



ISSUE MEMORANDUM

DATE	February 26, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Director
SUBJECT	Agenda Item #5F: Update on Federal Contact Lens Rules

In late December of 2020—the United States House of Representatives Committee on Appropriations requested that the Federal Trade Commission delay the effective date for the Contact Lens Rule until March 31, 2021. Negotiations are ongoing, and provisions of the rule may change. Identified by staff analysis, the current provisions may impact the following statutes of the California Optometry Practice Act:

Business and Professional Code 2541.2(c)

RELEASE OF CONTACT LENS PRESCRIPTION TO PATIENT

A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

- (1) Rigid gas permeables.
- (2) Bitoric gas permeables.
- (3) Bifocal gas permeables.
- (4) Keratoconus lenses.
- (5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

Business and Professional Code 2541.2(d)

RELEASE OF CONTACT LENS PRESCRIPTION TO PATIENT

If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, **attempt to promptly confirm** (emphasis added) the information contained in the prescription through direct communication with the contact lens seller.

Staff Recommendation: *On the action of President Morodomi, send the issue to the Consumer Protection/Public Outreach Committee to review legal analysis.*



THE CONTACT LENS RULE: A GUIDE FOR PRESCRIBERS AND SELLERS

TAGS: [Advertising and Marketing](#) | [Health Claims](#) | [contact lenses](#)

Consumers have the right to shop around when buying contact lenses – and prescribers and sellers have specific legal obligations. Are you complying with the Contact Lens Rule?

Changes to the Rule go into effect October 16, 2020.

The Fairness to Contact Lens Consumers Act gives people certain rights, including the right to shop around when buying contact lenses. The Act also imposes duties on contact lens prescribers and sellers, and requires the Federal Trade Commission (FTC) to develop and enforce implementing rules. In 2004, the FTC issued the [Contact Lens Rule](#) to spell out the Act's requirements. In 2020, the FTC amended the Rule, which you can find [here](#).

The [Contact Lens Rule](#) requires prescribers to give patients a copy of their contact lens prescriptions at the end of a contact lens fitting, even if the patient doesn't ask for it. A patient who wants to buy contact lenses from another seller may give the prescription to that seller. If a patient doesn't give his prescription to that seller, the seller must get that information from the patient and send it to a prescriber to verify before selling the lenses.

The verification process works like this: the patient gives information about her prescription (e.g., the manufacturer or brand, power, diameter) to the seller, who then submits it to the prescriber in a request to verify that information. The prescriber has eight business hours to respond. If the prescriber does not respond within that time, the prescription is verified automatically, and the seller may provide contact lenses to the consumer.

For Prescribers

According to the Rule, "prescriber" refers to anyone permitted under state law to issue prescriptions for contact lenses – including ophthalmologists, optometrists, and licensed opticians who also are permitted under state law to fit contact lenses (sometimes called "dispensing opticians").

All prescribers must:

give a copy of the contact lens prescription to the patient at the end of the contact lens fitting – even if the patient doesn't ask for it. You may provide the prescription digitally if the patient agrees to get it digitally instead of on

paper, and if the patient also agrees to the specific method (for example, e-mail, text, or portal), *and* if the electronic means can be accessed, downloaded, and printed by the patient. You also must keep records or proof that a patient agreed to digital delivery for at least three years.

In addition, if you are a prescriber who sells lenses or with a direct or indirect financial interest in the sale of contact lenses, you have to:

ask patients to sign a statement confirming they got their prescription. They'd confirm by signing an acknowledgment of receipt, a prescriber-retained copy of a contact lens prescription, or a prescriber-retained copy of the examination receipt. Keep those confirmations for at least three 3 years. If a patient refuses to sign the confirmation, note the refusal, sign it, and keep it.

if you provided a digital copy of the prescription, keep records or proof for at least three years that it was sent, received, or made accessible, downloadable and printable.

give the contact lens prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers, within 40 business hours.

In any response to a verification request, you have to correct any inaccuracy in the prescription, inform the seller if it's expired, and give the reason if it's invalid.

You cannot require patients to:

buy contact lenses

pay additional fees or

sign a waiver or release in exchange for a copy of the contact lens prescription.

You may require a patient to pay for the eye exam, fitting, and evaluation before giving them a copy of the contact lens prescription, but only if you also require immediate payment from a patient whose eye exams show no need for glasses, contact lenses, or other corrective eye care products. Proof of valid insurance coverage counts as payment for purposes of this requirement.

You cannot disown liability or responsibility for the accuracy of an eye examination.

Prescription expiration

The Rule sets a floor, or minimum, expiration date of one year unless there is a legitimate medical reason for setting a shorter expiration date. If a prescriber's state law specifies an expiration date of more than one year, that law would govern for those prescribers. Even if a prescriber's state law does not set an expiration date of more than the one-year minimum required by the Rule, prescribers are free to set a date of more than one year if they feel it is appropriate. The Rule merely prohibits prescribers from setting an expiration date of less than a year unless there is a medical justification for a shorter duration. If the prescriber has such a medical justification, the prescriber must document the medical reason for the shorter expiration date with enough detail to allow for review by a qualified medical professional, and maintain the records for at least three years.

For Sellers

You may provide contact lenses only when the customer presents his prescription in person, by fax, or by email if the prescription has been scanned and attached to the email. The customer also can give you permission to verify the prescription by "direct communication" with the prescriber.

What is direct communication?

It's a completed communication by phone, fax, or email.

Direct communication by phone requires reaching and speaking to the intended recipient, or leaving an electronic voice message for the intended recipient.

Direct communication by fax or email requires that the intended recipient actually get the fax or email message.

For more details about compliance, see [FAQs: Complying with the Contact Lens Rule](#) at [business.ftc.gov](https://www.business.ftc.gov).

Verification

When verifying a contact lens prescription, you have to give this information to the prescriber using direct communication:

- patient's full name and address
- contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate
- quantity of lenses ordered
- date of patient order
- date and time of verification request
- a contact person for the seller, including name, fax and phone numbers, and
- a clear statement of the prescriber's regular Saturday business hours if the seller is counting those hours as business hours under the Rule.

Under the Rule, a prescription is verified if the prescriber:

- confirms its accuracy to the seller via direct communication
- informs the seller that the prescription is inaccurate and provides accurate information to the seller via direct communication, or
- fails to communicate with the seller within eight business hours of getting a complete verification request. During the eight business hour period, the seller must give the prescriber a reasonable opportunity to verify the prescription.

When using automated phone calls for verification, you have to:

- record the entire call
- begin the call by identifying it as a request for prescription verification made in accordance with the Contact Lens Rule,
- deliver the information required by the Rule in a slow and deliberate manner and at a reasonably understandable volume, and
- make the information required by the Rule repeatable at the prescriber's option

Record-keeping

You have to keep prescriptions presented to you; prescription verification requests, including the recording of automated calls containing verification requests; and prescriber responses to the verification requests. If you count a prescriber's Saturday business hours, you also have to keep a record of what those hours are and how you learned of them. Keep these records for at least three years.

The Fine Print

What practices are not allowed?

You must not:

fill a prescription unless you have a copy of it or have verified it, as required by the Rule

fill a prescription if the prescriber tells you by direct communication within eight business hours after getting a complete verification request that the prescription is inaccurate, expired, or otherwise invalid

alter prescriptions. If you submit a verification request for a brand that is not the customer's prescribed brand, you may be violating the Rule by altering the prescription. The only exception is if you've submitted a verification request for a brand that the customer told you is listed on their prescription. To qualify for this exception, you must ask the customer to give you the manufacturer or brand listed on their prescription, and the customer must have told you that information. For private label lenses, however, you can substitute identical contact lenses made by the same manufacturer and sold under a different name

suggest or state that customers can get contact lenses without a prescription

What's a business hour?

Prescriptions are verified automatically if the prescriber doesn't respond to the seller's verification request within eight business hours. A business hour is defined as one hour between 9 a.m. and 5 p.m., Monday through Friday, excluding federal holidays, in the prescriber's time zone. If a seller determines that a particular prescriber has regular Saturday business hours, the seller also may count those Saturday hours as business hours under the Rule.

How is the "eight business hour" verification period calculated?

When calculating eight business hours, begin the verification period the first business hour **after** the prescriber gets a complete verification request and end it eight business hours later.

For example, if the prescriber gets a request at 10 a.m. Monday, he has to respond by 10 a.m. Tuesday. If there's no response, you can provide the contact lenses at 10:01 a.m. Tuesday. If the verification request is received at 10 p.m. Monday, the response would be due by 5 p.m. Tuesday. If there's no response, you can provide the lenses at 5:01 p.m. Tuesday.

[contact lenses](#)

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

June 2020



ftc.gov

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of February 22, 2021

Title 16 → Chapter I → Subchapter C → Part 315

Title 16: Commercial Practices

PART 315—CONTACT LENS RULE

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AUTHORITY: 15 U.S.C. 7601-7610.

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.

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§315.1 Scope of regulations in this part.

This part, which shall be called the “Contact Lens Rule,” implements the Fairness to Contact Lens Consumers Act, codified at 15 U.S.C. 7601-7610, which requires that rules be issued to address the release, verification, and sale of contact lens prescriptions. This part specifically governs contact lens prescriptions and related issues. Part 456 of Title 16 governs the availability of eyeglass prescriptions and related issues (the Ophthalmic Practice Rules (Eyeglass Rule)).

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§315.2 Definitions.

For purposes of this part, the following definitions shall apply:

Business hour means an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays. "Business hour" also may include, at the seller's option, a prescriber's regular business hours on Saturdays, provided that the seller has actual knowledge of these hours. "Business hour" shall be determined based on the time zone of the prescriber.

"Eight (8) business hours" shall be calculated from the time the prescriber receives the prescription verification information from the seller, and shall conclude when eight (8) business hours have elapsed. For verification requests received by a prescriber during non-business hours, the calculation of "eight (8) business hours" shall begin at 9 a.m. on the next weekday that is not a Federal holiday or, if applicable, on Saturday at the beginning of the prescriber's actual business hours.

Commission means the Federal Trade Commission.

Contact lens means any contact lens for which State or Federal law requires a prescription.

Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required, and such term may include:

- (1) An examination to determine lens specifications;
- (2) Except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and
- (3) Medically necessary follow-up examinations.

Contact lens prescription means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following:

- (1) The name of the patient;
- (2) The date of examination;
- (3) The issue date and expiration date of prescription;
- (4) The name, postal address, telephone number, and facsimile telephone number of prescriber;
- (5) The power, material or manufacturer or both of the prescribed contact lens;
- (6) The base curve or appropriate designation of the prescribed contact lens;
- (7) The diameter, when appropriate, of the prescribed contact lens; and

(8) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name.

Direct communication means completed communication by telephone, facsimile, or electronic mail.

Issue date means the date on which the patient receives a copy of the prescription at the completion of a contact lens fitting.

Ophthalmic goods are contact lenses, eyeglasses, or any component of eyeglasses.

Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration. "Other person," for purposes of this definition, includes a dispensing optician who is permitted under State law to issue prescriptions and who is authorized or permitted under State law to perform contact lens fitting services.

Private label contact lenses mean contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers.

Provide to the patient a copy means giving a patient a copy of his or her contact lens prescription:

(1) On paper; or

(2) In a digital format that can be accessed, downloaded, and printed by the patient. For a copy provided in a digital format, the prescriber shall identify to the patient the specific method or methods of electronic delivery to be used, such as text message, electronic mail, or an online patient portal, and obtain the patient's verifiable affirmative consent to receive a digital copy through the identified method or methods; and maintain records or evidence of a patient's affirmative consent for a period of not less than three years. Such records or evidence shall be available for inspection by the Federal Trade Commission, its employees, and its representatives.

Reasonably understandable volume means at an audible level that renders the message intelligible to the receiving audience.

Slow and deliberate manner means at a rate that renders the message intelligible to the receiving audience.

[69 FR 40508, July 2, 2004, as amended at 85 FR 50717, Aug. 17, 2020]

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§315.3 Availability of contact lens prescriptions to patients.

(a) *In general.* When a prescriber completes a contact lens fitting, the prescriber:

(1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription;

(2) Shall, as directed by any person designated to act on behalf of the patient, verify the contact lens prescription by electronic or other means; and

(3) Shall, upon request, provide any person designated to act on behalf of the patient with a copy of the patient's contact lens prescription by electronic or other means within forty (40) business hours of receipt of the request. A prescriber shall note in the patient's record the name of the requester and the date and time that the prescription was provided to the requester.

(b) *Limitations.* A prescriber may not:

(1) Require the purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(3) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section;

(2) Require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(3) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section; or

(3) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription under paragraph (a)(1), (a)(2), or (a)(3) of this section.

(c) *Confirmation of prescription release.* (1)(i) Upon completion of a contact lens fitting, the prescriber shall do one of the following:

(A) Request that the patient acknowledge receipt of the contact lens prescription by signing a statement confirming receipt of the contact lens prescription;

(B) Request that the patient sign a prescriber-retained copy of a contact lens prescription that contains a statement confirming receipt of the contact lens prescription;

(C) Request that the patient sign a prescriber-retained copy of the receipt for the examination that contains a statement confirming receipt of the contact lens prescription; or

(D) If a digital copy of the prescription was provided to the patient (via methods including an online portal, electronic mail, or text message) in compliance with paragraph (a)(1) of this section, retain evidence that the prescription was sent, received, or made accessible, downloadable, and printable.

(ii) If the prescriber elects to confirm prescription release via paragraphs (c)(1)(i)(A), (B), or (C) of this section, the prescriber may, but is not required to, use the statement, “My eye care professional provided me with a copy of my contact lens prescription at the completion of my contact lens fitting” to satisfy the requirement.

(iii) In the event the patient declines to sign a confirmation requested under paragraph (c)(1)(i)(A), (B), or (C) of this section, the prescriber shall note the patient's refusal on the document and sign it.

(2) A prescriber shall maintain the records or evidence required under paragraph (c)(1) of this section for a period of not less than three years. Such records or evidence shall be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(3) Paragraphs (c)(1) and (c)(2) of this section shall not apply to prescribers who do not have a direct or indirect financial interest in the sale of contact lenses, including, but not limited to, through an association, affiliation, or co-location with a contact lens seller.

[69 FR 40508, July 2, 2004, as amended at 85 FR 50717, Aug. 17, 2020]

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§315.4 Limits on requiring immediate payment.

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

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§315.5 Prescriber verification.

(a) *Prescription requirement.* A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is:

- (1) Presented to the seller by the patient or prescriber directly or by facsimile; or
- (2) Verified by direct communication.

(b) *Information for verification.* When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information through direct communication:

- (1) The patient's full name and address;
- (2) The contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;

(3) The quantity of lenses ordered;

(4) The date of patient request;

(5) The date and time of verification request;

(6) The name of a contact person at the seller's company, including facsimile and telephone numbers; and

(7) If the seller opts to include the prescriber's regular business hours on Saturdays as "business hours" for purposes of paragraph (c)(3) of this section, a clear statement of the prescriber's regular Saturday business hours.

(c) *Verification events.* A prescription is verified under paragraph (a)(2) of this section 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 through direct communication that the prescription is inaccurate and provides the accurate prescription; or

(3) The prescriber fails to communicate with the seller within eight (8) business hours after receiving from the seller the information described in paragraph (b) of this section. During these eight (8) business hours, the seller shall provide a reasonable opportunity for the prescriber to communicate with the seller concerning the verification request.

(d) *Automated telephone verification messages.* If a seller verifies prescriptions through calls that use, in whole or in part, an automated message, the seller must:

(1) Record the entire call;

(2) Commence the call by identifying it as a request for prescription verification made in accordance with the Contact Lens Rule;

(3) Deliver the information required by paragraph (b) of this section in a slow and deliberate manner and at a reasonably understandable volume; and

(4) Make the information required by paragraph (b) of this section repeatable at the prescriber's option.

(e) *Invalid prescription.* If a prescriber informs a seller before the deadline under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section.

(f) *No alteration of prescription.* A seller may not alter a contact lens prescription. In the context of prescription verification, alteration includes, but is not limited to, providing the prescriber with the name of a manufacturer or brand other than that specified by the patient's prescription, unless such name is provided because the patient entered or orally provided it when asked for the manufacturer or brand listed on the patient's prescription. Notwithstanding the preceding sentences, for private label contact lenses, a seller may substitute for contact lenses specified on a prescription identical contact lenses that the same company manufactures and sells under different labels.

(g) *Seller requirement to accept prescription presentation:* A seller shall provide a prominent method, and a clear and prominent disclosure of that method, for the patient to present the seller with a copy of the patient's prescription. Such method and the disclosure shall be provided prior to requesting a prescriber's contact information for verification of the prescription; provided, however, in the case of an order placed by telephone, a seller shall comply by providing a disclosure of the method prior to requesting a prescriber's contact information for verification of the prescription. The method to present the prescription shall be provided through (i) the same medium by which the order is placed, or (ii) electronic mail, text message, or file upload.

(h) *Recordkeeping requirement—verification requests.* A seller shall maintain a record of all direct communications referred to in paragraph (a) of this section. Such record shall consist of the following:

(1) For prescriptions presented to the seller: the prescription itself, or the facsimile version thereof (including an email containing a digital image of the prescription), that was presented to the seller by the patient or prescriber.

(2) For verification requests by the seller:

(i) If the communication occurs via facsimile or e-mail, a copy of the verification request, including the information provided to the prescriber pursuant to paragraph (b) of this section, and confirmation of the completed transmission thereof, including a record of the date and time the request was made;

(ii) If the communication occurs via telephone, a log:

(A) Describing the information provided pursuant to paragraph (b) of this section,

(B) Setting forth the date and time the request was made,

(C) Indicating how the call was completed, and

(D) Listing the names of the individuals who participated in the call.

(iii) If the communication occurs via telephone and uses an automated message, the complete recording required pursuant to paragraph (d)(1) of this section.

(3) For communications from the prescriber, including prescription verifications:

(i) If the communication occurs via facsimile or e-mail, a copy of the communication and a record of the time and date it was received;

(ii) If the communication occurs via telephone, a log describing the information communicated, the date and time that the information was received, and the names of the individuals who participated in the call.

(4) The records required to be maintained under this section shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(i) *Recordkeeping requirement—Saturday business hours.* A seller that exercises its option to include a prescriber's regular Saturday business hours in the time period for a request for a copy of the prescription specified in §315.3(a)(3) or for verification specified in paragraph (c)(3) of this section shall maintain a record of the prescriber's regular Saturday business hours and the basis for the seller's actual knowledge thereof. Such records shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

[69 FR 40508, July 2, 2004, as amended at 85 FR 50717, Aug. 17, 2020]

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§315.6 Expiration of contact lens prescriptions.

(a) *In general.* A contact lens prescription shall expire:

(1) On the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) Not less than one year after the issue date of the prescription if such State law specifies no date or specifies a date that is less than one year after the issue date of the prescription; or

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) *Special rules for prescriptions of less than one year.* (1) If a prescription expires in less than one year, the specific reasons for the medical judgment referred to in paragraph (a) (3) of this section shall be documented in the patient's medical record with sufficient detail to allow for review by a qualified professional in the field.

(2) The documentation described in the paragraph above shall be maintained for a period of not less than three years, and it must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(3) No prescriber shall include an expiration date on a prescription that is less than the period of time that he or she recommends for a reexamination of the patient that is medically

period of time that he or she recommends for a reexamination of the patient that is medically necessary.

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§315.7 Content of advertisements and other representations.

Any person who engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

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§315.8 Prohibition of certain waivers.

A prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

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§315.9 Enforcement.

Any violation of this Rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

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§315.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

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§315.11 Effect on state and local laws.

(a) State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or require active verification are preempted.

(b) Any other State or local laws or regulations that are inconsistent with the Act or this part are preempted to the extent of the inconsistency.

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (Division 2 enacted by Stats. 1937, Ch. 399.)

CHAPTER 5.4. Prescription Lenses [2540 - 2545] (Chapter 5.4 added by Stats. 1959, Ch. 2073.)

2541.2. (a) (1) The expiration date of a contact lens prescription shall not be less than one to two years from the date of issuance, unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than one year, or the presence or probability of visual abnormalities related to ocular or systemic disease indicate the need for reexamination of the patient earlier than one year. If the expiration date of a prescription is less than one year, the health-related reasons for the limitation shall be documented in the patient's medical record. In no circumstances shall the prescription expiration date be less than the period of time recommended by the prescriber for reexamination of the patient.

(2) For the purposes of this subdivision, the date of issuance is the date the patient receives a copy of the prescription.

(3) Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

(b) Upon completion of the eye examination or, if applicable, the contact lens fitting process for a patient as described in subdivision (f), a prescriber or a registered dispensing optician shall provide the patient with a copy of the patient's contact lens prescription signed by the prescriber, unless the prescription meets the standards set forth in subdivision (c).

(c) A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

(1) Rigid gas permeables.

(2) Bitoric gas permeables.

(3) Bifocal gas permeables.

(4) Keratoconus lenses.

(5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

(d) If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, attempt to promptly confirm the information contained in the prescription through direct communication with the contact lens seller.

(e) The contact lens prescription shall include sufficient information for the complete and accurate filling of a prescription, including, but not limited to, the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and an appropriate expiration date. When a provider prescribes a private label contact lens for a patient, the prescription shall include the name of the manufacturer, the trade name of the private label brand, and, if applicable, the trade name of the equivalent national brand.

(f) The contact lens fitting process begins after the initial comprehensive eye examination, and includes an examination to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and followup examinations that are medically necessary, and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved, or in the case of a prescription renewal for an established patient, the prescriber determines that there is no change in the prescription.

(g) The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the prescription, but only if the prescriber would have required immediate payment from the patient had the examination revealed that

no ophthalmic goods were required. A prescriber or registered dispensing optician shall not charge the patient any fee as a condition to releasing the prescription to the patient. A prescriber may charge an additional fee for verifying ophthalmic goods dispensed by another seller if the additional fee is imposed at the time the verification is performed.

(h) A prescriber shall not condition the availability of an eye examination, a contact lens fitting, or the release of a contact lens prescription on a requirement that the patient agree to purchase contact lenses from that prescriber. A registered dispensing optician shall not condition the availability of a contact lens fitting on a requirement that the patient agrees to purchase contact lenses from that registered dispensing optician.

(i) A prescriber or a registered dispensing optician shall not place on the contact lens prescription, deliver to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the prescriber or registered dispensing optician for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a prescriber or registered dispensing optician for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's prescription.

(j) The willful failure or refusal of a prescriber to comply with the provisions of this section shall constitute grounds for professional discipline, including, but not limited to, the imposition of a fine or the suspension or revocation of the prescriber's license. The Medical Board of California and the State Board of Optometry shall adopt regulations, to implement this subdivision, including, but not limited to, standards for processing complaints each receives regarding this subdivision.

(k) For the purposes of this section, "prescriber" means a physician and surgeon or an optometrist.

(l) Nothing in this section shall be construed to expand the scope of practice of a registered dispensing optician as defined in Sections 2542, 2543, and Chapter 5.5 (commencing with Section 2550).

(Added by Stats. 2002, Ch. 814, Sec. 1. Effective January 1, 2003.)