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VIA E-MAIL (contactlensrule@ftc.gov)

Federal Trade Commission/Office of the
Secretary
Room 159-H,
(Annex A) 600 Pennsylvania Avenue,
NW
Washington, DC 20580

Re: Contact Lens Rule, Project No. R411002

Dear Sir/Madam:

We are submitting this comment letter on behalf of the New Jersey Academy of Ophthalmology in response to the Notice of Proposed Rulemaking seeking comment on its proposed rule to implement the Fairness to Contact Lens Consumers Act ("the Act"), which provides for the availability of contact lens prescriptions to patients and the verification of contact lens prescriptions by prescribers. Specifically, our comments relate to § 315.5(c) *Verification Events*.

As described more fully below, compliance with the regulations as currently drafted would be difficult, if not impossible, for the typical physician prescriber. Section 315.5(c) provides that a prescription is verified ONLY where the prescriber confirms by direct communication that the prescription is accurate or inaccurate OR if the prescriber fails to communicate with the seller within eight (8) business hours after receiving information from the seller. A "business hour" is defined by § 315.2 as an hour between 9 a.m. and 5 p.m. during a weekday (Monday through Friday). The Act specifically provides, in part, that a prescription will be verified if "[t]he prescriber fails to communicate with the seller within 8 business hours, **or a similar time as defined by the Federal Trade Commission.**" [emphasis added] Thus, the Federal Trade Commission clearly has the discretion to revise the 8 hour time restriction.

Typically, a physician practice is not open every day from Monday through Friday, but rather is closed at least one day during the business week. Moreover, many offices are not open everyday from 9:00 a.m. to 5:00 p.m. but rather have flexible, varying office hours to provide care to working patients either earlier in the morning, later in the evening or on weekends.

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Furthermore, many offices close for vacation during several weeks out of the year. While physicians generally have emergency coverage during those days and times on which they are closed, such coverage normally does not include access to the physician's office or medical records. Physicians are not able to confirm the accuracy of a prescription until the office is open again. In order to comply with the regulations, every physician practice would have to provide office coverage every day from 9:00 a.m. to 5:00 p.m., even when the office is scheduled to be closed to patients, in order to ensure that a verification request is responded to within the proper amount of time. Such a requirement is unrealistic and unduly burdensome for the typical physician practice.

Accordingly, we request that the language in the regulations be revised to either permit a physician extra time to comply, beyond the current 8 hour time frame, or, in the alternative, to exempt from liability those physicians who could not verify a prescription due to office closure.

Thank you for your consideration of our comments.

Very truly yours,

Todd C. Brower

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