

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 19 CONTACT LENSES

16.16.19.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; A, 6-26-00; 16.16.19.1 NMAC - Rn, 16 NMAC 16.19.1, 03-15-2001; A, 07-06-2012]

16.16.19.2 SCOPE: Part 19 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.
[10-14-95; 16.16.19.2 NMAC - Rn, 16 NMAC 16.19.2, 03-15-2001]

16.16.19.3 STATUTORY AUTHORITY: The authority for Part 19 of Chapter 16 is NMSA 1978, Section 61-2-2; Section 61-2-4; Section 61-2-14; and 61-2-6.D. (2) (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.19.3 NMAC - Rn, 16 NMAC 16.19.3, 03-15-2001]

16.16.19.4 DURATION: Permanent.
[10-14-95; 16.16.19.4 NMAC - Rn, 16 NMAC 16.19.4, 03-15-2001]

16.16.19.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[6-24-94...10-14-95; 16.16.19.5 NMAC - Rn, 16 NMAC 16.19.5, 03-15-2001; A, 07-06-2012]

16.16.19.6 OBJECTIVE: The objective of Part 19 of Chapter 16 is to set forth regulations on contact lens prescription release.
[10-14-95; 16.16.19.6 NMAC - Rn, 16 NMAC 16.19.6, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.7 DEFINITIONS:

A. “Replacement contact lens prescription” means a prescription prepared by a licensed optometrist containing the information specified in Section 11 of this rule and written expressly for the purpose of providing contact lenses that have already been properly fitted.

B. “Appropriate 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.
[10-14-95; 16.16.19.7 NMAC - Rn, 16 NMAC 16.19.7, 03-15-2001; A, 03-15-2004]

16.16.19.8 RELEASE OF CONTACT LENS PRESCRIPTION: [RESERVED]
[6-24-94; 10-14-95; 16.16.19.8 NMAC - Rn, 16 NMAC 16.19.8, 03-15-2001; A, 6-08-01; Repealed, 03-15-2004]

16.16.19.9 CONTACT LENS EXAMINATION AND FOLLOW-UP FITTING REQUIRED:

A. No optometrist will prescribe contact lenses for a patient unless he/she has personally examined and fitted the contact lenses to the eyes of the patient at the optometrist’s place of practice.

B. A replacement contact lens prescription is deemed to be determined after a refraction, eye health examination, diagnostic contact lens fitting, instruction on care/maintenance procedures, and appropriate follow-up care (16.16.19.7.B NMAC) have been performed.

C. [RESERVED]

D. No optometrist may write a replacement contact lens prescription until the procedures in Subsections A and B of this rule have been performed (see 16.16.19.9 NMAC).

E. No optometrist may write a contact lens prescription for a patient whose eye health would be compromised through wearing contact lenses.

F. If, in the professional opinion of the optometrist, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the optometrist may terminate his/her care of that patient. The optometrist shall notify the patient in writing that the optometrist is terminating care and shall state his/her reason for doing so.

[6-24-94; 10-14-95; 16.16.19.9 NMAC - Rn, 16 NMAC 16.19.9, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.10 CONTACT LENS POLICIES AND PROCEDURES:

A. All contact lenses used in the determination of a contact lens prescription are considered to be

diagnostic lenses, and the use of such lenses by anyone other than a licensed optometrist or physician, or person under the direct supervision of a licensed optometrist or physician, shall constitute the practice of optometry.

B. Any New Mexico licensed optometrist who dispenses contact lenses will observe the following provisions:

- (1) maintain regular office hours and be physically accessible to the patient;
- (2) be actively interacting with the patient's professional care designed to detect disease, prevent infection due to patient and/or product variability;
- (3) provide eye examinations and/or contact lens related office visits; and
- (4) require a valid replacement contact lens prescription signed by the prescribing doctor.

[6-24-94; 10-14-95; 16.16.19.10 NMAC - Rn, 16 NMAC 16.19.10, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.11 REPLACEMENT CONTACT LENS PRESCRIPTION:

A. The licensed optometrist shall ensure that each replacement contact lens prescription that he/she prescribes contains all the ordering and fabrication specifications necessary for the proper duplication of the patient's current prescription; and shall include the following:

- (1) date of issue;
- (2) name and address of the patient;
- (3) name, professional designation, address, and signature of the prescribing optometrist;
- (4) all parameters including, but not limited to, lens size and type, base curve, power, diameter, brand name, materials type, required to properly duplicate or replace the contact lens supply;
- (5) a specific date of expiration, of not more than twenty-four months from the time the patient was first examined, unless, in the professional opinion of the optometrist, a shorter expiration date is in the best interest of the patient;
- (6) any limitation on refills and notification of scheduled follow-up visits and recommended lens replacement interval; and
- (7) an explicit statement that the prescription is a replacement contact lens prescription.

B. The replacement contact lens prescription may contain the following items:

- (1) a specific statement noting that any person, firm, or corporation that dispenses or sells contact lenses from the prescription should inform the patient in writing of the following:
 - (a) that the patient should return to the prescribing optometrist to ascertain the accuracy and suitability of the contact lenses; and
 - (b) that the prescribing optometrist or physician shall not be responsible for any damage or injury resulting from negligence of third parties to include, but not be limited to, negligence in packaging, manufacturing, substitution, improper care regimen or recommendations (i.e. cleaning, disinfection, and wetting) or instructions provided by the seller that lead to over-wear of the contact lenses or improper care of contact lenses that result in damage to the lenses or the visual system, or change of the parameters of the contact lens, or filling the prescription after the expiration date;
- (2) notice that the contact lens dispenser shall not adapt, substitute, or change the contact lens prescription, including brand name or specific material types, without prior authorization from the prescribing optometrist or physician, because to do so would constitute the practice of optometry;
- (3) the words "OK for contact lens", "fit with contact lenses", or similar wording, do not constitute a contact lens prescription;
- (4) a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented in the patient's records; and
- (5) wearing guidelines and/or specific instructions for use of the contact lenses by the patient.

[6-24-94, 10-14-95; A, 6-26-00; 16.16.19.11 NMAC - Rn, 16 NMAC 16.19.11, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.12 TERM OF PRESCRIPTION: An optometrist may not issue a contact lens prescription that expires before the second anniversary of the date the patient's prescription parameters were determined, unless a shorter prescription period was clinically indicated by the patient's ocular health or by potential harm to the patient's ocular health.

[16.16.19.12 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.13 SHORT-TERM PRESCRIPTION: If an optometrist writes a contact lens prescription for a

period of less than two years, the optometrist shall complete the following:

- A.** give the patient a verbal explanation, at the time of the action, of the reason for the action; and
- B.** maintain a written explanation of the reason in the patient's records.

[16.16.19.13 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.14 EXTENSION OF PRESCRIPTION: An optometrist may extend a patient's contact lens prescription expiration date without completing another eye examination if the optometrist deems it clinically indicated, and the reason shall be noted in the patient's records.

[16.16.19.14 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.15 RELEASE OF REPLACEMENT CONTACT LENS PRESCRIPTION; TIMING:

A. An optometrist who performs an eye examination and fits a patient for contact lenses shall prepare and provide the patient or anyone who is designated to act on behalf of the patient, with a replacement contact lens prescription when the patient's contact lens fitting has been completed.

B. Optometrists shall display, in a prominent location in their office(s), a sign to inform their patients that they have a right to a copy of their replacement contact lens prescription.

C. The optometrist shall provide the patient with a copy of the replacement contact lens prescription as long as the prescription is valid. The replacement copy will still show the original expiration date.

D. 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.

[16.16.19.15 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

16.16.19.16 LIMITATIONS ON, OR REFUSAL TO GIVE REPLACEMENT CONTACT LENS PRESCRIPTION:

A. An optometrist may exclude categories of contact lenses from a replacement contact lens prescription if the exclusion is clinically indicated.

B. An optometrist may refuse to provide a replacement contact lens prescription to a patient if:

- (1) the patient's ocular health presents a contraindication for contact lenses;
- (2) the refusal is warranted due to potential harm to the patient's ocular health;
- (3) the patient has a medical condition indicating that:
 - (a) the patient's ocular health would be damaged if the prescription were released to the

patient; or

- (b) further monitoring of the patient is needed;

(4) the request is made after the second anniversary of the date of the patient's last contact lens/eye examination.

C. If an optometrist refuses to give a patient his or her replacement contact lens prescription for any reason permitted under Subsection B of 16.16.19.16 NMAC, the optometrist must do the following:

- (1) give the patient a verbal explanation of the reason for the action at the time of the action; and
- (2) record and maintain, in the patient's records, a written explanation of the reasons given for

refusal.

D. Subsection B of 16.16.19.16 NMAC does not prohibit an optometrist from giving a patient the patient's replacement contact lens prescription.

[16.16.19.16 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.17 COMPLIANCE REQUIRED; VIOLATION PENALTIES:

A. A person or entity who is not a licensed optometrist or a licensed physician cannot sell or dispense replacement contact lenses unless registered with the New Mexico board of pharmacy. Pharmacies, hospitals and clinics licensed by the board of pharmacy are exempt from this rule.

B. Failure of an optometrist to comply with the provisions of this rule, 16.16.19 NMAC, shall be considered unprofessional and unethical conduct, and shall be dealt with in accordance with the appropriate provisions of Part 21 and Part 22 of 16.16.19 NMAC.

C. Adapting, substituting, or changing the contact lens prescription, including specified material types, without prior authorization from the prescribing doctor, constitutes the practice of optometry.

D. Practicing optometry without a license is a fourth degree felony violation punishable upon conviction as provided in the Criminal Code.

E. The board of optometry may impose a civil fine or no more than one thousand (\$1,000) on a licensed optometrist who fails to provide a requested replacement contact lens prescription; or who knowingly dispenses contact lenses without a valid replacement contact lens prescription; or who otherwise fails to comply with the provisions of this rule, 16.16.19 NMAC.

[16.16.19.17 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

16.16.19.18 SALE OR DISPENSING OF REPLACEMENT CONTACT LENSES: The sale of all replacement contact lenses is regulated by the federal trade commission's *Contact Lens Rule* which became effective in July 2004. Please see "a guide for prescribers and sellers" of contact lenses at <http://www.ftc.gov/bcp/edu/pubs/business/health/bus62.shtm>.

[16.16.19.18 NMAC - N, 6-08-01; A, 03-15-2004; 16.16.19.18 NMAC - N, 07-06-2012]

16.16.19.19 LIABILITY FOR USE OF PRESCRIPTION: When a patient's replacement contact lens prescription is dispensed by a person other than that 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. Furthermore, an optometrist or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lenses prescribed.

[16.16.19.19 NMAC - N, 03-15-2004; 16.16.19.19 NMAC - Rn & A, 16.16.19.18 NMAC, 07-06-2012]

16.16.19.20 REGISTRATION REQUIRED FOR NON-LICENSEES TO SELL CONTACT LENSES:

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/she is registered with the New Mexico 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.

B. 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.

C. The board of pharmacy shall maintain a current list of all registered seller and dispensers of contact lenses.

D. A person, company, or entity that is not registered pursuant to this subsection and knowingly sells or dispenses contact lenses to a New Mexico resident is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

[16.16.19.20 NMAC - Rn, 16.16.19.19 NMAC, 07-06-2012]

HISTORY of 16.16.19 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 24, Board Rule No. 24 - Contact Lenses, filed 5-25-94.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.19, Contact Lenses, filed 9-21-95, replaced NMBO Rule 24, Board Rule No. 24 - Contact Lenses.

16 NMAC 16.19, Contact Lenses, filed 9-21-95, renumbered and reformatted to 16.16.19 NMAC, Contact Lenses, effective 03-15-2001.