



## COA Facts

### Proposition 65 Warnings

Beginning May 11, 2016, any business with 10 or more employees that carries eyewear containing BPA should ensure that it warns individuals that they will be exposed to a chemical known to the State of California to cause reproductive harm before exposing them to BPA.

You may have been contacted by other companies or organizations regarding the warning requirements. If you are unsure or unclear about what information is required to be transmitted, COA's attorney has advised that the warnings discussed below do not need to identify the product, brand and style affected. Since not all offices are the same, COA highly recommends that you discuss your individual situation with your legal counsel to ensure you are in compliance.

You can learn more about Prop. 65 and its potential impact on your practice in the questions and answers below:

#### **Q: Why do optometrists have to do this?**

A: Proposition 65 ("Prop. 65") requires warnings prior to exposing individuals to chemicals known to the State of California to cause cancer or reproductive toxicity. Bisphenol A (BPA) was recently added to the Prop. 65 list as a chemical known to cause reproductive toxicity. BPA may be found, for example, in polycarbonate lenses and some spectacle frames.

#### **Q: What do optometrists need to do?**

A: Optometric offices may need to post multiple signs depending upon the type of exposure consumer, occupational, or environmental exposures.

Consumer warning - Eyewear may contain other Prop. 65-listed chemicals, in addition to BPA, so many practices may already be providing Prop. 65 warnings to their patients, such as the following:

WARNING: These products contain chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Practices that provide such a consumer warning would not need to change their warning language because this warning already advises patients of the harm associated with BPA, which is reproductive harm.

Businesses that do not already provide a Prop. 65 warning to patients may use this warning to warn of BPA and other Prop. 65 chemicals that may be found in eyewear.

Occupational/Environmental warning - Practices also need to warn their employees that they may be exposed to Prop. 65 chemicals. An occupational warning would be used, for example, in areas where incoming eyewear is opened and handled by employees for stocking. An occupational warning, such as the following, could be used to warn of BPA and other Prop. 65 chemicals that may be handled by employees in the workplace:



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WARNING: This area contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

This occupational warning could also be used to advise individuals of environmental exposures to a listed chemical; for example, if a practice grinds polycarbonate lenses containing BPA in-office.

#### **Q: What are the warning sign requirements?**

A: Prop. 65 warnings should be posted in a conspicuous place and under conditions that make it likely to be read and understood by employees, patients and other individuals prior to the exposure for which the warning is given.

For example, a consumer warning might be in the retail area where consumers will be trying on eyewear. As another example, employees may receive shipments and open the shipments in a back room/supply room. In that case, an occupational warning may need to be provided in the area where the shipments are likely to be received and opened. Another example is if you have a room or area where you grind polycarbonate lenses in-office, there may need to be an additional occupational/environmental warning there.

The signs can be generic and do not need to specify the brands that include BPA in their products.

Since not all offices are the same, COA highly recommends that you discuss your individual situation with your legal counsel to ensure you are in compliance.

#### **Q: Do part-time employees count toward the 10 employees?**

A: Yes. Businesses employing 10 or more employees - whether they are full- or part-time - are subject to Prop. 65. Even if you have nine or fewer employees, you may still consider posting Prop. 65 warnings because you may add employees in the future and forget about this requirement.

#### **Q: I realize I don't have to post an occupational warning since I have less than 10 employees. Do I need to post a consumer warning?**

A: No. If you have 9 or fewer employees, you do not have to provide consumer warnings, occupational warnings or environmental warnings. This is the exception for small businesses.

#### **Q: What if I have less than 10 employees but I'm part of a larger group?**

A: Businesses with fewer than 10 employees are exempt from the warning requirement. However, if your individual facility has fewer than 10 employees but is part of a larger



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company, even if that company is not located in California, then you will exceed the 10 employee exception. This will trigger the requirement to provide a Prop 65 warning.

**Q: What do I tell my patients if they ask me about the risk from Prop 65 chemicals?**

A: Allow patients to assess the risk for themselves. Prop. 65 is a warning statute. It requires that individuals who are exposed to chemicals known to the State of California to cause cancer or reproductive toxicity be warned before being exposed to the chemicals so that they can decide whether to expose themselves to the chemicals.

The risk will vary; for example, depending upon the concentration of the chemical(s), the method of exposure, the length of exposure, etc. As a result, you probably will not be in a position to advise patients about the risk to them.

**Q: What happens if I am required to warn but fail to warn?**

A: You may be ordered to comply, and could be subject to a lawsuit, a civil penalty up to \$2,500 per day for each violation, attorney fees and the costs of the lawsuit.

**Q: How can I get more information?**

A: For more information on Prop. 65 requirements, visit [California's Prop 65 website](#). Also, The Vision Council has [comprehensive fact sheet on its website](#).

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