

CHAPTER I, ARTICLE XII: Release of Contact Lens Prescriptions, and Registration of Entities Outside of the State Who Sell Contact Lenses

This regulation sets forth the standards for the writing of a contact lens prescription, the method of releasing said contact lens prescription to the patient, and the registration with the Arkansas State Board of Optometry of entities located outside the state of Arkansas who ship, mail, or deliver contact lenses or prescriptions for contact lenses to residents of Arkansas, all pursuant to ACA §17-90-108, 109, and 110.

Section 1 Definitions

- (1) “Person” means an individual, corporation, trust, partnership, incorporated or unincorporated association, and any other legal entity.
- (2) “Prescriber” means an optometrist or ophthalmologist.
- (3) “Buyer” means a state resident who purchases contact lenses.
- (4) “Seller” means an optometrist or ophthalmologist licensed in the state of Arkansas to sell contact lenses to individuals for whom he/she prescribed, or those persons, firms, corporations, or other legal entities in conjunction with an optometrist or ophthalmologist licensed in that state who may be located outside of the State of Arkansas, who are authorized to sell contact lenses to individuals who have been lawfully prescribed contact lenses.
- (5) “Business hours” means an hour between 9:00 a.m. and 5:00 p.m. during a weekday (Monday through Friday), excluding federal holidays (New Year’s Day; Martin Luther King, Jr. Day; President’s Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving; and Christmas). “Business hours” also may include, at the “Registered Mail Order Contact Lens Seller’s” option, a prescriber’s regular business hours on Saturdays, provided that the “Registered Mail Order Contact Lens Seller” has actual knowledge of these hours. “Business Hours” shall be determined based on the time zone of the prescriber.

Eight (8) business hours shall be calculated from the time the prescriber receives a complete prescription verification request and contains all of the required information to the prescriber (section 4 (3)) from the “Registered Mail Order Contact Lens 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 9:00 a.m. on the next weekday that is not a federal holiday or, if applicable, on Saturday.

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- (6) “Registered Mail Order Contact Lens Seller” means a person or entity who sells contact lenses through electronic mail, the internet, alternative channels or other means, the United States Postal Service, or other common carrier to buyers within the State of Arkansas and is registered in the State of Arkansas.
- (7) “Contact Lens Prescription” means a written order, as defined in Section 2, bearing the original signature of a licensed optometrist or ophthalmologist that authorizes a contact lens prescription. Tinted contact lens that are sold for cosmetic purposes which are without power require a contact lens prescription.
- (8) “Contact Lens Fitting” means the process that begins after the initial eye examination and ends when a successful fit has been achieved as determined by the examining optometrist or ophthalmologist. In the case of a renewal prescription, the fitting ends when the prescriber determines that no change in the existing prescription is required or a new fitting is completed after medically necessary follow-up examinations.
- (9) “Direct Communication” means a completed direct communication through the telephone, facsimile, or electronic mail.
- (10) “Issue date” means the date on which the patient receives a copy of the prescription at the completion of a contact lens fitting.
- (11) “Contact lens” means any contact lens for which State or Federal law requires a prescription including tinted plano lenses.

Section 2 Contact Lens Prescription

A 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, including the following:

- (1) Name of the patient;
- (2) Date of the examination;
- (3) Issue date and expiration date of the prescription;
- (4) Name, license number, postal address, telephone number, facsimile telephone number, and original signature of the prescriber;
- (5) Brand of lens, power, material or manufacturer, or both if needed;
- (6) Base curve or appropriate designation;
- (7) Diameter, when appropriate;

- (8) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name by the same manufacturer, but sold under the labels of other sellers;
- (9) Number of lenses or refills permitted;
- (10) The prescription may also include the diameter, axis, add power, cylinder, peripheral curve, optical zone, and center thickness and any additional information necessary in order that the prescription be accurately filled.

Section 3 Release of Contact Lens Prescription

- (1) A contact lens prescription shall be given to the patient after the completion of the contact lens fitting whether or not it is requested by the patient.
- (2) A prescriber shall, as directed by any person designated to act on behalf of the patient, provide or verify, as defined in Section 4, the contact lens prescription.
- (3) Contact lens prescriptions shall expire one (1) year after the issue date unless there is a medical reason that warrants a prescription for less than one (1) year. The medical reasons for issuing a prescription for less than one year shall be documented in the patient's medical record.
- (4) The issue date means the date on which the patient receives a copy of the prescription. The patient cannot alter the issue date by requesting additional copies of the prescription after the issue date.
- (5) 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. Presentation of proof of insurance coverage for that service shall be deemed to be a payment.
- (6) When specialty or custom-made contact lenses are necessary to complete the fitting process, the prescriber may charge patients for such lenses as part of the cost of the fitting process and as such may condition the release of a contact lens prescription on payment of the fitting fee.
- (7) A prescriber may not
 - (a) Require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of the prescription;

- (b) Require a 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 or verification of a prescription;
 - (c) Require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.
- (8) Any optometrist or ophthalmologist who releases a contact lens prescription in accordance with 17-90-108 (a)(2) shall not be liable for any damages for injury resulting from the purchasing, manufacturing, or dispensing of the contact lenses unless the contact lens seller and the contact lens prescriber are the same person.

Section 4 Verification of Contact Lens Prescription:

- (1) Prescription Requirement - A "Registered Mail Order Contact Lens Seller" may sell contact lenses only in accordance with an unexpired contact lens prescription.
- (a) presented to the "Registered Mail Order Contact Lens Seller" by the patient or prescriber directly or by facsimile; or
 - (b) verified by direct communication.
- (2) Record Requirement - A "Registered Mail Order Contact Lens Seller" shall maintain a complete detailed record for five (5) years of all direct communications with prescriber and buyer including:
- (a) Date and time the request was made;
 - (b) Method of direct communication
 - (c) Persons involved listing the names of the individuals who participated in the communications with a telephone log.
 - (d) Communication details including copies of prescriptions received directly from a patient or prescriber
 - (1) Describing the information that the "Registered Mail Order Contact Lens Seller" provided to the prescriber.
 - (2) Recording the date and time the conversation was completed.
 - (3) Indicating how the call was completed.
 - (4) Copies of the telephone bills must be retained by "Registered Mail Order Contact Lens Seller."

- (e) Final outcome of the recommendations.
- (3) Recordkeeping-Saturday business hours. A "Registered Mail Order Contact Lens Seller" that exercises its option to include a prescriber's regular Saturday business hours in a time period for verification shall maintain a record of the prescriber's regular business hours and the basis for the "Registered Mail Order Contact Lens Seller" actual knowledge thereof. Such records shall be maintained for a period of not less than five (5) years. These records must be available for inspection by the Arkansas State Board of Optometry, its employees, and its representatives.
- (4) Information for Verification - When seeking verification of a contact lens prescription, a "Registered Mail Order Contact Lens Seller" shall provide the prescriber with the following information:
- (a) Patient's full name, address, and phone number;
 - (b) Contact lens power, brand name, manufacturer, base curve or appropriate designation, diameter, and color when appropriate;
 - (c) Quantity of lenses ordered;
 - (d) Date and time of patient's request;
 - (e) Date and time of verification request;
 - (f) Name of contact person at seller's company, including toll-free facsimile and telephone number for optometrist and ophthalmologist verification usage.
 - (g) If the seller opts to include the prescriber's regular business hours on Saturdays as "business hours" a clear statement of the prescriber's regular Saturday business hours must be provided.
- (5) (a) "Registered Mail Order Contact Lens Seller's" direct communication with the optometrist and ophthalmologist shall be made Monday through Friday, including Saturday (only if the prescriber is in his/her office on a regular basis) and excluding Sunday, and all Federal holidays (New Years Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, Christmas).

- (1) "Registered Mail Order Contact Lens Seller" may send one verification request per patient via direct communication to the prescriber. Unless a subsequent request contains additional or revised information, a "Registered Mail Order Contact Lens Seller" may not resend the same verification request to the prescriber.
- (2) The rule does not expressly require the prescriber to notify the "Registered Mail Order Contact Lens Seller" of an incomplete request.
 - (b) The prescribing optometrist or ophthalmologist shall have eight (8) business hours to verify the information in Section 2. The prescriber shall be allowed to respond that a prescription is "expired" without providing additional information to the "Registered Mail Order Contact Lens Seller."
 - (c) A prescription is verified when one of the following occurs:
 - (1) The prescriber confirms the prescription is accurate by direct communication with the "Registered Mail Order Contact Lens Seller."
 - (2) The prescriber informs the "Registered Mail Order Contact Lens Seller" that the prescription is inaccurate and provides the accurate prescription.
 - (3) The prescriber fails to communicate with the "Registered Mail Order Contact Lens Seller" within eight (8) business hours. During these eight (8) hours, the "Registered Mail Order Contact Lens Seller" shall provide a reasonable opportunity for the prescriber to communicate with the "Registered Mail Order Contact Lens Seller" concerning the verification request.
 - (d) If the "Registered Mail Order Contact Lens Seller" processes the contact lens order and the sale occurs prior to the end of the eight (8) hour verification period and does not confirm a valid prescription with the prescriber, the "Registered Mail Order Contact Lens Seller" will be held in violation of 17-90-108 and 17-90-109.
- (6) Invalid Prescription - If the prescriber informs a "Registered Mail Order Contact Lens Seller" before the deadline that the contact lens prescription is inaccurate, expired, or otherwise invalid, the "Registered Mail Order Contact Lens 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 "Registered Mail Order Contact Lens Seller" to the prescriber is inaccurate, the prescriber shall correct the prescription.

- (7) No Alteration - A "Registered Mail Order Contact Lens Seller" may not alter a contact lens prescription. Tinted contact lenses shall be specifically prescribed for the patient as to brand, power, material, tint, and type of lens by the prescriber and shall not be changed or altered without a new prescription from the prescriber. Notwithstanding the first sentence, if the same contact lens is manufactured by the same company but sold under multiple labels to individual providers, the "Registered Mail Order Contact Lens Seller" may fill the prescription with an identical contact lens manufactured by that same company by sold under another label.

Section 5 Standards and Procedures for Licensed Optometrists in the State of Arkansas

Licensed optometrists in the State of Arkansas who sell contact lenses are to comply with the standards and procedures set forth in this regulation. To fail to do so would be considered unprofessional conduct and would be harmful to the health and safety of the citizens of Arkansas. Said failure to comply with this regulation may subject the licensee to disciplinary charges, which could result in the suspension or revocation of licensure.

Section 6 Prohibition of Certain Waivers

A prescriber may not place on the 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 lenses.

Section 7 Mail Order Contact Lens Seller

- (1) Any "Registered Mail Order Contact Lens Seller" or any "Person" authorized to sell contact lenses in the State of Arkansas who fills a contact lens prescription bears the full responsibility for the accurate selling and dispensing of the contact lenses provided for in the contact lens prescription. At no time shall any changes or substitutions be made including brand, type of lenses, or ophthalmic parameters without the direction of the optometrist or ophthalmologist who issued the contact lens prescription except as provided in Section 4 subsection (7).
- (2) A "Registered Mail Order Contact Lens Seller" who fills, ships, mails, or delivers through electronic mail, the internet, alternative channels, other means, or sells contact lenses to a patient at an Arkansas address must register with the Arkansas State Board of Optometry.

- (3) The Arkansas State Board of Optometry shall require annual registration and payment of all applicable fees required by the State Board of Optometry of all "Registered Mail Order Contact Lens Sellers" outside the State of Arkansas who sell and dispense contact lenses to Arkansas residents. "Registered Mail Order Contact Lens Seller's" registration shall be granted upon the disclosure and certification by the "Registered Mail Order Contact Lens Seller" of all the following:
- (a) The "Registered Mail Order Contact Lens Seller" shall register to do business in the State of Arkansas with the Secretary of State and designate a registered agent for service of process;
 - (b) The "Registered Mail Order Contact Lens Seller" will provide the name of the optometrist or ophthalmologist licensed in the state of the seller, who will supervise the sale of the contact lenses and the filling of the contact lens prescriptions, and further provide his or her address, phone number, and states where he/she is licensed, and providing proof of current licensure standing in that state.
 - (c) The "Registered Mail Order Contact Lens Seller's" location, names, and titles of all owners, partners, corporate officers, and the optometrist or ophthalmologist who is responsible for overseeing the selling and dispensing of the contact lenses to residents of the state of Arkansas.
 - (d) The payment of an annual registration fee of \$1,000 for each "Registered Mail Order Contact Lens Sellers"
 - (e) The completion of an application form for registration by the "Registered Mail Order Contact Lens Seller."
- (4) The "Registered Mail Order Contact Lens Seller" shall comply with and shall continue to comply with all lawful directives and appropriate requests for information from the appropriate agency of each state in which the seller is licensed or registered.
- (5) The "Registered Mail Order Contact Lens Seller" shall respond to all requests for information from the Arkansas State Board of Optometry within thirty (30) days from registered receipt of the request.
- (6) The "Registered Mail Order Contact Lens Seller" shall maintain records of contact lenses dispensed to residents of this state for a period of five (5) years, and that the records shall be readily available for inspection by the Arkansas State Board of Optometry.

- (7) The "Registered Mail Order Contact Lens Seller" shall provide a toll-free telephone service during its regular hours of operation for the sole purpose of responding to the patients in this state concerning questions and complaints. All questions relating to eye care shall be referred to the doctor prescribing the contact lenses.
- (8) The "Registered Mail Order Contact Lens Seller" shall provide a toll-free telephone service during its regular hours of operation solely for the use of prescribers.
- (9) The "Registered Mail Order Contact Lens Seller" shall provide the following notification to the patient whenever contact lenses are supplied: **WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS, REMOVE YOUR CONTACT LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, REDNESS, OR LIGHT SENSITIVITY.**
- (10) If the registered optometrist or ophthalmologist utilized by the "Registered Mail Order Contact Lens Seller" has his license suspended or revoked in the state in which he or she practices, the seller is to immediately notify the Arkansas State Board of Optometry of said actions.
- (11) The Arkansas State Board of Optometry shall charge a fee for investigation and registration of "Registered Mail Order Contact Lens Sellers."
- (12) 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.
- (13) A registration may be denied, suspended, revoked, or otherwise subjected to discipline of any of the following:
 - (a) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.
 - (b) An act of dishonesty or fraud.
 - (c) Committing any act resulting in conviction of a crime constituting grounds for denial of licensure or registration.
 - (d) Any violation of 17-90-101 and the rules and regulations of the Arkansas State Board of Optometry.