

# CHAPTER 327-A

## OPHTHALMIC DISPENSING

**327-A:1 Definitions.** – In this chapter:

I. "Ophthalmic dispensing" means the design, verification, and delivery to the intended wearer of lenses, frames, and other specially fabricated optical devices upon prescription. It includes, but is not limited to, prescription analysis and interpretation; the taking of measurements to determine the size, shape, and specifications of the spectacle lenses, frames, or lens forms best suited to the wearer's needs; the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating eyewear; the verification of the quality of finished ophthalmic products, the adjustment of lenses or frames to the intended wearer's face; the delivery of such ophthalmic products including instruction in hygiene and insertion and removal of contact lenses; and the adjustment, replacement, and reproduction of previously prepared ophthalmic lenses, frames, contact lenses, or other specially fabricated ophthalmic devices. It does not include the alteration without permission of the prescriber of any prescriptions, nor does it include the fitting of contact lenses which may only be performed by ophthalmologists or optometrists pursuant to law regulating such practices, unless the ophthalmic dispenser is in possession of a statement of delegation authorizing the fitting of contact lenses.

II. "Fitting contact lenses" means measurement of the shape of the eye, as well as determining the lens specifications, including base curve, size, shape, thickness, color, and material composition.

III. "Prescription for spectacle lenses" means a dated and signed, written or oral direction not more than 24 months old from an ophthalmologist or optometrist for therapeutic or corrective lenses which states the prescribed refractive power and when necessary, the vertex distance, cylinder axis, and prism. The oral prescription must be recorded and kept on file for one year by the ophthalmic dispenser.

IV. "Prescription for contact lenses" means a dated and signed, written direction specifying that it is for contact lenses or plano lenses, and shall include at least the power, size, curvature, color, and material composition of the lenses. A prescription for contact lenses may also include, at the prescriber's professional discretion, other parameters or instructions such as lens manufacturer, prescription expiration date, number of permitted refills, and a statement prohibiting substitutions. Such parameters or instructions shall be honored by a person filling the prescription. Unless otherwise specified by the prescriber for health reasons, a contact lens prescription shall expire one year from the date of issue.

V. "Commissioner" means the commissioner of the department of health and human services.

VI. "Department" means the department of health and human services.

VII. "Ophthalmic dispenser/optician" means anyone who sells or dispenses, upon prescription, spectacles, eyeglasses or contact lenses.

VIII. "Statement of delegation" means a written, signed statement from the prescribing ophthalmologist or optometrist which authorizes a named ophthalmic dispenser to fit the prescription for contact lenses. The statement shall be written on the prescription for contact lenses or shall be a letter which shall be attached to the prescription for contact lenses.

IX. "Plano lenses" means contact lenses with no refractive power.

Source. 1989, 389:1. 1995, 310:157, 158. 1998, 308:1, eff. Jan. 1, 1999. 2011, 121:4, 5, eff. Aug. 1, 2011.

**327-A:2 Registration of Ophthalmic Dispensers.** – It shall be unlawful for any person to engage in the business of ophthalmic dispensing or the practice of dispensing contact lenses unless such person is registered in accordance with this chapter and unless the registration of such person is current and valid. No person shall engage in the fitting of contact lenses unless the person has a statement of delegation from an ophthalmologist or optometrist.

Source. 1989, 389:1, eff. Jan. 1, 1990.

**327-A:3 Application for Registration.** – An application for a certificate of registration for ophthalmic dispensing under this chapter shall be filed with the department in such form and detail as the commissioner shall require in accordance with rules adopted under RSA 541-A, shall be duly signed and verified, shall be available for public inspection, and shall include, but not be limited to:

I. The name and the business address of the applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and business address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and business address of each of the officers of the corporation.

II. The place or places, including the complete address or addresses, where the business is to be conducted.

Source. 1989, 389:1. 1995, 310:175, 183, eff. Nov. 1, 1995.

**327-A:4 Advisory Council; Establishment, Duties.** – [Repealed 2010, 368:1(27), eff. Dec. 31, 2010.]

**327-A:5 Powers and Duties of the Commissioner.** – The powers and duties of the commissioner under this chapter include:

I. Accepting applications for certificates of registration under this chapter, and approving or denying such applications.

II. Renewing certificates of registration.

III. Suspending or revoking certificates of registration upon the grounds listed in RSA 327-A:9, and conducting hearings regarding the denial, suspension, revocation and renewal of certificates as provided in RSA 327-A:11.

IV. Accepting written complaints from the public against registrants and conducting necessary investigations upon such written complaints.

V. Publicizing the complaint procedure.

VI. Adopting such rules under RSA 541-A as are necessary to carry out the purposes of this chapter, but in no instance shall the commissioner adopt rules limiting competition, prohibiting truthful advertising, affecting the location or number of practices or the employment of any person registered under this chapter.

VII. Reporting to the governor and council and to the commissioner of the department of health and human services annually on the activities conducted under this chapter.

VIII. [Repealed.]

Source. 1989, 389:1. 1995, 310:183. 2010, 368:28, V, eff. Dec. 31, 2010.

**327-A:6 Issuance of Certificate.** – Except as provided in RSA 327-A:9, the commissioner shall issue a certificate of registration for ophthalmic dispensing to any person who files an application for such certificate accompanied by the required application and registration fees within 30 days after the filing of such application.

Source. 1989, 389:1. 1995, 310:183, eff. Nov. 1, 1995.

**327-A:7 Application and Registration Fees.** – Every application for a certificate of registration for ophthalmic dispensing shall be accompanied by a non-refundable registration fee of \$100. Upon approval of the application by the commissioner, the applicant shall be issued a certificate of registration for ophthalmic dispensing to be valid for 2 years. The fee for renewal of any certificate of registration shall be \$100.

Source. 1989, 389:1. 1995, 310:183, eff. Nov. 1, 1995, 2012, 171:18, eff. Aug. 10, 2012.

**327-A:8 Display of Certificate.** – Any person who has been issued a certificate of registration under this chapter shall conspicuously display such certificate in his principal place of business.

Source. 1989, 389:1, eff. Jan. 1, 1990.

**327-A:9 Suspension, Revocation or Refusal to Issue Certificate.** – The commissioner may deny the application for a certificate of registration and may suspend or revoke the registration of any ophthalmic dispenser issued pursuant to this chapter or refuse to issue a renewal thereof if it is determined after hearing that such applicant or registrant:

I. Has made a material false statement or concealed a material fact in connection with his application for certificate of registration;

II. Has had a certificate of registration issued under this chapter revoked or suspended previously;

III. Has been found guilty of fraud or fraudulent practices after prosecution by the attorney general, or has used dishonest or misleading advertising;

IV. Has failed to follow the orders on the prescription of an ophthalmologist or optometrist;

V. Has failed to comply with any other provision of this chapter or any rules promulgated by the commissioner.

Source. 1989, 389:1. 1995, 310:183, eff. Nov. 1, 1995.

**327-A:10 Return of Certificate.** – Upon the suspension or revocation of a certificate of registration by the commissioner and the issuance of a notice thereof, the registrant shall within 5 days, not including Sundays and holidays, deliver to the commissioner the certificate of registration. If surrendered by mail, the certificate of registration must be sent by registered or certified mail, postmarked no later than 3 days, not including Sundays and holidays, following notice of suspension or revocation. Failure to return a certificate of registration which has been revoked or suspended hereunder within the prescribed time shall constitute a misdemeanor.

Source. 1989, 389:1. 1995, 310:183, eff. Nov. 1, 1995.

**327-A:11 Procedure for Complaints; Hearings; Judicial Review.** –

I. No certificate of registration shall be suspended or revoked until after a hearing before the commissioner, which shall be held in accordance with RSA 541-A, and upon written notice mailed to the registrant by certified or registered mail. However, when a notice of hearing is mailed to a registrant at the address shown in the records of the department and such a registrant fails to attend such hearing, the commissioner may suspend his registration without a hearing pending his attendance at such hearing. Upon the denial of an application for a certificate of registration, the commissioner shall grant a hearing to an applicant therefor upon receipt of a request for a hearing made within 30 days after the applicant is notified of denial. The commissioner shall have the power to require the attendance of witnesses and issue subpoenas duces tecum in the conduct of such hearing. If a certificate of registration is revoked or suspended or an application is denied, no such certificate shall be issued to such former registrant or applicant for at least 6 months, or thereafter, except in the discretion of the commissioner. The applicant or registrant may be heard in person or by counsel. The

commissioner shall notify the applicant of the time and place of the hearing. The commissioner shall have the power to subpoena any person in this state, or document, record or other relevant evidence, and administer an oath to and take the testimony of any such person or cause his deposition to be taken.

II. Appeals from an order of suspension or revocation or a denial of an application of a certificate of registration shall be made under RSA 541.

Source. 1989, 389:1. 1995, 310:175, 183, eff. Nov. 1, 1995.

**327-A:12 Rulemaking.** – The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The registration application form and content, and the license application procedures.

II. The application form, content, and procedure for a renewal or reinstatement of a registration to practice ophthalmic dispensing, in accordance with RSA 327-A:3.

III. A schedule of fees, in accordance with RSA 327-A:7.

IV. Ethical and professional standards required to be met by registrants.

V. The conduct of investigations, in accordance with RSA 327-A:11.

VI. A schedule of administrative fines pursuant to RSA 327-A:17 for the violation of the provisions of this chapter or rules adopted pursuant to this chapter.

VII. Procedures for notice and hearing prior to denial, suspension, or revocation of a registration, and the imposition of administrative fines.

VIII. Procedures for the handling of complaints.

IX. Procedures for the approval or denial of an application.

X. Procedures for suspension or revocation of a registration.

XI. Procedures for appeal of decisions of the commissioner made pursuant to the provisions of this subdivision and rules adopted pursuant to this subdivision.

XII. Waivers of applicable rules.

XIII. Ophthalmic dispensing to young children, as necessary.

Source. 1989, 389:1. 1995, 310:182. 1998, 308:2, eff. Jan. 1, 1999. 2012, 171:17, eff. Aug. 10, 2012.

**327-A:13 Persons and Practices Not Affected.** – Nothing in this chapter shall apply to:

I. Licensed physicians and surgeons authorized to practice medicine or surgery and licensed optometrists authorized to practice optometry under the laws of this state.

II. [Repealed.]

III. Any individual, firm, or corporation employing persons registered under this chapter.

IV. The activities of any employee of an ophthalmic dispenser, licensed physician, or optometrist if the employee is not engaged in ophthalmic dispensing as defined in RSA 327-A:1, I. Such activities shall include, but not be limited to, the sale of related products, work performed by laboratory technicians, and the making of minor mechanical repairs on eyeglasses or frames.

Source. 1989, 389:1. 1998, 308:3. 1999, 221:1, 2, eff. Sept. 4, 1999.

**327-A:14 Renewal of Registration; Continuing Education.** – Certificates of registration issued under this chapter shall be subject to renewal every 2 years and shall expire unless renewed in the manner prescribed by the commissioner. Certificates of registration for ophthalmic dispensing shall be renewed upon the payment of the renewal fee and the completion of 8 credits of continuing education during the previous 2-year period. Any national, regional, or state optical company, trade, or professional group is authorized to sponsor continuing education programs approved by the American Board of Opticianry, the National Contact Lens Examiners, or the commissioner. The commissioner or the deputy commissioner of the department of health and human services shall authorize continuing education programs which contribute to the advancement, extension, or enhancement of the professional skills and the technical knowledge of opticians.

Source. 1989, 389:1. 1995, 310:183. 1998, 308:4. 2010, 368:13, eff. Dec. 31, 2010.

**327-A:15 Injunction.** – The commissioner may request the attorney general to commence an action to enjoin the operation of any person engaged in the selling or fitting of ophthalmic devices or contact lenses in violation of this chapter. Said action shall be filed in the superior court in Merrimack county.

Source. 1989, 389:1. 1995, 310:183, eff. Nov. 1, 1995.

**327-A:16 Civil Claims.** – Any person injured by the actions of a person engaged in the dispensing of ophthalmic devices or contact lenses in violation of any of the provisions of this chapter may bring a civil action to recover damages suffered by reason of the violation.

Source. 1989, 389:1, eff. Jan. 1, 1990.

**327-A:17 Administrative Fines.** – The commissioner after notice and hearing, pursuant to rules adopted under RSA 541-A, may impose an administrative fine of \$250 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

Source. 2002, 155:1, eff. Jan. 1, 2003.