

March 22, 2004

**COMMENTS SUBMITTED BY THE PENNSYLVANIA OPTOMETRIC
ASSOCIATION FOR CONSIDERATION BY THE FEDERAL TRADE
COMMISSION ON THE FAIRNESS TO CONTACT LENS CONSUMER ACT**

The Pennsylvania Optometric Association (POA) is the professional organization representing Doctors of Optometry and the optometric profession in the Commonwealth of Pennsylvania. We are submitting comments for the FTC's review regarding the Fairness to Contact Lens Consumer Act.

Optometrists in Pennsylvania have experienced many problems and frustrations regarding contact lens sellers, mainly 1-800-CONTACTS. 1-800-CONTACTS continues to be the largest mail order and internet contact lens seller. They have had a long history selling contact lenses to patients without valid prescriptions, even though they are aware that contact lenses are medical devices that require a prescription. We thought those problems would be solved after this legislation passed; however, we have found that the contact lens sellers are still circumventing the law and using deceptive business practices when verifying patients' contact lens prescriptions. As a result of these tactics used by contact lens sellers, patients are receiving inaccurate and expired prescriptions and are being misinformed by the seller. These practices raise many problematic issues, mainly the ocular safety of the patient. In addition, it is simply not possible to verify a prescription within the "8-hour" period in certain instances.

The POA has been collecting data and individual instances of contact lens sellers not following the law since February 4, 2004, the date the law went into effect. We are asking the FTC to consider these issues during the rule making process.

Our doctors have had problems contacting the contact lens sellers, mainly 1-800-CONTACTS, via fax machine. After the verification is received by fax at the doctor's office, we have noted that the contact lens sellers fax machine is constantly busy and the doctor is unable to return the verification, therefore the contact lens seller ships the lenses out to the patient. This was a known tactic that the contact lens sellers used in the past and apparently still wish to continue.

When a doctor is able to return the verification to the contact lens seller by fax, if the doctor notes that the patients prescription is either expired or they indicate they do not have a patient by that name, the contact lens seller returns the fax stating that "expired" or "no patient by that name" is an invalid unacceptable verification response and therefore the patients prescription will be mailed out. This is unacceptable. When a

doctor states that a prescription is expired, or that the buyer is not a patient, the verification process should end and the lenses should NEVER, under any circumstances, be sent to the patient.

Another tactic that the POA has noted is the “double verification,” used by contact lens sellers. The “double verification” is conducted like this: The first fax is sent to the doctor by the seller. The doctor faxes back the response that the patient’s prescription is expired. The seller then faxes another verification for the same patient for the same prescription. When the doctor doesn’t respond because they have already responded to the first verification for the same patient, the seller mails the lenses out and states that the doctor did not verify with the seller within the 8 hour time frame. Then, the contact lens sellers use the second letter from the double verification process as “proof” for the FTC that the doctor did not verify. This is yet another example of how contact lens sellers, mainly 1-800-CONTACTS, is breaking the law and putting patients at risk.

Our doctors have also noted that the toll free numbers provided by contact lens sellers, namely 1-800-CONTACTS, either do not work, disconnect the doctor after the doctor has navigated the convoluted automated phone system, or it tells the doctor that they will be placed on hold for a very lengthy time frame, sometimes more than 40 minutes. Most businesses, especially small businesses, do not have multiple phone lines in the office that allow one or two to be tied up for extended time frames. In addition, most small businesses cannot afford their staff to be on hold for extended time frames for each patient’s verification. Our association and our doctors have never encountered business practices such as these. We can tell you from experience that the toll free phone lines for the contact lens sellers do in fact work for new customers wanting to purchase contact lenses. New customers are not cut off nor put on hold for extended periods of time. Contact lens sellers are able to make their automated phone systems work for new customers but not for doctors who are following the law.

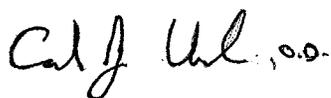
Many optometrists operate out of satellite offices in Pennsylvania. This has become a problem when contact lens sellers contact the wrong offices or contact a satellite office when the office is closed. If a verification is sent to office A and the patient was seen and the patient records are located in office B, the doctor cannot verify the prescription within the 8 hour time constraint. Several of our doctors have tried to call the contact lens sellers to notify them that they have sent the verification request to the wrong office; however, the doctors were told by 1-800-CONTACTS that they could not grant the doctors request of sending the verification to the proper office and therefore the contacts would be mailed out. The whole point of verification is to make sure that the patient receives the proper prescription and the proper lenses. If contact lens sellers view verification simply as an obstacle that stands in their way of making a profit, then they are potentially placing their customers at a very high health risk. In addition, many satellite offices are only open one day per week. It is impossible for the doctor to answer verification requests from contact lens sellers that reach the office on days that the office is not open. It would be ludicrous to think that any doctor would have on file all the patient prescriptions for each patient in each office in which the doctor practices just in case a contact lens seller sends a verification request.

The FTC should consider the time zone of where the contact lens seller generates the verification request versus the time zone in which the doctor's office is located. The contact lens seller must send verifications to doctors during normal business hours of the doctor, in the time zone that the doctor is located. Otherwise the 8 hours runs out before the doctor had a chance to see the request, look up the patients chart and return the request.

Automated phone requests by the contact lens seller should not be allowed. When the doctor's office answers the phone, an automated voice states they have a contact lens request from a patient. In most instances, the contact lens company is not identified; the name of the patient is mumbled and not able to be understood. The automated system does not allow for any response from the doctor. It only asks you if you will verify or not. No matter what number you push, it states that you have not verified and the lenses will be mailed out. This system gives the doctor no way to correct a wrong prescription, state if the prescription is expired, or state that they don't have a patient by that name.

In conclusion, contact lenses are prescriptive devices. Doctors use their skill and education to fit and prescribe each pair of contact lenses to each patient. Contact lenses do not bare the label 'one size fits all.' They are sold by prescription only and it is the duty of the contact lens sellers to make sure they are selling contacts to patients who have a valid, unexpired prescription. The concept of verification came about only because contact lens sellers were selling contact lenses to people who had never even seen an eye doctor; yet, they ordered and received contacts without a prescription. If the contact lens sellers would have abided by the law and refused to dispense contacts to those who did not have a valid prescription, we wouldn't be writing these comments to the FTC. The POA is requesting that you consider our comments, the problems our doctors have encountered and endure every day regarding the deceptive practices the contact lens sellers continue to use.

Respectfully submitted,

A handwritten signature in black ink that reads "Carl J. Urbanski, M.D." The signature is written in a cursive style.

Carl J. Urbanski, President
Pennsylvania Optometric Association