

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

PART 55A
EYE CARE CONSUMER PROTECTION

333.5551 Eye care consumer protection law; meanings of words and phrases.

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

(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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5553 Definitions; C to E.

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.

(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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5555 Definitions; L to S.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5557 Definitions; V.

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:

(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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5559 Spectacles and contact lenses as medical devices; exceptions.

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.

(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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5561 Prohibited acts; "supervision" defined.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5563 Administration and enforcement of part; rules.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5565 Allegation of violation; writing; review by department; hearing, oaths, and testimony; authority of department to proceed under MCL 333.5567; initiation of investigation.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5567 Order to cease and desist; hearing; costs; referral of case for further enforcement; action under MCL 333.5569 or 333.5571.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5569 Civil action; filing; injunction or other relief; civil fine; costs; attorney fees.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.

333.5571 Violation of part, rule, or order as misdemeanor; fine; costs; attorney fees.

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.

History: Add. 2014, Act 269, Eff. Sept. 30, 2014.