



New Mexico Regulation and Licensing Department

BOARDS AND COMMISSIONS DIVISION – BOARD OF PHARMACY

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November 3, 2015

Lensdiscounters.com
1010 Niagara St
Buffalo, NY 14213

Attention: Legal or Government/Regulatory Affairs Department

It appears that lensdiscounters.com is illegally shipping contact lenses to patients in the state of New Mexico.

A person or entity 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 registered with the New Mexico Board of Pharmacy (NMBOP) as a **Contact Lens Distributor**. Your company is not listed as a current registrant of the NMBOP.

In addition, you must obtain a valid prescription from each customer prior to selling any contact lenses. Your company's policies¹ allowing for the shipment of contact lenses to patients in New Mexico without a prescription or validation from the prescribing optometrist are in direct violation of New Mexico State statutes², and New Mexico State regulations.³

To obtain an application, go to:

[http://www.rld.state.nm.us/uploads/files/Seller%20or%20dispenser%20of%20Contact%20Lenses%20Application\(2\).pdf](http://www.rld.state.nm.us/uploads/files/Seller%20or%20dispenser%20of%20Contact%20Lenses%20Application(2).pdf)

To view the NMBOP regulations regarding contact lenses, go to:

<http://www.nmcpr.state.nm.us/nmac/parts/title16/16.019.0028.htm>

Written response regarding your corrective action is required within 30 (thirty) days from receipt of this letter.

Sincerely,

Ben Kesner
Executive Director and Chief Inspector
New Mexico Board of Pharmacy

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

¹ Lensdiscounters.com Policies and FAQ
(<http://www.lensdiscounters.com/TAC.html>)

Prescriptions for customers ordering within the USA

If we are shipping within the USA, we must verify your prescription as per the FTCLCA (Fairness to Contact Lens Consumer Act). If you choose to have us contact your doctor, please note that we have to give your doctor a minimum of 8 business hours to respond to our verification request, after which, if they do not respond, we will release your order for shipment with the prescription numbers you have provided and will not be responsible for any errors made by you while reading or entering in your prescription online or by phone. For faster prescription processing and positive verification, you may fax or email us a copy of your prescription.

(<http://www.lensdiscounters.com/faq.html>)

8. Do I have to send you my prescription?

No, you do not need to send us your prescription. You can provide us with your doctor's information, and we can verify it by phone or fax. There is no extra charge for this service. Your doctor is required to release the prescription to us, however, if they do not cooperate, we are allowed to assume that your prescription is correct and valid if your doctor does not respond to our request within 8 business hours. If you send us your prescription by email or fax, we will have no need to contact your doctor and your order will get processed a bit faster.

9. How long is my prescription valid for?

Usually 1 or 2 years from the date it was written, depending on the state that you are in. Sometimes it is up to your doctor's discretion. If you are unsure if your prescription is still valid, you can always try placing your order and providing us with your doctor information. If your doctor does not contact us to cancel your order within 8 business hours of the prescription verification request, your order will ship. There are no restocking or cancellation fees if your order gets canceled, so you have nothing to lose.

14. My doctor will not release my prescription to me or I do not have a prescription available. How do I order through your company?

Just place the order based off the prescription parameters on your previous box of contact lenses or trial pair, and provide us with the phone or fax number to your doctor's office. If your doctor does not respond within 8 business hours of our prescription verification request, the order will ship. Please make sure that the prescription numbers that you entered during the order are correct, as your doctor will not always call us back to make corrections.

² **NMSA 61-2-10.5. Replacement contact lens prescriptions.**

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.

³ **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**
CHAPTER 19 PHARMACISTS
PART 28 SELLER OR DISPENSER OF CONTACT LENSES
(EXCLUDING LICENSED OPTOMETRISTS and PHYSICIANS)

16.19.28.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.
[16.19.28.1 NMAC - N, 12-01-2003; A, 06/30/06]

16.19.28.2 SCOPE: All persons or entities selling or dispensing contact lenses pursuant to a valid prescription to patients in New Mexico.
[16.19.28.2 NMAC - N, 12-01-2003]

16.19.28.3 STATUTORY AUTHORITY: The board of pharmacy is authorized pursuant to the Optometry Act, Section 61-2-1 through Section 61-2-18 NMSA 1978 (1997 Repl. Pam.) to register sellers or dispensers of contact lenses and collect a fee for registration.
[16.19.28.3 NMAC - N, 12-01-2003]

16.19.28.4 DURATION: Permanent
[16.19.28.4 NMAC - N, 12-01-2003]

16.19.28.5 EFFECTIVE DATE: December 1, 2003, unless a different date is cited at the end of a section.
[16.19.28.5 NMAC - N, 12-01-2003]

16.19.28.6 OBJECTIVE: The objective of Part 28 of Chapter 19 is to establish the registration of sellers or dispensers of contact lenses.
[16.19.28.6 NMAC - N, 12-01-2003]

16.19.28.7 DEFINITIONS:

- A. "Board" means the New Mexico board of pharmacy, herein referred to as the board.
- B. "Optometry Act" means NMSA 1978 Section 61-2-1 through 61-2-18 (1995 Repl. Pamp.), herein referred to as the Optometry Act or Section 61-2-1 et seq.
- C. "Contact lens prescription" means a prescription that shall explicitly state that it is for contact lenses; specify the lens type; include all specifications for the ordering and fabrication of the lenses; include the date of issue, the name and address of the patient and the name and address of the prescriber; and 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 interest of the patient.
- D. "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.
- E. "Contact lens" means any contact lens for which state law requires a prescription.
- F. "Dispensing facility" means the building or structure for which contact lens are stored, shipped or distributed from.
- G. "Seller/dispenser" means one who is in the business of the sale or distribution of contact lenses.

[16.19.28.7 NMAC - N, 12-01-2003; A 06/30/06]

16.19.28.8 REGISTRATION:

- A. 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.
- B. Pharmacies, hospitals and clinics licensed by the board are exempt from this regulation.
- C. Registration will be submitted in forms provided by the board with the appropriate fee attached as a check or money order.
- D. Fees for registration are listed in 16.19.12 NMAC.
- E. Period of registration is for two years with renewals due by the last day of the expiration month listed on the registration.
- F. Refer to NMSA 1978, Section 61-11-14F for application requirements.

[16.19.28.8 NMAC - N, 12-01-2003; A, 06/30/06]

16.19.28.9 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:

- (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.

B. The prescription contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

- (1) lens manufacturer;
- (2) type of lens;
- (3) power of the lens;
- (4) base curve;
- (5) lens size;
- (6) name of the patient;
- (7) date the prescription was given to the patient;
- (8) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and
- (9) 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 that prescription for three 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.
[16.19.28.9 NMAC - N, 12-01-2003; A, 06/30/06]

16.19.28.10 REGISTRATION LIST: The board shall maintain a current list of all registered sellers and dispensers of contact lenses.
[16.19.28.10 NMAC - N, 12-01-2003]

16.19.28.11 VIOLATION PENALTIES: Any person who violates any of the provisions of this part shall be subject to the provisions of the New Mexico Uniform Licensing Act.
[16.19.28.11 NMAC - N, 06/30/06]

HISTORY OF 16.19.28 NMAC: [RESERVED]
