

Association of Optometrists

Advice on Sale and Supply of Contact Lenses

Introduction

This advice is addressed to optometrists only, although medical practitioners and dispensing opticians are affected by the law on contact lenses. It does not cover pricing policy, nor the detailed clinical aspects of contact lenses. It describes how to practise within the law and is based on the opinion given to the AOP by Beverley Lang QC and the Information Commissioner's Office. For the purposes of this article, the terms 'sale' and 'supply' are considered to be synonymous.

Recent changes to the Opticians Act seek to make a clearer distinction between the fitting and supply of contact lenses (which now include plano contact lenses, such as so called 'fun' or coloured lenses). They clarify the requirements relating to a contact lens specification. The changes also loosen the control of the supply of contact lenses, by adding to the concept of supervision the notion of general direction.

Prescribing and Fitting

Contact lenses can only be prescribed and fitted on the basis of a sight test or eye examination which is less than two years old. It is a criminal offence to prescribe and fit contact lenses, if the period is longer than two years.

It remains a legal requirement to give the patient a copy of his/her spectacle prescription, following a sight test or an eye examination. But note that the difference between a spectacle prescription and a contact lens specification is that the latter must, firstly, provide sufficient details for the lenses to be replicated; and, secondly, indicate the period for which the specification is valid.

If, having received the prescription, the patient decides in favour of contact lenses, the optometrist can offer to fit them. Fitting contact lenses means, in brief, determining that there are no contra-indications to contact lenses; and determining the right contact lenses for a patient. The optometrist, having assumed the responsibility of fitting the contact lenses, must take all the necessary care and attention to ensure that the lenses are suitable for the patient.

It is a criminal offence to fit contact lenses (including plano contact lenses) in the absence of a valid spectacle prescription.

Once the optometrist and patient are satisfied with the fitting of the lenses, the fitting is complete. (The College of Optometrists believes the period is usually not more than three months. The optometrist should be able to justify a period that is, exceptionally, longer for the fitting to be completed.) During the fitting period, the optometrist remains responsible for the patient. If more than one person participates in the fitting, the last person to participate in the fitting is the person responsible for the provision of the specification and for giving the patient the correct instructions on how to use the contact lenses (see below).

When the fitting is complete, the fitter (in this case, the optometrist) must give the patient 'a signed, written specification of each lens fitted, sufficient to enable the lens to be replicated.'

In addition to having a responsibility to ensure that a patient is suitable to wear contact lenses (including planos), the fitter must also give the patient instructions on the use and care of the lenses. As Beverley Lang QC indicates, 'it is advisable for optometrists to provide instructions and information in writing', partly because The College of Optometrists so advises (see its Members Handbook paragraph 28.03) and its guidance 'is likely to be relied upon in any negligence or disciplinary proceedings as an indicator of good practice.' The AOP's advice is that the optometrist's duty of care under the common law would require instructions to be given in writing.

The optometrist is advised to ask the patient to sign a consent form to indicate that the patient understands the advice and instructions about the wearing and care of the lenses. The fact of having given the patient such advice and instructions should be recorded on the patient's record.

The optometrist must judge how often he/she needs to see the patient for a contact lens check-up or eye examination thereafter. In making such a judgement, the optometrist must exercise his/her clinical discretion.

In due course, a patient will require a new or re-issued specification. In the case of 'no change' in the contact lenses, the optometrist will follow the path described above and, after an appropriate examination, simply re-issue the specification for a new period of validity. If there is a change in the strength or type of contact lenses prescribed, the optometrist should judge whether or not to treat the change as equivalent to a first fitting. If the lens specification is changed and if it is felt necessary to bring the patient back for a further check to ensure the new specification is satisfactory, then it is reasonable to treat this as a fitting and not to issue the new specification until the fitting is deemed complete. If the specification is unchanged or does not require further assessment (e.g. a small power change), then the AOP takes the view that the optometrist may re-issue a specification immediately following an appropriate examination.

Specification Details

When the fitting of contact lenses is complete, the optometrist is required by law to give the patient a specification of the lenses, such that the lenses can be replicated. (Replication of the lenses is the crucial distinguishing feature between a spectacle prescription and a contact lens specification.)

The specification must include the following:

- details of the author of the specification,
- details of the patient,
- details of the lenses so that they can be replicated,
- the dates of the completion of the fitting and of the expiry of the specification.

The expiry date must be clinically justified and is to be interpreted as not only the date beyond which a supply cannot be made, but also the date beyond which the existing supply cannot 'stretch'. Beverley Lang QC confirms that 'although ... not spelt out in the legislation, it is implicit in the requirement that lenses can only be supplied where a valid specification is in force.' In other words, it is not permissible to provide three months' supply of lenses where the specification only has one month to run.

In deciding how long the patient can wear and be supplied with the contact lenses, the optometrist's overriding concern should be the patient's safety.

Contact Lens Supply

It is a criminal offence to supply contact lenses other than by, or under the supervision of, or under the general direction of a registered medical practitioner, registered optometrist or registered optician. Although not specifically required by the legislation the AOP recommends that a Dispensing Optician who is providing general direction within a supply chain should be a qualified contact lens fitter.

Beverley Lang QC takes the notion of general direction to be 'less rigorous' than supervision and quotes the minister in Parliament, namely that 'the sale must be directed by an optician or doctor. This means that the optician needs to be in the management chain and accountable for what goes on between customer and seller.' The College of Optometrists specifies the duties of a directing optometrist in its Members Handbook (see paragraphs 30.09 and 30.10). The AOP understands the crucial difference in the optometrist's accountability regarding supply to be between knowledge of the process of supply (general direction) and actual presence on the premises at the time of supply (supervision).

If an optometrist receives a specification and a request from a patient for the supply of contact lenses, the optometrist must only supply if the specification is valid.

Specification Copy

If an optometrist is asked by a patient to provide them with a copy of the original specification, the optometrist should comply with the patient's request.

If an optometrist is asked by another supplier for a copy of the original specification, the optometrist can:

- either give a copy to the patient for the patient to pass to the supplier,
- or send the copy to the supplier after first obtaining the patient's permission in writing or verbally. In the latter case, the optometrist should fully annotate the patient's record.

It is preferable that the optometrist gives the copy of the specification directly to the patient, thus avoiding the problem of confidentiality.

Specification Verification

Verifying a specification entails comparing the data on the patient's original specification with the details provided by the patient's prospective supplier and confirming whether they are correct and whether the specification is valid.

When a supplier telephones/faxes/emails for verification he/she should provide the following details:

- Patient's full name and address
- Full specification including parameters and power of the lenses
- An expiry date of the specification
- The name of the person who has signed the specification and/or their GOC registration number.

Before verifying the validity of the specification, the practitioner should:

- Be reasonably satisfied that the patient has provided consent for the practitioner to do so. The Information Commissioner's Office has said the practitioner will not necessarily require the patient's express consent and that it may be reasonable to deem consent by virtue of the fact that the patient has passed the specification to another supplier for the supply of the contact lenses;
- be reasonably satisfied that the supplier is under the supervision or general direction of an identifiable optometrist or qualified optician. This AOP advice is to prevent any suggestion of being complicit in an illegal supply of lenses and is not explicitly required by the legislation;
- enter the request in the patient's record;
- check that the patient's details and the clinical details in the specification are correct;
- reply with a 'yes' or 'no'. Any specification details not already in the supplier's possession should not be offered without the patient's explicit consent.

If any of the details provided by the supplier are not correct and do not correlate with the practitioner's records, you cannot verify the specification. In these circumstances, the AOP's advice is that it is preferable to supply a copy of the correct specification directly to the patient in order to avoid the problem of confidentiality. An optometrist may charge a patient for providing a copy of a contact lens specification; but the optometrist is advised to notify all patients of such charges in advance.

Direct Supplier and Remote Supplier

When an optometrist supplies contact lenses to another person's specification, if they have any doubts about whether the specification is an original, they must verify the details of the specification. In doing so, the optometrist should identify the originator of the specification and record it.

Unless an optometrist supplies contact lenses personally, he/she might be called a 'remote supplier'. As a remote supplier, the optometrist may be responsible for the general direction of the supply of contact lenses. As such, the optometrist is in the management chain and accountable for what goes on between the supplier and the patient.

Aftercare

The law requires the supplier of contact lenses to make arrangements for the person to whom the lenses are supplied 'to receive aftercare, in so far as, and for so long as, may be reasonable in his particular case.' (If the fitter is the supplier, the fitter is responsible for the aftercare.)

Although there is no legal definition of aftercare, the term 'aftercare' as the profession has previously understood it is not now applicable in this context.

The AOP takes the view that aftercare within the meaning of the statute is basic advice to the patient, advising on contact lens care, the need for routine professional contact lens care and contact details for emergency care. The AOP would recommend this advice is given to the patient in writing to protect the supplying practitioner. The AOP view is consistent with the College's guidance (paragraphs 30.11 and 30.12).

An optometrist who examines an existing contact lens wearer for the renewal of a specification and supply, will be expected to provide a higher level of professional contact lens care than this basic "aftercare". Chapter 29 of the College's guidance describes this higher level of care.

Note

This advice will be updated and clarified from time to time.