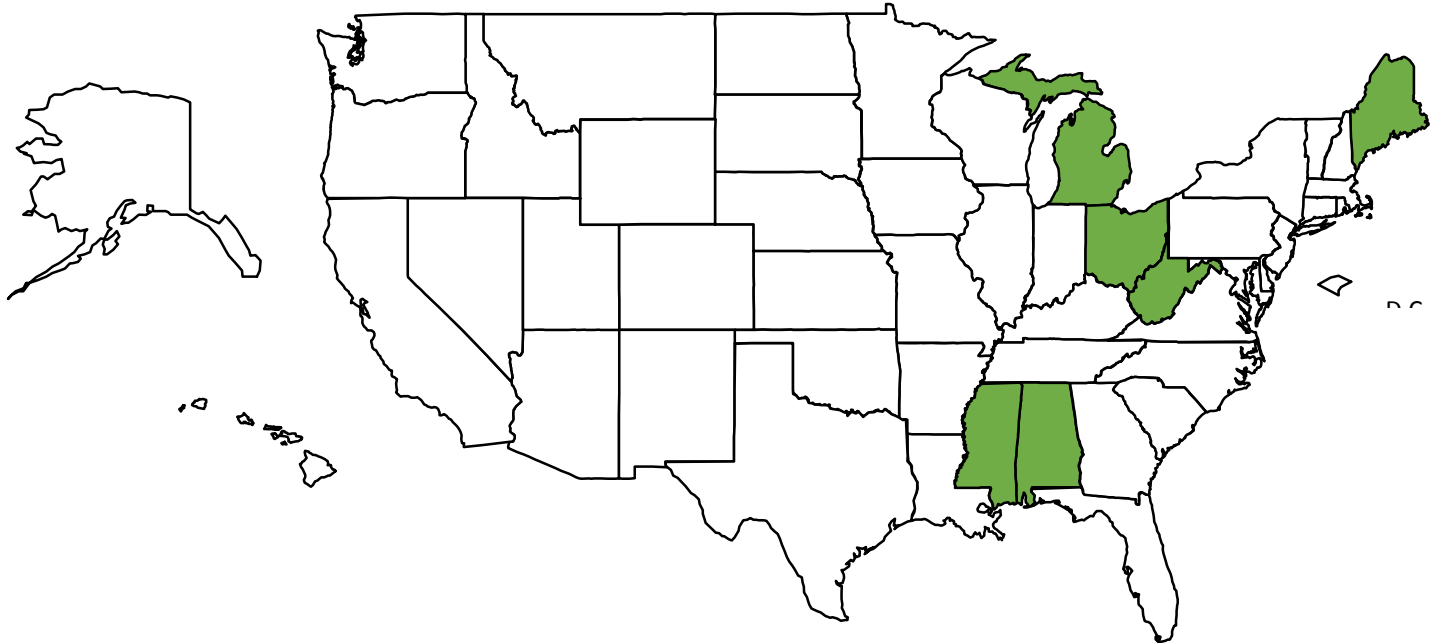




## Consumer Protection



[West Virginia HB 2662](#) – Eye Care Consumer Protection Law

[Maine SB 453](#) – Patients Who Need Eye Care

[Michigan SB 853](#) – Eye Care Consumer Protection

[Mississippi](#) - Mississippi Board of Medical Licensure rule 3.01 Contact Lens Prescriptions

Because of the potential for eye damage in an unsupervised setting, contact lens prescriptions should be given to patients only when the physician has reason to believe that adequate follow-up evaluation will be performed by a physician or optometrist. Adopted January 20, 1994.

[Ohio](#) – Policy Statement Regarding Online Refractions, State Board of Optometry

[Alabama](#) – License to Practice Across State Lines Title 34, Chapter 22, Article 5 §§80-88



# AMERICAN OPTOMETRIC ASSOCIATION

**West Virginia**  
**House Bill 2662 of 2015**

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**For H. B. 2662**

(By Delegates Stansbury, Ellington, Householder, R. Phillips, Byrd, Faircloth, Sponaugle, Weld, Moore, B. White and Pushkin)

[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all relating to the practice of optometry; defining certain terms; providing that contact lenses require a prescription that must be performed by a licensee; providing that spectacles require a prescription that must be performed by a licensee; requiring certain actions to be taken with regard to prescriptions; prohibiting the dissemination of contact lenses without a prescription from a licensee; prohibiting the dissemination of spectacles without a prescription from a licensee; providing the board to enforce this article; allowing the board to promulgate rules; and providing criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-8A-1; §30-8A-2; §30-8A-3; §30-8A-4 and §30-8A-5, all to read as follows:

**ARTICLE 8A. EYE CARE CONSUMER PROTECTION LAW.**

**§30-8A-1. Definitions.**

As used in this article:

- (a) "Contact Lens" means a lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. Contact lens includes, but is not limited to, a cosmetic, therapeutic, or corrective lens.
- (b) "Board" means the West Virginia Board of Optometry.
- (c) "Diagnostic contact lens" means a contact lens used to determine a proper contact lens fit.
- (d) "Direct supervision" means supervision that occurs when a licensee is actually present in the building.
- (e) "Examination and evaluation" means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated refracting device or other automated testing device for the purpose of writing a valid prescription.
- (f) "Licensee" means a person who is authorized to engage in the practice of optometry under article eight, chapter thirty of this code.
- (g) "Special requirements" means the type of lens design, lens material, tint, or lens treatments.
- (h) "Spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision to address the visual needs of the individual wearer. This includes spectacles that may be adjusted to achieve different types or levels of visual correction or enhancement.
- (i) "Valid prescription" means one of the following, as applicable:

(1) For a contact lens, a written or electronic order by a licensee who has conducted an examination and evaluation of a patient and has determined a satisfactory fit for the contact lens based on an analysis of the physiological compatibility of the lens or the cornea and the physical fit and refractive functionality of the lens on the patient's eye. To be a valid prescription under this subdivision, it shall at least include the following:



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- (A) A statement that the prescription is for a contact lens;
- (B) The contact lens type or brand name, or for a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent or similar brand;
- (C) All specifications necessary to order and fabricate the contact lens, including, if applicable, the power, material, base curve or appropriate designation, and diameter;
- (D) The quantity of contact lenses to be dispensed;
- (E) The number of refills;
- (F) Specific wearing instructions and contact lens disposal parameters;
- (G) The patient's name;
- (H) The date of the examination and evaluation;
- (I) The date the prescription is originated;
- (J) The prescribing licensee's name, address, and telephone number;
- (K) The prescribing licensee's written or electronic signature, or other form of authentication; and
- (L) An expiration date of not less than one year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

(2) For spectacles, a written or electronic order by a licensee who has examined and evaluated a patient. To be a valid prescription under this subdivision, it shall include at least the following:

- (A) A statement that the prescription is for spectacles;
- (B) As applicable and as specified for each eye, the lens power including the spherical power, cylindrical power including axis, prism, and power of the multifocal addition;
- (C) Any special requirements, the omission in the opinion of the prescribing licensee, would adversely affect the vision or ocular health of the patient;
- (D) The patient's name;
- (E) The date of the examination and evaluation;
- (F) The date the prescription is originated;
- (G) The prescribing licensee's name, address, and telephone number;
- (H) The prescribing licensee's written or electronic signature, or other form of authentication; and
- (I) An expiration date of not less than one year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

## **§30-8A-2. Prescriptions.**

(a) Except as otherwise provided in subsection (b), spectacles and contact lenses are medical devices and are subject to the requirements of this article.

(b) The requirements of this article do not apply to the following:

- (1) A diagnostic contact lens that is used by a licensee during an examination and evaluation;
- (2) An optical instrument or device that is not intended to correct or enhance vision; or
- (3) An optical instrument or device that is sold without consideration of the visual status of the individual who will use the optical instrument or device.

## **§30-8A-3. Prohibited Actions.**

A person may not:

- (1) Employ objective or subjective physical means to determine the accommodative or refractive condition; the range, power of vision or muscular equilibrium of the human eye or prescribe spectacles or contact lenses based on that determination unless that activity is performed by a licensee or performed by a person under direct supervision.
- (2) Dispense, give, or sell spectacles or contact lenses unless dispensed, given, or sold pursuant to a valid prescription.
- (3) Use an automated refractor or other automated testing device to generate objective refractive data unless that use is under direct supervision.



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## **§30-8A-4. Enforcement.**

- (a) The board shall enforce the provisions of this article.
- (b) The board may promulgate a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the implementation of this article.
- (c) The board is not required to wait until harm to human health has occurred to initiate an investigation under this section.
- (d) If a person is in violation of this article and is licensed by another board, the board shall refer to the appropriate licensing board to enforce the provisions of their article.

## **§30-8A-5. Criminal Penalty for violation.**

A person violating this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000.

Maine

Act 173 of 2015

LAW WITHOUT GOVERNOR'S SIGNATURE JUNE 13, 2015

CHAPTER 173 PUBLIC LAW

S.P. 453 - L.D. 1271

## **An Act To Protect Patients Who Need Eye Care**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 32 MRSA §2411, sub-§§6 to 13** are enacted to read:

**6. Contact lens.** "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. "Contact lens" includes, but is not limited to, cosmetic, therapeutic and corrective lenses.

**7. Dispense.** "Dispense" means the act of furnishing a pair of ophthalmic or contact lenses to a patient.

**8. Eye examination.** "Eye examination" means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the determination of a refractive error.

**9. Kiosk.** "Kiosk" means automated equipment or an application designed to be used on a phone, computer or Internet-based device that can be used either in person or remotely to provide refractive data or information.

**10. Ophthalmic lens.** "Ophthalmic lens" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer and commonly known as glasses or spectacles, including ophthalmic lenses that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement. "Ophthalmic lens" does not include an optical instrument or device not intended to correct or enhance vision or that is sold without consideration of the visual status of the individual who will use the optical instrument or device.

**11. Provider.** "Provider" means an individual licensed as an optometrist under this chapter or an individual licensed as an osteopathic or medical doctor under chapter 36 or 48, respectively, who has also completed a residency in ophthalmology.

**Sec. 2. 32 MRSA §2417, sub-§4, A-1, as enacted by PL 1993, c. 600, Pt. A, §146,** is amended to read:

A-1. For ophthalmic lenses and contact lenses:

- (1) The prescription must contain all the information necessary to be properly dispensed;
- (2) The prescription must specify whether it is for contact lenses or ophthalmic lenses; and



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(3) All prescriptions must include the name of the patient, date of prescription, name and office location of prescriber and an expiration date. A prescription may not contain an expiration date of more than 2 years from the date of the eye examination by the provider unless the prescription contains a statement made by the provider of the reasons why a longer time frame is appropriate based on the medical needs of the patient;

(4) A person or entity may not dispense ophthalmic lenses or contact lenses to a patient without a valid prescription from a provider issued after an eye examination performed by the provider, except that a person or entity may dispense without a prescription spectacle lenses, solely for the correction of vision, that are of uniform focus power in each eye of between plano and +3.25 diopters; and

(5) A prescription for ophthalmic lenses or contact lenses may not be made based solely on the diagnosis of a refractive error of the human eye as generated by a kiosk.

**Sec. 3. 32 MRSA §2421, sub-§3** is enacted to read:

**3. Operation of kiosks.** The following provisions govern the operation of kiosks.

A. The ownership and operation of a kiosk, including use of a kiosk by a provider, must comply with section 2435.

B. In addition to the enforcement actions available to the board under section 2431-A, the board has the following powers of enforcement for violations of this chapter that relate in any way to kiosks, their use or the issuance of prescriptions arising out of their use. Nothing in this paragraph may be construed to apply to enforcement for violations by physicians who are governed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure.

(1) A person or governmental entity that believes a violation of this chapter in relation to a kiosk has occurred or has been attempted may make an allegation of that fact to the board in writing.

(2) If, upon reviewing an allegation under subparagraph (1), the board determines there is a reasonable basis to believe a violation of this chapter or attempted violation of this chapter has occurred in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use, the board shall investigate. Page 3 - 127LR1446(03)-1

(3) The board may hold adjudicatory hearings and administer oaths and order testimony to be taken at a hearing or by deposition conducted pursuant to Title 5, sections 9051 to 10005.

(4) The board may proceed with an action if the board determines that a violation in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use has occurred.

(5) The board is not required to wait until human harm has occurred to initiate an investigation under this subsection.

(6) The board, upon finding, after notice and an opportunity for a hearing, that a person has violated or has attempted to violate any requirement related to a kiosk, its use or the issuance of a prescription arising out of kiosk use, may impose an administrative fine of not more than \$10,000 for each violation or attempted violation and may issue an order requiring reimbursement of the reasonable costs to the board of investigation and hearing.

(7) The board shall advise the Attorney General of the failure of a person to pay an administrative fine or reimburse costs of investigation and hearing imposed under this paragraph. The Attorney General may bring an action in a court of competent jurisdiction for the failure to pay any amount imposed under this paragraph.

(8) The board may request that the Attorney General file a civil action seeking an injunction or other appropriate relief to enforce this subsection. The court may impose on a person for violations of this subsection that relate in any way to a kiosk, its use or the issuance of a prescription arising out of kiosk use a fine of not more than \$20,000 for each violation or attempted violation. In addition, the Attorney General may bring an action to recover the reasonable costs of the investigation and hearing.

(9) The board may adopt rules to implement, administer and enforce this subsection. Rules adopted pursuant to this subparagraph are routine technical rules under Title 5, chapter 375, subchapter 2-A.



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C. Nothing in this subsection prohibits the Attorney General from initiating an action without referral or request from the board if the Attorney General determines there is a reasonable basis to believe a violation or attempted violation of this subsection occurred.

D. It is neither a violation of this subsection nor grounds for professional discipline or liability for an optometrist to fill a prescription for a patient based in part on measurements obtained through a kiosk.

Sec. 4. 32 MRSA §3300-D is enacted to read:

## **§3300-D. Issuance of prescription for ophthalmic lenses**

A physician licensed pursuant to section 3275 may not issue a prescription for ophthalmic lenses, as defined in section 2411, subsection 10, solely in reliance on a Page 4 - 127LR1446(03)-1 measurement of the eye by a kiosk, as defined in section 2411, subsection 9, without conducting an eye examination, as defined in section 2411, subsection 8.

## **Michigan**

### **Act No. 269 Public Acts of 2014**

Approved by the Governor June 26, 2014

Filed with the Secretary of State July 2, 2014

EFFECTIVE DATE: September 30, 2014

PL 269 of 2014 in the Public Health Code

Introduced by Senators Jones, Hune, Marleau, Schuitmaker, Bieda, Robertson, Hopgood, Jansen, Hildenbrand, Ananich, Smith, Booher, Emmons, Kowall, Green, Warren, Rocca, Meekhof, Young, Moolenaar, Hansen, Johnson, Brandenburg and Pappageorge

## **ENROLLED SENATE BILL No. 853 AN**

ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” (MCL 333.1101 to 333.25211) by adding part 55A.

**The People of the State of Michigan enact:**

### **PART 55A**

### **EYE CARE CONSUMER PROTECTION**

**Sec. 5551.** (1) This part may be referred to as the “eye care consumer protection law”.





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(2) As used in this part, the words and phrases defined in sections 5553 to 5557 have the meanings ascribed to them in those sections.

(3) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

**Sec. 5553.** (1) “Contact lens” means a lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. Contact lens includes, but is not limited to, a cosmetic, therapeutic, or corrective lens.

(2) “Department” means the department of licensing and regulatory affairs. (113) Act No. 269 Public Acts of 2014 Approved by the Governor June 26, 2014 Filed with the Secretary of State July 2, 2014 EFFECTIVE DATE: September 30, 2014 2 ESB 853

(3) “Diagnostic contact lens” means a contact lens used to determine a proper contact lens fit.

(4) “Examination and evaluation”, for the purpose of writing a valid prescription, means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated refracting device or other automated testing device.

**Sec. 5555.** (1) “Licensee” means any of the following:

(a) A physician who is licensed or otherwise authorized to engage in the practice of medicine under part 170 and who specializes in eye care.

(b) A physician who is licensed or otherwise authorized to engage in the practice of osteopathic medicine and surgery under part 175 and who specializes in eye care.

(c) An optometrist who is licensed or otherwise authorized to engage in the practice of optometry under part 174.

(2) “Spectacles” means an optical instrument or device worn or used by an individual that has 1 or more lenses designed to correct or enhance vision to address the visual needs of the individual wearer and commonly known as glasses, including spectacles that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement.

**Sec. 5557.** “Valid prescription” means 1 of the following, as applicable:

(a) For a contact lens, a written or electronic order by a licensee who has conducted an examination and evaluation of a patient and has determined a satisfactory fit for the contact lens based on an analysis of the physiological compatibility of the lens on the cornea and the physical fit and refractive functionality of the lens on the patient’s eye. To be a valid prescription under this subdivision, it must include at least all of the following information:

(i) A statement that the prescription is for a contact lens.

(ii) The contact lens type or brand name, or for a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of the equivalent or similar brand.

(iii) All specifications necessary to order and fabricate the contact lens, including power, material, base curve or appropriate designation, and diameter, if applicable.

(iv) The quantity of contact lenses to be dispensed.

(v) The number of refills.

(vi) Specific wearing instructions and contact lens disposal parameters, if any.

(vii) The patient’s name.

(viii) The date of the examination and evaluation.

(ix) The date the prescription is originated.

(x) The prescribing licensee’s name, address, and telephone number.

(xi) The prescribing licensee’s written or electronic signature, or other form of authentication.

(xii) An expiration date of not less than 1 year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

(b) For spectacles, a written or electronic order by a licensee who has examined and evaluated a patient. To be a valid prescription under this subdivision, it must include at least all of the following information:



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- (i) A statement that the prescription is for spectacles.
- (ii) As applicable and as specified for each eye, the lens power including the spherical power, cylindrical power including axis, prism, and power of the multifocal addition.
- (iii) Any special requirements, the omission of which would, in the opinion of the prescribing licensee, adversely affect the vision or ocular health of the patient. As used in this subparagraph, "special requirements" includes, but is not limited to, type of lens design, lens material, tint, or lens treatments.
- (iv) The patient's name.
- (v) The date of the examination and evaluation.
- (vi) The date the prescription is originated.
- (vii) The prescribing licensee's name, address, and telephone number.
- (viii) The prescribing licensee's written or electronic signature, or other form of authentication.
- (ix) An expiration date of not less than 1 year from the date of the examination and evaluation or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient.

**Sec. 5559.** (1) Except as otherwise provided in subsection

(2), spectacles and contact lenses are medical devices and are subject to the requirements of this part for the protection of consumers. 3 ESB 853 (2) This part does not apply to any of the following:

- (a) A diagnostic contact lens that is used by a licensee during an examination and evaluation.
- (b) An optical instrument or device that is not intended to correct or enhance vision.
- (c) An optical instrument or device that is not made, designed, or sold specifically for a particular individual.

**Sec. 5561.** (1) A person shall not do any of the following:

- (a) Employ objective or subjective physical means to determine the accommodative or refractive condition or range of power of vision or muscular equilibrium of the human eye unless that activity is performed by a licensee or under the supervision of a licensee.
  - (b) Prescribe spectacles or contact lenses based on a determination described in subdivision (a) unless that activity is performed by a licensee.
  - (c) Dispense, give, or sell spectacles or contact lenses unless dispensed, given, or sold pursuant to a valid prescription.
  - (d) Use an automated refractor or other automated testing device to generate objective refractive data unless that use is by a licensee or under the supervision of a licensee.
- (2) As used in this section, "supervision" means that term as defined in section 16109.

**Sec. 5563.** (1) Except as otherwise provided in this part, the administration and enforcement of this part is the responsibility of the department.

(2) The department may promulgate rules under the administrative procedures act of 1969 that it determines necessary to implement, administer, and enforce this part.

**Sec. 5565.** (1) A person or governmental entity that believes that a violation of this part or a rule promulgated under this part has occurred or has been attempted may make an allegation of that fact to the department in writing.

(2) If, upon reviewing an allegation under subsection (1), the department determines there is a reasonable basis to believe the existence of a violation or attempted violation of this part or a rule promulgated under this part, the department shall investigate.

(3) The department may hold hearings, administer oaths, and order testimony to be taken at a hearing or by deposition conducted pursuant to the administrative procedures act of 1969.

(4) The department may proceed under section 5567 if it determines that a violation of this part or a rule promulgated under this part has occurred.

(5) This section does not require the department to wait until harm to human health has occurred to initiate an investigation under this section.





**Sec. 5567.** (1) After a determination as described in section 5565(4), the department may order a person to cease and desist from a violation of this part or a rule promulgated under this part.

(2) A person ordered to cease and desist under this section is entitled to a hearing before the department if a written request for a hearing is filed within 30 days after the effective date of the order.

(3) The department may assess costs related to the investigation of a violation of this part or rules promulgated under this part. The department may issue an order for costs assessed under this subsection after a hearing held in compliance with the administrative procedures act of 1969.

(4) The department may refer a case for further enforcement action under section 5569 or 5571 against a person that fails to comply with a cease and desist order that is not contested or that is upheld following a hearing.

(5) The department is not required to issue a cease and desist order before taking action under section 5569 or 5571.

**Sec. 5569.** (1) The department may file a civil action in a court of competent jurisdiction seeking an injunction or other appropriate relief to enforce this part or a rule promulgated under this part.

(2) In an action under subsection (1), the court may impose on a person that violates or attempts to violate this part or a rule promulgated under this part a civil fine of not less than \$5,000.00 for each violation or attempted violation. The court may also award costs of an investigation and attorney fees from a person that violates or attempts to violate this part or a rule promulgated under this part.

**Sec. 5571.** A person that violates this part or a rule promulgated under this part or violates a cease and desist order issued under this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than \$5,000.00 or more than \$25,000.00, or both. If successful in obtaining a conviction, the agency prosecuting the case is entitled to actual costs and attorney fees from the defendant. 4 ESB 853

**Enacting section 1.** This amendatory act takes effect 90 days after the date it is enacted into law. This act is ordered to take immediate effect.

## **Mississippi State Board of Medical Licensure Policies** [Administrative Code](#)

### **Mississippi State Board of Medical Licensure Policies 3.01 Contact Lens Prescriptions**

Because of the potential for eye damage in an unsupervised setting, contact lens prescriptions should be given to patients only when the physician has reason to believe that adequate follow-up evaluation will be performed by a physician or optometrist. Adopted January 20, 1994.

## **Ohio State Board of Optometry** [Policy Statement Regarding Online Refractions](#)

The Ohio State Board of Optometry's first and foremost charge is protection of the public's health and wellness. The Board recognizes that online refractive technology has potential as a visual screening and refractive device in a medical setting or as an online visual screening program. However, the Board does not support the use of online questionnaires to give a glasses or contact lens prescription, without an immediate, accompanying physical examination of ocular health by an Ohio licensed optometrist.

One company is currently on the internet advising they are launching these services. Their policy states; "No one under 18, over 40, or with specific medical conditions such as diabetes, hypertension, known eye diseases, will qualify to receive a prescription." However, the use of online questionnaires is inadequate to establish the patient's age and medical/ocular history. The patient record established by the online eye



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questionnaire should be consistent with existing laws and regulations governing patient health care records. Age and location of the patient must be verified by acceptable means of identification. Records of past care, with laboratory and test results, are necessary to establish pre-existing medical conditions. We would expect that medical history be verified with a dated copy of a completed physical examination and ocular history be verified with a dated copy of a completed eye examination.

The risk with all telemedicine is substandard professional services. With the promise to save people the commute, the wait, the time, and the money, standards of care can be significantly compromised. It is expected that all optometrists who provide telemedicine place the welfare and health of the patients first. An online eye refraction shall not be given after an online questionnaire, unless a dated copy of a recent eye health examination (within 6 months) is part of the patient's record.

Telemedicine is the way of the future and the Board agrees that it is a powerful tool in medical practice, but not a separate form of medicine. We would expect that optometrists who provide eye care, whether in-person or via telemedicine, comply with acceptable, appropriate, and professional standards of care. While we support technology, increased access to care, and patient choice, we do not support the use of online questionnaire to give prescriptions without an accompanying, ocular health exam. This does not adhere to current standards of care and therefore represents a compromise to the health and safety of the public.

1. Glasses prescriptions: It is the well-established and accepted standard of care, that a refraction is not to be independent from an ocular health exam. This is vital for the detection of eye diseases that result in permanent vision loss as well as serious systemic diseases. Many times those diseases first present themselves in a change in the quality of vision. Therefore, we do not support the use of any company to give a prescription apart from the ocular health exam.

2. Contact lens prescriptions: Under the Fairness to Contact Lens Consumers Act, the expiration date of a contact lens prescription must be specified based on the medical judgment of the prescriber, with respect to the ocular health of the patient. This important component of the prescription can be determined only with the use of a slit lamp. Skype interactions, a self-photo, and a web cam photo are not a substitute for this binocular microscope examination, which gives a stereoscopic, highly magnified view of ocular structures. Only a slit lamp examination can detect the presence of corneal neovascularization and infiltrates below the corneal epithelium; both indicate that ocular health is compromised by the use of contact lenses. Additional testing, such as corneal topography, may be necessary to determine whether contact lens wear is causing corneal pathology. Neither a prior contact lens prescription nor a close-up photo of the patient's eyes can confirm ocular health for established contact lens wearers.

Telemedicine is the way of the future and we support technology as a powerful tool in health care. However, The Ohio State Board of Optometry agrees that there are too many unanswered questions regarding this technology, as well as serious concerns for liability and risk involved. **Therefore, we do not advocate participation by Ohio licensed optometrists in these practices. You should notify the Board if you become aware of online refractions being conducted in the State of Ohio. Approved 12-10-14** POLICY STATEMENT REGARDING ONLINE REFRACTIONS.

Please refer to the following excerpts from our Laws, Rules and Policies:

**4725.19 Disciplinary actions.**

(9) Departing from or failing to conform to acceptable and prevailing standards of care in the practice of optometry as followed by similar practitioners under the same or similar circumstances, regardless of whether actual injury to a patient is established;

(15) Soliciting patients from door to door or establishing temporary offices, in which case the board shall suspend all certificates held by the optometrist;



## **4725.01 Optometry definitions.**

As used in this chapter:

(A)(1) The "practice of optometry" means the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers, adapting optical accessories for the aid thereof, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury.

## **4725-5-16 Display of name and office requirements.**

An optometrist has the responsibility to establish and maintain a safe and hygienic office adequately equipped to provide full optometric services within the scope of the licensure of the practitioner. The board requires the following minimum equipment needed to provide a full scope examination which shall include, but not be limited to, tonometer, slit lamp, and instrumentation to examine the retina and to perform visual fields. All optometric examination locations shall be equipped with adequate hand washing facilities on location for use by optometrists and patients.

## **Alabama**

### **Section 34-22-80**

#### **Legislative findings.**

The Legislature hereby finds and declares that technological advances are occurring in the practice of optometry, thereby changing the practice of optometry, and that those technological advances are in the public interest. The Legislature further finds and declares that the practice of optometry is a privilege and that the state's ability to regulate and monitor such technological advances is necessary for the protection of the citizens of this state and for the public interest, health, welfare, and safety.

*(Act 98-495, p. 956, §1; Act 2014-339, §1.)*

### **Section 34-22-81**

#### **Definitions.**

For the purposes of this article, the following terms shall have the following meanings:

- (1) BOARD. The Alabama Board of Optometry created pursuant to Section 34-22-40.
- (2) DISTANT SITE PROVIDER. The provider providing the telemedicine service from a site other than the patient's current location. A distant site provider shall hold an active Alabama license pursuant to Section 34-22-20 or Section 34-22-21.
- (3) ESTABLISHED TREATMENT SITE. A location where a patient shall present to seek optometric care where there is an optometrist present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. The term requires an optometrist-patient relationship. A patient's private home is not considered an established treatment site.
- (4) FACE-TO-FACE VISIT. An evaluation performed on a patient where both the provider and patient are at the same physical location or where the patient is at an established treatment site.
- (5) IN-PERSON EVALUATION. A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.
- (6) PROVIDER. An optometrist holding an active Alabama license pursuant to Section 34-22-20 or Section 34-22-21.
- (7) TELEMEDICINE. A health service that is delivered by a licensed optometrist acting within the scope of his or her license and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including all of the following:
  - a. Compressed digital interactive video, audio, or data transmission.
  - b. Clinical data transmission using computer imaging by way of still image capture and store and forward.
  - c. Other technology that facilitates access to health care services or optometric specialty expertise.

*(Act 98-495, p. 956, §2; Act 2014-339, §1.)*



## **Section 34-22-82**

### **Telemedicine - Protocols; privacy practices.**

(a) A provider who uses telemedicine in his or her practice shall adopt protocols to prevent fraud and abuse through the use of telemedicine.

(b)(1) Privacy practices.

a. A provider that communicates with patients by electronic communications other than telephone or facsimile shall provide patients with written notification of the provider's privacy practices before evaluation or treatment.

b. The notice of privacy practices shall include language that is consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.

c. A provider shall make a good faith effort to obtain the patient's written acknowledgment of the notice.

(2) Limitations of telemedicine. A provider who uses telemedicine services, before providing services, shall give each patient notice regarding telemedicine services, including the risks and benefits of being treated via telemedicine, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement by the patient, establishes a presumption of notice.

(3) Necessity of in-person evaluation. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a healthcare provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.

*(Act 98-495, p. 956, §3; Act 2014-339, §1.)*

## **Section 34-22-83**

### **Telemedicine - Services; provider-patient relationship; standards of practice; confidentiality.**

(a) Telemedicine services provided at an established treatment site may be used for all patient visits, including initial evaluations to establish a proper doctor-patient relationship between a provider and a patient.

(1) A provider shall be reasonably available onsite at the established medical site to assist with the provision of care.

(2) A provider may delegate tasks and activities at an established treatment site to an assistant who is properly trained and supervised or directed.

(b) A distant site provider who provides telemedicine services to a patient that is not present at an established treatment site shall ensure that a proper provider-patient relationship is established, which at a minimum includes all of the following:

(1) Having had at least one face-to-face meeting at an established treatment site before engaging in telemedicine services. A face-to-face meeting is not required for new conditions relating to an existing patient, unless the provider deems that such a meeting is necessary to provide adequate care.

(2) Establishing that the person requesting the treatment is in fact whom he or she claims to be.

(c) Evaluation, treatment, and consultation recommendations made in a telemedicine setting, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional in-person clinical settings.

(d)(1) Adequate security measures shall be implemented to ensure that all patient communications, recordings, and records remain confidential.

(2)a. Written policies and procedures shall be maintained when using electronic mail for provider-patient communications. Policies shall be evaluated periodically to make sure they are up to date. Policies and procedures shall address all of the following:



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1. Privacy to assure confidentiality and integrity of patient-identifiable information.
  2. Health care personnel, in addition to the provider, who will process messages.
  3. Hours of operation and availability.
  4. Types of transactions that shall be permitted electronically.
  5. Required patient information to be included in the communication, such as the patient name, identification number, and type of transaction.
  6. Archival and retrieval.
  7. Quality oversight mechanisms.
  - b. All relevant provider-patient email, and other patient-related electronic communications, shall be stored and filed in the patient record.
  - c. Patients shall be informed of alternative forms of communication for urgent matters.
- (Act 98-495, p. 956, §4; Act 2014-339, §1.)*

## **Section 34-22-84**

### **Maintenance of records.**

- (a) Patient records shall be maintained for all telemedicine services. The provider or distant site provider shall maintain the records created at any site where treatment or evaluation is provided.
  - (b) Distant site providers shall obtain an adequate and complete medical history for the patient before providing treatment and shall document the medical history in the patient record.
  - (c) Patient records shall include copies of all relevant patient-related electronic communications, including relevant provider-patient email, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions. If possible, telemedicine encounters that are recorded electronically shall also be included in the patient record.
- (Act 98-495, p. 956, §5; Act 2014-339, §1.)*

## **Section 34-22-85**

### **Exceptions.**

- (a) A licensed optometrist, who is not licensed in Alabama pursuant to Section 34-22-20 or Section 34-22-21, who utilizes telemedicine across state lines in an emergency, as defined by the board, is not subject to the requirements of this article.
  - (b) A provider that is contacted in an emergency is not subject to the notice and security provisions of this article, but is subject to those provisions should any nonemergency care continue with the patient.
- (Act 98-495, p. 956, §6; Act 2014-339, §1.)*

## **Section 34-22-86**

### **Penalties.**

Any person who violates this article is subject to criminal prosecution for the unlicensed practice of optometry under Section 34-22-6, or other action authorized in this state to prohibit or penalize continued practice without a license under Section 34-22-8.

*(Act 98-495, p. 956, §7; Act 2014-339, §1.)*

## **Section 34-22-87**

### **Rulemaking authority.**

The Alabama Board of Optometry is vested with authority to adopt and promulgate rules to effect the purposes of this article.

*(Act 98-495, p. 956, §8; Act 2014-339, §1.)*

## **Section 34-22-88**

### **Rules and regulations.**

The Alabama Board of Optometry is vested with authority to adopt and promulgate rules and regulations to effect the purposes of this article.



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*(Act 98-495, p. 956, §9.)*