

ARTICLE 2

Optometry

Section

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61-2-1. Short title. (Repealed effective July 1, 2024.) [Chapter 61, Article 2](#) NMSA 1978 may be cited as the "Optometry Act". **History:** 1953 Comp., § 67-1-1, enacted by Laws 1973, ch. 353, § 1; 1985, ch. 241, § 1.

61-2-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Optometry Act:

A. "practice of optometry" means:

(1) 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;

(2) 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

(3) does not include the use of surgery or injections in the treatment of eye diseases except for the use of the following types of in-office minor surgical procedures:

(a) non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;

(b) removal of nonperforating foreign bodies from the cornea, conjunctiva and eyelid;

(c) non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias;

(d) removal of eyelashes; and

(e) probing, dilation, irrigation or closure of the tear drainage structures of the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;

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 pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act [Chapter [26](#), Article [1](#) NMSA 1978];

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.

History: 1953 Comp., § 67-1-2, enacted by Laws 1973, ch. 353, § 2; 1977, ch. 30, § 1; 1979, ch. 3, § 1; 1985, ch. 241, § 2; 1995, ch. 20, § 2; 2003, ch. 274, § 1; 2007, ch. 277, § 1; 2015, ch. 131, § 1.

61-2-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [[28-2-1](#) to [28-2-6](#) NMSA 1978] shall govern any consideration of criminal records required or permitted by the Optometry Act.

History: 1953 Comp., § 67-1-2.1, enacted by Laws 1974, ch. 78, § 11.

61-2-4. License required. (Repealed effective July 1, 2024.)

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;

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

C. duplicate or replace an ophthalmic lens.

History: 1953 Comp., § 67-1-3, enacted by Laws 1973, ch. 353, § 3; 2003, ch. 274, § 2.

61-2-5. Board created; terms; appointment; continuance; removal. (Repealed effective July 1, 2024.)

A. There is created a six-member "board of optometry". The board shall be administratively attached to the regulation and licensing department. The board consists of four persons who have resided in and have been continuously engaged in the practice of optometry in New Mexico for at least five years

immediately prior to their appointment and two persons who shall represent the public. The public members of the board shall not have been licensed as optometrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Professional members of the board shall be appointed by the governor from a list of five names for each vacancy submitted to him by the state organization affiliated with the American optometric association. Not more than one professional board member shall maintain his place of business or reside in any one county, and professional appointments shall be made on a geographical basis to effect representation of all areas of the state. Board members shall be appointed for staggered terms of five years or less, each. The term of each board member shall be made in such a manner that the term of one board member ends on June 30 of each year. Board members shall serve until their successors have been appointed and qualified. A professional member vacancy shall be filled for the unexpired term by the appointment by the governor of a licensed optometrist from the general area of the state represented by the former member. All members of the board of optometry in office on the effective date of the Optometry Act shall serve out their unexpired terms.

C. The governor may remove a member from the board for the neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for a reason that would justify the suspension or revocation of his license to practice optometry.

D. A board member shall not serve more than two consecutive terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board regulations.

E. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor, the board members and the state optometric association of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

History: 1953 Comp., § 67-1-4, enacted by Laws 1973, ch. 353, § 4; 1979, ch. 12, § 1; 1991, ch. 189, § 1; 2003, ch. 408, § 1.

61-2-6. Organization; meetings; compensation; powers and duties. (Repealed effective July 1, 2024.)

A. The board shall annually elect a chair, a vice chair and a secretary-treasurer; each shall serve until a successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chair and shall be called upon the written request of a majority of the board members. A majority of the board members currently serving constitutes a quorum.

C. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [[10-8-1](#) through [10-8-8](#) NMSA 1978] but shall receive no other compensation, perquisite or allowance.

D. The board has the authority to determine what constitutes the practice of optometry in accordance with the provisions of the Optometry Act and has jurisdiction to exercise any other powers and duties pursuant to that act. The board may issue advisory opinions and declaratory rulings pursuant to that act and rules promulgated in accordance with that act, but shall not expand the scope of practice of optometry beyond the provisions of that act.

E. The board shall:

- (1) administer and enforce the provisions of the Optometry Act;
- (2) adopt, publish and file, in accordance with the Uniform Licensing Act [[61-1-1](#) through [61-1-31](#) NMSA 1978] and the State Rules Act [Chapter [14](#), Article [4](#)NMSA 1978], all rules for the implementation and enforcement of the provisions of the Optometry Act;
- (3) adopt and use a seal;
- (4) administer oaths and take testimony on matters within the board's jurisdiction;
- (5) keep an accurate record of meetings, receipts and disbursements;
- (6) keep a record of examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within thirty days after an examination, the

board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which the applicant is examined; providing that an applicant failing may apply for re-examination at the next scheduled examination date;

(8) keep a book of registration in which the name, address and license number of licensees shall be recorded, together with a record of license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Optometry Act;

(10) develop and administer qualifications for certification for the use of pharmaceutical agents as authorized in Section [61-2-10.2](#) NMSA 1978, including minimum educational requirements and examination, as required by Section [61-2-10.2](#) NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use pharmaceutical agents as authorized in Section [61-2-10.2](#) NMSA 1978; and

(11) provide for the suspension of an optometrist's license for sixty days upon a determination of use of pharmaceutical agents without prior certification in accordance with Section [61-2-10.2](#) NMSA 1978, after proper notice and an opportunity to be heard before the board.

History: 1953 Comp., § 67-1-5, enacted by Laws 1973, ch. 353, § 5; 1977, ch. 30, § 2; 1979, ch. 12, § 2; 1985, ch. 241, § 3; 1995, ch. 20, § 3; 2003, ch. 408, § 2; 2015, ch. 131, § 2.

61-2-7. Disposition of funds; optometry fund created; method of payments; bonds. (Repealed effective July 1, 2024.)

A. There is created the "optometry fund."

B. All funds received by the board and money collected under the Optometry Act shall be deposited with the state treasurer, who shall place the same to the credit of the optometry fund.

C. All payments out of the optometry fund shall be made on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the optometry fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Optometry Act and the duties and powers imposed thereby; and

(2) the promotion of optometric education and standards in this state within the budgetary limits.

E. All funds which may have accumulated to the credit of the board under any previous law shall be transferred to the optometry fund and shall continue to be available for use by the optometry board in accordance with the provisions of the Optometry Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the optometry fund for use in accordance with the provisions of the Optometry Act.

F. The secretary-treasurer and any employee who handles money or who certifies the receipt or disbursal of money received by the board shall, within thirty days after election or employment by the board, execute a bond in accordance with the provisions of the Surety Bond Act [[10-2-13](#) through [10-2-16](#) NMSA 1978], conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands.

G. The secretary-treasurer shall make, at the end of each fiscal year, an itemized report to the governor of all receipts and disbursements of the board for the prior fiscal year, together with a report of the records and information required by the Optometry Act. A copy of the annual report to the governor shall be presented to the board at its first meeting in July of each year.

History: 1953 Comp., § 67-1-6, enacted by Laws 1973, ch. 353, § 6.

61-2-8. Qualifications for licensure as an optometrist. (Repealed effective July 1, 2024.)

Each applicant for licensure as an optometrist shall furnish evidence satisfactory to the board that the applicant:

- A. has reached the age of majority;
- B. is of good moral character and of temperate habits;
- C. has completed at least an approved four-year high school course of study or the equivalent thereof as determined by regulations of the board;
- D. is a citizen of the United States or has taken out his first naturalization papers; and
- E. has graduated and been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board, and in the event the applicant applies for licensure by endorsement, he shall have been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board which had a minimum course of study of four thousand clock hours of instruction leading to such degree.

History: 1953 Comp., § 67-1-7, enacted by Laws 1973, ch. 353, § 7.

61-2-9. Licensure by examination; licensure by endorsement. (Repealed effective July 1, 2024.)

A. An applicant meeting the qualifications set forth in [Section 61-2-8](#) NMSA 1978, shall:

(1) file his application under oath, on forms supplied by the board, for an examination by the board. The examination shall be confined to the subjects within the curriculum of colleges of optometry approved and accredited by the board and shall include written tests and practical demonstrations and may include oral tests; or

(2) file his application under oath on forms supplied by the board which conform to board regulations on endorsement and furnish proof satisfactory to the board of his having been licensed by examination in another state which had qualifications equal to or exceeding those required in this state on the date of his original licensure, and satisfying the board that he holds a doctor of optometry degree from a school or college approved and accredited by the board which was obtained after the completion of a course of study with a minimum of four thousand clock hours of instruction. The applicant must have been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made. This proof shall be accepted in lieu of the written portion of the examination. Applicants for licensure without written examination shall be examined to the satisfaction of the board by practical, oral and clinical demonstration in the presence of a majority of the board and a detailed record of such examination shall be kept and made available to the applicant at his request.

B. All applicants successfully passing the examinations shall be issued a license by the board upon payment of the license fee.

History: 1953 Comp., § 67-1-8, enacted by Laws 1973, ch. 353, § 8.

61-2-9.1. License issued. (Repealed effective July 1, 2024.)

Each applicant for a license to practice optometry as provided in [Chapter 61, Article 2](#) NMSA 1978 who successfully passes the examination for licensure, possesses the required educational qualifications and meets other requirements of the Optometry Act or regulations adopted pursuant to that act is entitled to a license that carries with it the title "doctor of optometry".

History: Laws 1995, ch. 20, § 1.

61-2-10. Repealed.

61-2-10.1. Repealed.

61-2-10.2. Designation of pharmaceutical agents; certification for use of certain agents. (Repealed effective July 1, 2024.)

A. Subject to the provisions of the Optometry Act, optometrists qualified and certified by the board may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:

- (1) may prescribe hydrocodone and hydrocodone combination medications;
- (2) may administer epinephrine auto-injections to counter anaphylaxis; and
- (3) shall not prescribe any other controlled substance classified in Schedule I or II

pursuant to the Controlled Substances Act [Chapter [30](#), Article [31](#) NMSA 1978].

B. The board shall issue certification for the use of pharmaceutical agents as set forth in Subsection A of this section to optometrists currently licensed by the board. To be certified, an optometrist shall submit to the board proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the administration of pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. The course shall constitute a minimum of twenty hours of instruction in clinical pharmacology, including systemic pharmacology as applied to optometry, and shall be taught by an accredited institution approved by the board.

C. Applicants for licensure shall meet the requirements for certification in the use of pharmaceutical agents as set forth in the Optometry Act and shall successfully complete the board's examination in pharmaceutical agents prior to licensure.

D. The certification authorized by this section shall be displayed in a conspicuous place in the optometrist's principal office or place of business.

History: 1978 Comp., § 61-2-10.2, enacted by Laws 1995, ch. 20, § 5; 1996, ch. 59, § 1; 2015, ch. 131, § 3.

61-2-10.3. Prescription for pharmaceutical agent or ophthalmic lenses; required elements; authority of a person who sells and dispenses eyeglasses. (Repealed effective July 1, 2024.)

A. A prescription written for a 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 or electronic order signed by the prescriber, that bears the name and address of the prescriber, the prescriber's 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;
- (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.

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

- (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.

History: Laws 2003, ch. 274, § 8; 2015, ch. 131, § 4.

61-2-10.4. Contact lens prescription; required elements; restrictions. (Repealed effective July 1, 2024.)

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.

History: Laws 2003, ch. 274, § 9.

61-2-10.5. Replacement contact lens prescriptions. (Repealed effective July 1, 2024.)

- 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 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 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.

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.

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.

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.

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:

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

(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

(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 misdemeanor and shall be sentenced pursuant to [Section 31-19-1](#) NMSA 1978.

History: Laws 2003, ch. 274, § 10.

61-2-11. License fees; licensure under prior law. (Repealed effective July 1, 2024.)

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.

History: 1953 Comp., § 67-1-9, enacted by Laws 1973, ch. 353, § 9; 1981, ch. 50, § 1; 1995, ch. 20, § 6; 1996, ch. 59, § 2; 2003, ch. 274, § 3.

61-2-12. License; display; renewal; retirement; resumption of practice. (Repealed effective July 1, 2024.)

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 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.

History: 1953 Comp., § 67-1-10, enacted by Laws 1973, ch. 353, § 10; 1995, ch. 20, § 7; 2003, ch. 274, § 4.

61-2-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2024.)

The board may refuse to issue, suspend or revoke any license, in accordance with the provisions of the Uniform Licensing Act [[61-1-1](#) through [61-1-31](#) NMSA 1978], for any of the following reasons:

- A. conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- B. malpractice or incompetence;
- C. continued practice by a person knowingly having an infectious or contagious disease;
- D. advertising by means of knowingly false, misleading or deceptive statements or advertising or attempting to practice under a name other than one's own;
- E. habitual drunkenness or addiction to the use of habit-forming drugs;
- F. aiding or abetting in the practice of optometry any person not duly licensed to practice optometry in this state;

G. lending, leasing or in any other manner placing his certificate of license at the disposal or in the service of any person not licensed to practice optometry in this state;

H. employing, procuring or inducing an unlicensed person to practice optometry in this state;

I. violating any of the provisions of the Optometry Act; or

J. committing any act defined as "unprofessional conduct" by regulation of the board filed in accordance with the State Rules Act [Chapter [14](#), Article [4](#) NMSA 1978]. Without limiting the right of the board to determine what acts on the part of a licensee constitute unprofessional conduct, the following acts shall be deemed to be unprofessional conduct:

- (1) any conduct of a character tending to deceive or defraud the public;
- (2) the obtaining of a fee by fraud or misrepresentation;
- (3) charging unusual, unreasonable or exorbitant fees;
- (4) "splitting" or dividing a fee with any person;
- (5) advertising professional superiority;

(6) advertising by any means, or granting, a discount for professional services, prosthetic devices, eyeglasses, lenses, frames or mountings whether sold separately or as part of the professional services; or

(7) using any type of "price advertising" which would tend to imply the furnishing of professional services without cost or at a reduced cost to the public.

History: 1953 Comp., § 67-1-11, enacted by Laws 1973, ch. 353, § 11.

61-2-14. Offenses. (Repealed effective July 1, 2024.)

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:

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

(2) using or attempting to use a pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act [Chapter [26](#), Article [1](#) NMSA 1978] 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 the patient's 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 a 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 of them, but this paragraph does not preclude the use of a business name, trade name or trademark not relating to price or 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.

History: 1953 Comp., § 67-1-12, enacted by Laws 1973, ch. 353, § 12; 1985, ch. 241, § 5; 1995, ch. 20, § 8; 1996, ch. 59, § 3; 2003, ch. 274, § 5; 2015, ch. 131, § 5.

61-2-15. Exemptions. (Repealed effective July 1, 2024.)

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.

History: 1953 Comp., § 67-1-13, enacted by Laws 1973, ch. 353, § 13; 2003, ch. 274, § 6.

61-2-16. Freedom of choice. (Repealed effective July 1, 2024.)

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.

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.

History: 1953 Comp., § 67-1-14, enacted by Laws 1973, ch. 353, § 14; 1985, ch. 241, § 6; 2003, ch. 274, § 7.

61-2-17. Power to enjoin violations. (Repealed effective July 1, 2024.)

Upon conviction of any person for violation of any provision of the Optometry Act, the board or any interested person may, in addition to the penalty herein provided, petition the district court for an order restraining and enjoining said person from further or continued violation of the Optometry Act and the order may be enforced by contempt proceedings.

History: 1953 Comp., § 67-1-15, enacted by Laws 1973, ch. 353, § 15.

61-2-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of optometry is terminated on July 1, 2023 pursuant to the Sunset Act [[12-9-11](#) through [12-9-21](#) NMSA 1978]. The board shall continue to operate according to the provisions of the Optometry Act until July 1, 2024. Effective July 1, 2024, the Optometry Act is repealed.

History: 1978 Comp., § 61-2-18, enacted by Laws 1979, ch. 12, § 3; 1981, ch. 241, § 16; 1985, ch. 87, § 1; 1991, ch. 189, § 2; 1997, ch. 46, § 2; 2003, ch. 428, § 1; 2009, ch. 96, § 2; 2015, ch. 119, § 2.