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Ophthalmic Dispensers and Ophthalmic Technicians Law

Table of Contents

52:17B-41.1. Purpose of act; "ophthalmic appliances and lenses" defined; exemptions; prohibited acts	1
41.52:17B-41.2. State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians; compensation; expenses; report	1
52:17B-41.3. Meetings, organization, powers, agent.....	2
52:17B-41.4. Compensation of secretary and inspector	3
52:17B-41.5. Practice of ophthalmic dispensing; prescription required; "ophthalmic technicians" defined; temporary permits to persons from out of the State; apprentices.....	3
52:17B-41.6. Examinations; certificate of registration; annual renewal	4
52:17B-41.6a. Continuing education to qualify for license renewal.....	4
52:17B-41.7. Certificate holder may practice as ophthalmic dispenser or technician	4
52:17B-41.8. Display of certificate	4
52:17B-41.9. Meetings of board; examinations; qualifications as candidates	5
52:17B-41.9a. Apprentice dispenser; registration; requirements for qualification	5
52:17B-41.9b. Ophthalmic technician; qualifications	6
52:17B-41.9c. Examinations; retention; inspection	6
52:17B-41.11. Persons who have practiced two years before enactment; license.....	6
52:17B-41.12. License to be evidenced by certificate; fees; persons not holding license within 5 years of application must pass examination.....	7
52:17B-41.13. Forms for application and examination; rules and regulations.....	7
52:17B-41.14. Disposition of fees, fines, penalties and other moneys	7
52:17B-41.15. Budget request for appropriations.....	7
52:17B-41.16. Surplus; disposition.....	8
52:17B-41.17. Advertisements by ophthalmic dispenser or ophthalmic technician; rebates or commissions.....	8
52:17B-41.18. Penalty.....	8
52:17B-41.23. Partial invalidity	9
52:17B-41.24. Effective date.....	9
52:17B-41.25. Short title	9
52:17B-41.26 Definitions.	9
52:17B-41.27. Ophthalmic dispensers authorized.....	9
52:17B-41.28. Prescription required.....	10
52:17B-41.29. Replacement lenses on prescription or record	10

52:17B-41.30. Release of patient's prescription.....	10
52:17B-41.31. Release of patient's contact lens specifications.....	10

52:17B-41.1. Purpose of act; "ophthalmic appliances and lenses" defined; exemptions; prohibited acts

This act is enacted in the exercise of the police powers of the State and its purposes generally are to protect the public health, welfare and safety by providing for the regulation of the sale, dispensing and supplying of all ophthalmic appliances, eyeglasses, or ophthalmic lenses to the ultimate wearer or consumer in this State.

For the purposes of this act, ophthalmic appliances and lenses are defined as those employed for the aid or protection of human vision or for the correction of defects of human vision.

Physicians and optometrists, duly licensed to practice medicine and optometry in this State, are specifically exempt from the provisions of this act.

A person registered under the provisions of this act is specifically prohibited from engaging in the practice of ocular refraction, orthoptics, visual training, or fitting contact lenses; or the prescribing of subnormal vision aids or telescopic spectacles, in his own behalf or as an employee or student of another, whether under the personal supervision of his employer or preceptor or not.

No person not licensed to practice medicine or optometry in this State shall directly or indirectly, for himself or others, do or engage in any act or practices specifically prohibited to duly registered ophthalmic dispensers and ophthalmic technicians by the provisions of this act.

L.1952, c. 336, p. 1076, s. 1.

41.52:17B-41.2. State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians; compensation; expenses; report

There is hereby created the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians in the Division of Professional Boards of the Department of Law and Public Safety, hereinafter designated as the "board," which shall be composed of five members who shall be appointed by the Governor, four of whom shall be ophthalmic dispensers and the other member shall be an optometrist duly licensed by the State Board of Optometrists. The four ophthalmic dispensers shall be engaged in the practice of ophthalmic dispensing in the State of New Jersey for not less than five years, each of whom shall be residents of the State of New Jersey, and also shall be persons of recognized ability and honor, and who may be appointed by the Governor from a list to be furnished within thirty days after any vacancy occurs in the membership of said board by the Society of Dispensing Opticians of New Jersey, Incorporated, of whom the persons nominated are members; and for every membership filled in said board, at least three names shall be submitted to the Governor, and from the names thus submitted, the Governor may select one person to be a member of said board; and the optometrist may be appointed by the Governor from a list to be furnished within thirty days after any vacancy occurs in the membership of said board by the New Jersey Optometric Association, of whom the person nominated is a member; and for every membership filled in said board, at least three names shall be submitted to the Governor, and from the names thus submitted, the Governor may select one person to be a member of said board.

One ophthalmic dispenser member shall be appointed for a term of one year; another ophthalmic dispenser member shall be appointed for a term of two years; another ophthalmic dispenser member shall be appointed for a term of three years; another ophthalmic dispenser member shall be appointed for a term of four years; and the optometrist member shall be appointed for a term of five years; and upon the expiration of the term of said optometrist member, his successor shall be an ophthalmic

dispenser member of said board, so that at the expiration of the optometrist member's term on the board, the board shall thereafter be composed of five ophthalmic dispenser members.

Upon the expiration of the terms of members herein named, the Governor shall annually fill each vacancy resulting from the expiration of a term of office of a member for a term of five years by an appointment of an ophthalmic dispenser in the same manner as an original appointment is to be made.

Each appointee, within thirty days after receipt of his commission, shall take, subscribe and file in the office of the Secretary of State the oath or affirmation prescribed by law.

A vacancy resulting from any cause other than the expiration of a term shall be filled for the unexpired term by an appointment of an ophthalmic dispenser by the Governor in the same manner as an original appointment is to be made.

Each member of the board shall receive the sum of two hundred fifty dollars (\$250.00) for each regular examination conducted by the board, and each member of the board shall also be compensated for actual expenses incurred in the discharge of his official duties, all to the extent that funds are available from the license fees prescribed herein.

The Governor may remove any member for cause, upon notice and opportunity to be heard.

On June thirtieth of each year, the board shall submit to the Attorney General a written report. Such report shall include the names of all ophthalmic dispensers and ophthalmic technicians to whom licenses have been granted as provided in section six of this act, any cases heard and decisions rendered by the board, and the recommendation of the board as to future policies. Each member of the board shall review and sign such report before its submission to the Attorney General. The principal office of the board shall be in Trenton, New Jersey, but it may meet or conduct any of its business at any place in this State. The board shall empower any member to conduct any proceeding, hearing or investigation necessary to its purposes. Three members of the board shall be a quorum.

L.1952, c. 336, p. 1077, s. 2.

52:17B-41.3. Meetings, organization, powers, agent

3. The board shall hold at least two meetings each year and may hold such other meetings as it may deem advisable. The time and place of all such meetings shall be determined by the board.

The board shall elect a president, a secretary and a treasurer from its membership and shall have a common seal, of which all courts of this State shall take judicial notice. Its president, or secretary, may issue subpoenas to compel attendance of witnesses to testify before the board and administer oaths in taking testimony in any matter pertaining to its duties, which subpoenas shall issue under the seal of the board and shall be served in the same manner as subpoenas issued out of the Superior Court of this State, and every person who refuses or neglects to obey the command of such subpoena, or who, after appearing, refuses to be sworn and testify, shall, in either event, be liable to a penalty of fifty dollars (\$50.00) to be sued for in the name of the board in any court of competent jurisdiction, which penalty when collected shall be paid to the treasurer of said board.

The board may appoint an agent, subject to the approval of the Attorney General, whose title shall be "inspector of the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians," who shall hold office during the pleasure of the board and who may be removed by the board subject to the approval of the Attorney General, and shall, during his continuance in office, be authorized to serve

and execute any process issued by any court of record under the provisions of this act. Such agent shall not be subject to the provisions of the Civil Service law.

L.1952,c.336,s.3; amended 1991,c.91,s.497.

52:17B-41.4. Compensation of secretary and inspector

The secretary and the inspector of the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians shall receive such compensation as shall be fixed by the board, subject to the approval of the Attorney General, within the limits of available appropriations therefor.

L.1952, c. 336, p. 1080, s. 4.

52:17B-41.5. Practice of ophthalmic dispensing; prescription required; "ophthalmic technicians" defined; temporary permits to persons from out of the State; apprentices

A person practices ophthalmic dispensing within the meaning of the provisions of this act relating to ophthalmic dispensing who prepares and dispenses lenses, spectacles, eyeglasses or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their profession, and in accordance with such prescriptions, interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes. The services and appliances relating to ophthalmic dispensing shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon prescription issued by a physician or optometrist; but duplications, replacements, reproductions or repetitions may be done without prescription, and such act shall likewise be construed to constitute the practice of ophthalmic dispensing the same as if performed on the basis of an original written prescription. No person shall sell, dispense, supply or offer ophthalmic lenses, spectacles or eyeglasses to intended wearers or users thereof without prescriptions, properly authorized, by physicians or optometrists duly licensed to practice their professions in the State of New Jersey; provided, however, nothing in this act shall be construed to apply to the sale of toy glasses or goggles consisting of plano-white, plano-colored lenses, magnifiers, loupes, binoculars or ordinary colored glasses or the sale of ready-made glasses or spectacles, with simple magnification only, when sold as merchandise at established places of business.

An ophthalmic technician, for the purposes of this act, shall be defined as follows:

One having a knowledge of optics and skilled in the technique of producing and reproducing ophthalmic lenses and kindred products, and mounting same to supporting materials.

Any person from out of the State of New Jersey with appropriate ophthalmic dispensing qualifications or ophthalmic technician qualifications who can prove such qualifications may apply to the board for a temporary permit to secure employment in the State of New Jersey as an ophthalmic dispenser or ophthalmic technician, and said permit shall automatically expire after the publication of the grades of the next succeeding examination; and the board shall be limited to the issuance of only two temporary permits to each applicant, and a fee of five dollars (\$5.00) shall accompany such application.

Any person entering into employment in an ophthalmic dispensing establishment for the purpose of obtaining practical experience and skill as a licensed ophthalmic dispenser or ophthalmic technician shall register as an apprentice with the board and the computation of any period of apprenticeship under the

provisions of this act shall commence at the date of such registration. Such application for registration shall be certified under oath, by the employer and by such applicant; and a fee of five dollars (\$5.00) shall accompany such application, and the board may issue to such applicant an apprentice's certificate. Any person who may have served part of his apprenticeship in any other State or country, not requiring such registration, shall be obliged to give proof of such service satisfactory to the board.

Nothing in the provisions of this act relating to ophthalmic dispensing shall be construed to limit or restrict, in any respect, the practice of medicine by physicians duly licensed to practice in this State, or the practice of optometry by optometrists duly licensed to practice optometry in this State.

L.1952, c. 336, p. 1080, s. 5.

52:17B-41.6. Examinations; certificate of registration; annual renewal

The board shall examine for competence in matters pertaining to ophthalmic dispensing and allied and practical subjects.

To every applicant who shall pass such examination, the board shall issue a certificate of registration which shall constitute a license hereunder, and shall be issued for a period of one year and may be renewed annually as herein provided. Any license issued hereunder shall be subject to all of the provisions of this act and the rules and regulations promulgated hereunder.

L.1952, c. 336, p. 1082, s. 6.

52:17B-41.6a. Continuing education to qualify for license renewal

The board may require all ophthalmic dispensers now or hereafter licensed in this State to take board-approved courses of study relating to the practice of the profession of opticianry or to maintain proficiency in some other alternative manner to be prescribed and established by the board in order to qualify for license renewal.

L.1979, c. 155, s. 6.

52:17B-41.7. Certificate holder may practice as ophthalmic dispenser or technician

Any person who has received a certificate of registration as a qualified ophthalmic dispenser or qualified ophthalmic technician as provided for herein shall be permitted and authorized to practice as an ophthalmic dispenser or ophthalmic technician, as defined in section five of this act.

L.1952, c. 336, p. 1082, s. 7.

52:17B-41.8. Display of certificate

Every holder of a certificate of registration shall conspicuously display the same in his establishment.

L.1952, c. 336, p. 1082, s. 8.

52:17B-41.9. Meetings of board; examinations; qualifications as candidates

The board shall meet at least twice annually, at which time candidates applying for certification shall be examined and their qualifications determined; and the board may meet at such other times and places as the board may prescribe. A candidate shall qualify for examination and licensure as an ophthalmic dispenser upon providing the board with proof that he:

- a. Holds a high school diploma or equivalent; and
- b. Has fulfilled either of the following requirements;
 - (1) Holds an associate degree in ophthalmic science or its equivalent from an accredited institution and has worked full-time as an apprentice ophthalmic dispenser under the supervision of a licensed ophthalmic dispenser for not less than 4 months nor more than 1 year prior to taking the examination; or
 - (2) Has served not less than 36 calendar months as an apprentice dispenser during which time he has satisfactorily completed not less than the requisite number of school hours of board-approved courses in ophthalmic science, said number of hours to be determined by the board.

L.1952, c. 336, p. 1082, s. 9. Amended by L.1979, c. 155, s. 1.

52:17B-41.9a. Apprentice dispenser; registration; requirements for qualification

No one may apprentice pursuant to section 5 of P.L.1952, c. 336 (C. 52:17B-41.5) unless he is registered with the board. Subsequent to registration, an apprentice dispenser who does not hold an associate degree in ophthalmic science or its equivalent from an accredited institution shall serve a minimum of 36 months of apprenticeship during which time he shall accumulate not less than the requisite number of school hours in board-approved courses in ophthalmic science, which service and education shall be completed in the following manner:

- a. During the first 12 months of the apprenticeship, an apprentice dispenser shall serve not less than one-half of his time in technical optical procedures and satisfactorily complete not less than the requisite number of school hours of board-approved courses.
- b. Upon completion of the first 12 months as an apprentice dispenser and the requisite educational requirements, an apprentice shall be required to take and pass a qualifying technical examination established and administered by the board. In the event the apprentice dispenser fails such examination, he shall not thereafter directly serve the public in the dispensing of ophthalmic products until he passes the qualifying technical examination. Such apprentice dispenser who fails examination may take two subsequent examinations for a total limit of three. An apprentice dispenser shall be required to take the first available qualifying technical examination for which he is eligible.
- c. Upon successful completion of the qualifying technical examination, an apprentice shall satisfactorily complete the remainder of the school hours of board-approved courses while continuing to work full-time as an apprentice under the supervision of a licensed dispenser for such additional period as necessary for the apprentice dispenser to have accumulated the remainder of the required 36 months of work. Upon accumulation of not less than the requisite number of school

hours and the required supervised employment, the apprentice shall be eligible to take the examination for licensure. Employment as an apprentice dispenser shall require supervision by a licensed ophthalmic dispenser who may supervise the number of apprentices that the board permits by regulation.

L.1979, c. 155, s. 2.

52:17B-41.9b. Ophthalmic technician; qualifications

A candidate shall qualify for examination and licensure as an ophthalmic technician upon providing the board with proof that he has served not less than 12 calendar months as an apprentice technician.

No one may apprentice pursuant to section 5 of P.L.1952, c. 336 (C. 52:17B-41.5) unless he is registered with the board. Employment as an apprentice technician shall require supervision by a licensed ophthalmic dispenser or licensed ophthalmic technician who may supervise the number of apprentices that the board permits by regulation. Any person who holds or obtains an ophthalmic technician license shall be eligible to register with the board as an apprentice dispenser, notwithstanding the failure of such applicant to possess a high school diploma or its equivalent. Subsequent to such registration, such person shall be deemed eligible to take the examination for licensure as an ophthalmic dispenser upon completion of 36 calendar months as an apprentice dispenser during which time he has satisfactorily completed not less than the requisite number of school hours of board-approved courses in ophthalmic science.

L.1979, c. 155, s. 4.

52:17B-41.9c. Examinations; retention; inspection

The board shall maintain all examinations of candidates for licensure as ophthalmic dispensers and of candidates for licensure as ophthalmic technicians on file for at least one year. Upon written request to the board by a candidate, the board shall make his examination available for inspection by the candidate.

L.1979, c. 155, s. 5.

52:17B-41.11. Persons who have practiced two years before enactment; license

All applicants who have been principally engaged in ophthalmic dispensing and in the preparation and processing of ophthalmic lenses and frames to prescriptions in the State of New Jersey for a period of two years prior to the effective day of this enactment, and whose applications, accompanied by a fee of twenty-five dollars (\$25.00), have been properly filed prior to such day or within six months after said day, shall be issued a license.

All applicants who have been principally engaged as an ophthalmic technician in the preparation and processing of ophthalmic lenses and frames in the State of New Jersey for a period of two years prior to the effective day of this enactment, and whose applications, accompanied by a fee of ten dollars (\$10.00), have been properly filed prior to such day or within six months after said day, shall be issued a license.

L.1952, c. 336, p. 1083, s. 11.

52:17B-41.12. License to be evidenced by certificate; fees; persons not holding license within 5 years of application must pass examination

A license issued under the provisions of this act shall be evidenced by a certificate issued by the board. A fee shall be paid to the board, at the date of application for license, as follows: For licensed ophthalmic dispensers, twenty-five dollars (\$25.00), and fifteen dollars (\$15.00) for annual renewal of any such license. For licensed ophthalmic technicians, fifteen dollars (\$15.00), and ten dollars (\$10.00) for annual renewal of any such license. Any person licensed by said board who shall fail to renew his license within six months after the date of its expiration and shall, thereafter, desire to renew such license, shall pay to the board fifteen dollars (\$15.00) for such renewal; provided, before granting a license to any applicant who has not held a license issued by said board within five years of the date of application, said board shall require such applicant to pass a standard examination satisfactory to said board and to pay to the board the fee required of original applicants.

L.1952, c. 336, p. 1084, s. 12.

52:17B-41.13. Forms for application and examination; rules and regulations

The board shall prescribe and prepare the necessary forms for application and examination of candidates for certification hereunder and shall by its formally adopted rules and regulations establish the method and manner in which such application shall be filed and the examination held.

The board shall be authorized and empowered to promulgate such reasonable rules and regulations which shall be necessary to give full force and effect to the provisions of this act and to regulate the practice of ophthalmic dispensers and ophthalmic technicians in this State within the meaning hereof; provided, however, such rules and regulations are not inconsistent with the provisions of this act.

L.1952, c. 336, p. 1084, s. 13.

52:17B-41.14. Disposition of fees, fines, penalties and other moneys

(a) All license, certificate, permit, registration and renewal fees prescribed by this act shall be paid into the State treasury through the Attorney General; and

(b) All fines, penalties and other moneys derived from the operation of, or payable pursuant to law to, the board shall be paid into the State treasury through the Attorney General.

Such fees, fines, penalties and other moneys so paid into the State treasury shall be placed to the credit of the board, and no part thereof may be disbursed or expended by the board for any purpose except in accordance with appropriations made by law, and then only upon warrant of the Director of the Division of Budget and Accounting in the Department of the Treasury on vouchers certified or approved by the president of the board.

L.1952, c. 336, p. 1085, s. 14.

52:17B-41.15. Budget request for appropriations

On or before the fifteenth day of September in each year, the board shall prepare and submit to the Attorney General a budget request for appropriations for the board for the ensuing fiscal year. The

budget request so prepared shall, upon approval of the Attorney General, be submitted to the State Treasurer.

L.1952, c. 336, p. 1085, s. 15.

52:17B-41.16. Surplus; disposition

Any surplus remaining in any year to the credit of the board, after annual appropriations made as provided herein, shall be paid into and become part of the General Fund of the State.

L.1952, c. 336, p. 1085, s. 16.

52:17B-41.17. Advertisements by ophthalmic dispenser or ophthalmic technician; rebates or commissions

It shall be lawful for an ophthalmic dispenser or ophthalmic technician to advertise; provided, that no mention shall be made, either directly or indirectly by any means whatsoever, of a discount, any definite or indefinite price or credit terms on corrective ophthalmic lenses, frames, complete prescription or corrective glasses; and provided, that such ophthalmic dispenser or ophthalmic technician does not advertise in any manner that would tend to mislead or deceive the public or that would in any manner discredit others in the eye care field. An ophthalmic dispenser or ophthalmic technician shall have the right with each individual patient to recommend an ophthalmologist or optometrist.

It shall be unlawful to advertise or employ displays in such a manner as to suggest, infer or indicate that persons licensed under this act are qualified to give professional advice concerning eye care.

It shall be unlawful for any ophthalmic dispenser or ophthalmic technician to use the word "licensed" or any of its synonyms.

It shall be unlawful for any ophthalmic dispenser or ophthalmic technician or employee or agent thereof or any other person on their behalf to offer to pay a rebate or commission in any form whatsoever to any ophthalmologist, refractionist, or optometrist in return for referring patients to anyone licensed under this act.

L.1952, c. 336, p. 1085, s. 17.

52:17B-41.18. Penalty

18. Any person who, after this act becomes operative, shall practice as a licensed ophthalmic dispenser or ophthalmic technician as defined in section five of this act, or hold himself out to be a qualified or licensed ophthalmic dispenser or ophthalmic technician, or designate himself by any other term or title which implies that he is an ophthalmic dispenser or ophthalmic technician without having been licensed as a qualified ophthalmic dispenser or ophthalmic technician, by the board, shall be liable to a penalty of two hundred dollars (\$200.00), which penalty shall be recovered in a summary manner in the Superior Court in the manner prescribed by the rules of procedure for those courts.

L.1952,c.336,s.18; amended 1991,c.91,s.498.

52:17B-41.23. Partial invalidity

If any clause, sentence, paragraph or part of this act be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act, and it is hereby declared to be the legislative intent that this act would have been adopted had such invalid provision not been included herein.

L.1952, c. 336, p. 1089, s. 23.

52:17B-41.24. Effective date

This act shall become operative ninety days after its enactment.

L.1952, c. 336, p. 1089, s. 24.

52:17B-41.25. Short title

1. This act shall be known and may be cited as the "Contact Lens Dispenser Act."

L.1991,c.447,s.1.

52:17B-41.26 Definitions.

2. As used in this act:

- a. "Practice of contact lens dispensing" means the sale or delivery of contact lenses to the patient based upon the prescription of powers for vision and specifications for contact lenses for the patient as provided by a licensed physician or optometrist. The practice includes, but is not limited to, the analysis and interpretation of prescriptions and specifications for contact lenses; the preparation of orders and the grinding for fabrication of contact lenses; the instruction of the patient as to the proper insertion, removal, care and the use of the contact lenses; and the duplication, reproduction and replacement of previously prepared contact lenses. For the purposes of this act, "contact lenses" shall include contact lenses without power, sometimes referred to as "plano" lenses.

- b. "Prescription" means written instructions or orders from a licensed physician or optometrist stating the powers of vision of a person.

- c. "Duplication" means the replacement or reproduction of contact lenses based upon a prescription or specifications of record.

L.1991,c.447,s.2; amended 2005, c.262, s.2.

52:17B-41.27. Ophthalmic dispensers authorized

3. Any ophthalmic dispenser licensed in New Jersey may engage in the practice of contact lens dispensing.

L.1991,c.447,s.3.

52:17B-41.28. Prescription required

4. A contact lens dispenser shall only dispense contact lenses upon a written prescription provided by a licensed physician or optometrist containing the powers of vision and specifications for contact lenses for the patient.

L.1991,c.447,s.4.

52:17B-41.29. Replacement lenses on prescription or record

5. Previously dispensed contact lenses shall only be replaced, reproduced, or duplicated upon the prescription or specifications of record, a copy of which shall be provided by the original contact lens prescriber or dispenser upon the patient's request; provided that the prescription or specifications of record are not more than two years old.

L.1991,c.447,s.5.

52:17B-41.30. Release of patient's prescription

6. A licensed physician or optometrist shall release a copy of the patient's prescription containing a spectacle lens specification with contact lens specifications to any person qualified to dispense contact lenses upon the patient's request, except that nothing in this act shall require an optometrist or physician to write a prescription for contact lenses when, in the judgment of the optometrist or physician, it is contraindicated.

L.1991,c.447,s.6.

52:17B-41.31. Release of patient's contact lens specifications

7. Notwithstanding any rule or regulation to the contrary, the complete record of contact lens specifications shall be released by an optometrist or ophthalmologist to the patient or to another ophthalmologist, optometrist or ophthalmic dispenser licensed in the State of New Jersey upon either the oral or written request of the patient or professional acting on the patient's behalf.

L.1991,c.447,s.7.