

**March 31, 2004**

**MEMORANDUM FOR THE FEDERAL TRADE COMMISSION**

**FROM** **ANNETTE HANIAN, O.D.**  
**PRESIDENT**  
**ARIZONA OPTOMETRIC ASSOCIATION**

**RE** **FAIRNESS TO CONTACT LENS CONSUMERS ACT (FCLCA)**

On behalf of Arizona optometrists, we appreciate the opportunity to provide input to the Federal Trade Commission (FTC) during the rules process for the "Fairness to Contact Lens Consumers Act." There are several areas that we would like to see addressed:

- 1- Elimination of the automated telephone verification system: This process has proven to be flawed and difficult to follow. The issues surrounding this inadequate system have already been well documented. The fax system now used by many mail order companies has been a satisfactory alternative.
- 2- Verification of the date and time of the transmission: Until recently, most mail order verification request forms failed to include the date and time of the transmission. This hinders the prescribing doctor's ability to monitor the allotted time for a response, and makes it more difficult to track violations by the seller.
- 3- Seller question to consumer: As consumers often are either unaware of the prescription expiration date, or are attempting to purchase contacts without a valid prescription, the seller should be required to ask (on both telephone and website orders) whether the patient has had a comprehensive eye exam within the past year. This should also include a notation that a current valid prescription is required before purchasing contacts. This would have the effect of saving time for both the seller and the prescribing doctor, as appropriately informed patients would have the opportunity to obtain the necessary exam and prescription prior to placing the order that initiates the verification process.
- 4- Confirmation of sale: With the relative effectiveness of the fax system, a confirmation fax should be sent to the prescribing doctor after:
  - a. the doctor has verified the prescription within the allotted time, and
  - b. the seller has shipped the lenses to the consumer.This fax should include verification of the parameters of the lenses shipped, as well as the number of lenses/boxes shipped. Since the provided written prescription is not forfeited by the consumer (as is the case with a pharmaceutical prescription that is given to a pharmacist), it is difficult to prevent consumers from "stocking up" on lenses from various sources. This confirmation fax would become part of the patient medical record, allowing the prescribing doctor to better monitor lens utilization thereby protecting the eye health of the patient, and the integrity of the law.
- 5- Standardization of verification forms: All forms from the seller should include similar information. This issue has been widely discussed already, but any standardization should include a checkbox for "expired prescription." When appropriate to do so, checking this box (if within the allotted eight business hours) should constitute compliance by the prescribing doctor, thereby preventing any shipping of lenses until a valid prescription is obtained by the patient. When the seller sends the patient

- 6- Notification that the prescription is expired: a copy of said notice should be sent to the prescribing doctor, again to be made part of the patient's medical record.
- 7- Clarification of the expiration date: We support a one-year expiration date, unless a shorter period is medically indicated. Additionally, there might be some ambiguity in the current format concerning the prescription issue date. The one-year period should not start from the time that any copy of the prescription is given to the patient, but rather one-year from the time that the contact lens parameters were determined by the doctor. For example, if a patient requests another copy of their prescription six months after the contact lens evaluation period has been completed, the expiration of that prescription would be six months later, and not one year from the issuance of this additional copy.
- 8- Telephone verifications: If called directly by telephone by a representative of the seller, the prescribing doctor should be given ample time to respond to the verification request. In such case that the office is busy, the doctor/contact lens technician is with a patient, or the patient medical record needs to be located, the prescribing doctor should be given a fax number and/or phone number to respond when time allows (to be completed within the allotted eight business hour period). Failure to provide verification at the time of the initial phone call should not constitute non-compliance or passive approval of the contact lens prescription by the prescribing doctor.
- 9- Special arrangements for "specialty fits:" Occasionally, a contact lens fit can require ordering of lenses (e.g., custom toric, some bifocal lenses, lenses for keratoconus, etc.). When ordered, these lenses may be paid for by the prescribing doctor, often with limitations on returns. The rules should include details that clearly address how this is to be handled.
- 10- Advertising claims: As the intent of this legislation is to provide "fairness" to consumers, the FTC should provide closer scrutiny to sellers for misleading advertising and claims.
- 11- Opportunity for modifications: Recognizing that not all issues concerning the implementation of this legislation can be anticipated, we support a system that allows for periodic review and, where indicated, modification of the rules by the FTC.

The optimal way to provide fairness to consumers, while protecting their eye health and the doctor/patient relationship, is to ensure that all interested parties, and not just the prescribing doctor, follow the same rules, and are held to the same standards. We are confident that with such a system, the spirit and goals of this legislation will be respected and achieved. Thank you for providing us the opportunity to contribute to this important legislative process.

Respectfully submitted,  
Annette Hanian, O.D.