

June 21, 2004

Federal Trade Commission
Office of the secretary
Room 159-H (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Contact Lens Rule, Project Number R411002

To Whom It May Concern:

I respectfully submit the attached comments in response to the Federal Trade Commission's request for comments on its proposed Contact Lens Rules; Ophthalmic Practice Rules, 69 Federal Registry 5440 (February 4, 2004) (The Contact Lens Rule).

- Prescription Verification Period: The contact lens prescription verification period of 8 business hours puts a burden on the Eye Care Practitioner. The 8 hour time limit is not a sufficient length of time for a busy practitioner to respond to a request for contact lens verification. I feel that a 24 business hour response time would be more beneficial to the practitioner and consumer. This would potentially negate any contact lens prescriptions from being improperly filled due to insufficient response time on the part of the practitioner, without placing the consumer in jeopardy or unduly delaying the consumer from receiving their contact lenses.
- Private Label and Doctor Exclusive Lenses: Eye Care Practitioners have a long standing practice of prescribing private label contact lenses. In the mass marketed world of contact lenses many manufacturers offer private label contact lenses to practitioners as an alternative to their regular product line. Many contact lens manufacturers make private label contact lenses. Some are no more than duplicates of other contact lenses that are mass marketed to consumers. Other manufacturers choose to private label contact lenses which are not mass marketed and are proprietary to that manufacturer and therefore no substitute contact lens exists. Furthermore requiring a prescriber of proprietary contact lenses to write a second prescription for non proprietary contact lenses would require the practitioner to fit the patient twice resulting in increased time and expenses for the practitioner and patient.
- Broadly Defining the Terms "Direct Communication" and "Completed Communication": It is in the best interest of the contact lens consumer that the communication requirements between the prescriber and contact lens seller for prescription verification are not changed as currently stated in the "Fairness to Contact Lens Consumers" Act. Positive verification is needed to ensure that the contact lens consumer is receiving the proper contact lenses for their visual

needs. If attempted communication is allowed as a criteria for verification than the potential for abuse and harm to contact lens consumers greatly increases. Consumers ordering replacement contact lenses must be assured that the seller has properly verified their contact lens prescription.

- Preemption: Amending the term “Seller” as used and defined in the “Fairness to Contact Lens Consumers” Act is not in the best interest of the consumer. Many states have existing laws designed to deter the selling of contact lenses by unlicensed individuals. Preempting these laws could legitimize many alternative sources for contact lenses such as gas stations and beauty supply stores. In Ohio the Optical Dispensers Board has cited and issued “cease and desist” orders to many such outlets under Ohio Law. This became necessary due to individuals buying non prescription contact lenses from these outlets. One highly documented case resulted in a teenager ulcerating her cornea and requiring corneal transplants after wearing the contacts she purchased without a prescription for only one day. These horror stories abound across the nation. Preempting existing laws because some feel that a seller does not need to be registered under state law is a felonious assumption and has led to many individual consumers being harmed.

Thank You for this opportunity to comment.

Sincerely;

Mark D. Brezvai
President, Opticians Association of Ohio