



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Office of Commissioner
Rohit Chopra

To: April Tabor
From: Samuel Levine
Date: November 1, 2019
Re: Contact Lens SNPRM: Comment to be placed on the public record

On October 29, 2019, Commissioner Rohit Chopra met with representatives of 1-800 Contacts.¹ The purpose of the meeting was to discuss 1-800 Contacts' feedback on the Commission's Supplemental Notice of Proposed Rulemaking (SNPRM) regarding the Contact Lens Rule.

During the meeting, the company's representatives raised three issues that they hoped the Commission would consider: (1) abandonment of notice language in the signed acknowledgment proposal; (2) the requirement for sellers to record automated verification calls; and (3) seller alteration of contact lens prescriptions.

The representatives argued that despite the requirement that prescribers give consumers their prescriptions, release issues still exist. They contended that signed acknowledgements inform consumers of their rights, and that prescriber concerns are self-created and would be realized only if the prescriber routinely refused to release prescriptions in the past. In their view, the benefits of signed acknowledgements far outweigh the costs.

As to verification calls, the representatives expressed concern that the recording requirements proposed by the Commission were overly burdensome and could create compliance uncertainty in states requiring two-party consent. They also warned that limiting recording requirements to pre-recorded calls could incentivize noncompliant sellers to rely instead on calls by live agents.

With respect to seller alteration of prescriptions, the representatives stated that the current language referring to an "order form" does not consider modern ways, such as search boxes and drop-down menus, for consumers to place an order. Regulating how sellers can accept orders will likely prove difficult and may constrain innovation, they argued.

Commissioner Chopra asked questions related to the company's citation of surveys and other evidence. He specifically asked whether the company had a financial relationship with Consumer

¹ In attendance from 1-800-Contacts were John Graham (Chief Executive Officer), Kellen Fowler (Vice President of Business Development), Allison Fleming (Vice President of Government Affairs), and Lisa Kimmel (Partner at Crowell Morning). Samuel Levine, Commissioner Chopra's Consumer Protection Counsel, also participated in the meeting, as did Paige Carter, the Commissioner's paralegal.

Action, which conducted one of the cited surveys. The company noted that they had made financial contributions to Consumer Action for general operating expenses. However, they indicated that they played no part at all, including through the earmarking of any funds, for the survey. Commissioner Chopra also inquired about the company's financial relationship with Professor Baker of Stanford University. The company noted that it retained Professor Baker to conduct analysis on the SNPRM.

Commissioner Chopra asked for information regarding rebate programs offered by manufacturers and online sellers. He also inquired about the company's pricing compared to products sold by prescribers. The company shared that their products were roughly equivalent in price. The company also shared that several online sellers price below both prescribers and 1-800 Contacts.

Concluding their presentation, 1-800 Contacts stated that the regulatory framework works best when all actors are complying with their obligations in good faith.

1-800 Contacts

Meeting with FTC Commissioner Chopra

Dr



We Appreciate Your Time

We appreciate your time and the attention you and your staff have dedicated to this rule review

1-800 Contacts supports most of the proposals made in the SNPRM:

- Prescriber signed acknowledgement/record keeping requirement
 - Vital because:
 - Prescribers continue to refuse to release prescriptions
 - Consumers do not fully understand their rights
 - Credible threat of enforcement needed to encourage compliance
- Digital release of prescriptions (but with verifiable consent)
- Uniform quality standards for automated verification calls
- Prescribers required to respond to prescription requests within 40 business hours

We Urge You to Review Some Aspects of the SNPRM

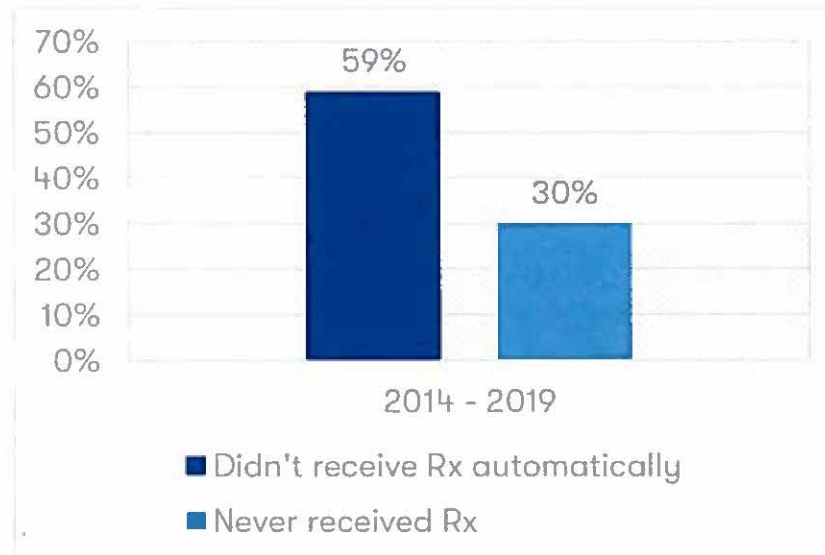
We are particularly interested in discussing the following:

- Abandonment of the important notice language in the previous signed acknowledgement proposal
- Requirement for sellers to record automated verification calls
- Seller Alteration of Contact Lens Prescriptions

Prescription Release Issues Still Exist

Despite the FCLCA being 15 years old, release issues are still prevalent

- Multiple consumer surveys conducted by several organizations over many years show compliance is inadequate
- Less than half of consumers are automatically provided with a copy of their prescription
- Consumer surveys show approximately 30% of consumers never receive their prescription



Signed Acknowledgement Informs Consumers of Their Rights

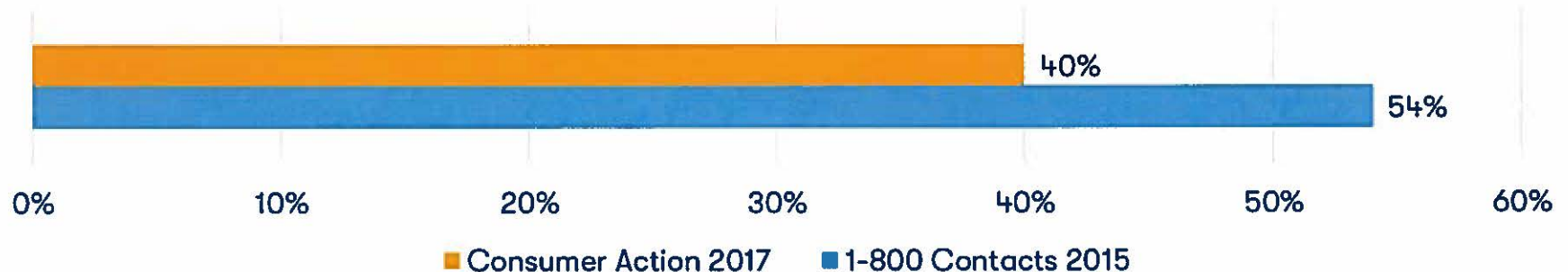
Informing patients of their rights is an important objective of the CLR

- Notice language is an efficient, low cost method to educate consumers
- Prescriber concerns can be addressed with minor modifications:

“My eye care professional provided me with a copy of my contact lens prescription at the completion of my contact lens fitting. I understand that I am free to purchase contact lenses from my prescriber or from the seller of my choice”

- Encourages prescribers to release when it matters: before selling and dispensing lenses

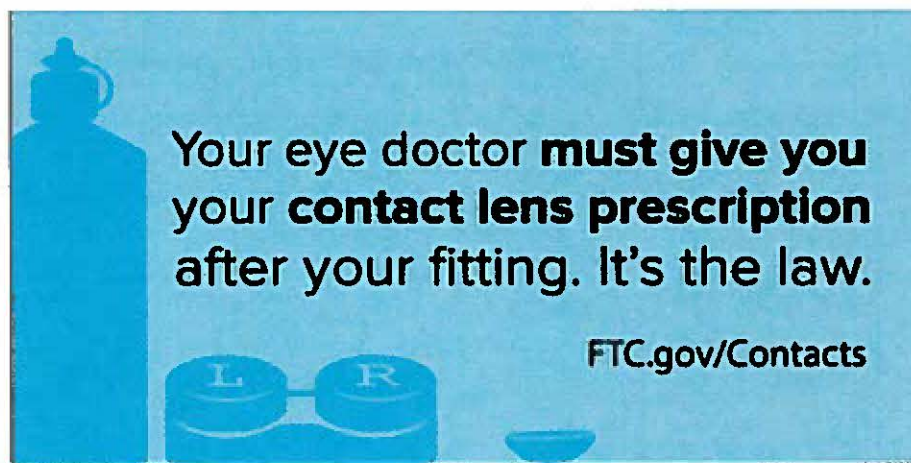
% OF CONSUMERS AWARE OF RIGHTS



Prescriber Concerns About Perception Are Self Created

Prescriber concerns that this notice would suggest they had been misleading patients or violating the law are unfounded

- This perception would only occur only if the prescriber routinely refused to release in the past



- The Commission should not reject a cost-effective mechanism to educate consumers in order to protect prescribers from the consequences of their own poor behavior

Signed Acknowledgement Benefits Outweigh Costs

With signed acknowledgement verification requests are likely to fall sufficiently to completely offset the modest costs of the amendment

- Using the Commission's cost estimate and more conservative assumptions, Dr. Baker continued to conclude that verifications are likely to fall sufficiently to offset the modest cost of the amendment
- The benefits to consumers from increased prescription release bolster the cost/benefit case in favor of the amendment
 - Facilitates comparison shopping and competition
 - Enables third-party sellers to provide faster delivery
 - This reduces the risk of overwear by consumers on their last pair



We Support the Proposal to Improve Verification Calls



1-800's Phone Verification System Meets FTC's Proposed Standards	Proposed by FTC
1. Every call is initiated by a live person	
2. Gives clear notice of company and intent of call	✓
3. Allows eye care provider to repeat verification information	✓
4. Provides a clear contact person and contact number	✓
5. Provides all information in a slow and deliberate manner	✓
6. Provides information at an understandable volume	✓



We agree that these requirements, along with targeted enforcement, will help deter bad actors from misusing phone verification systems

The Proposed Amendment Regarding Seller Alteration of Prescriptions Is Unclear

We agree that sellers should not intentionally use passive verification to sell lenses that have not been prescribed for the consumer

- For the verification framework to work as intended sellers must be able to presume that a consumer has a valid prescription for the lenses they order
- We agree sellers should have a mechanism for consumers and prescribers to provide prescriptions, but don't think this resolves the current issues
- Cleaning up issues with verification call quality will enable prescribers to help address the emergence of single brand business models

The current language referring to an "order form" doesn't consider modern ways for consumers to initiate an order

- Modern retailers offer many ways for consumers to select their prescribed product including drop-down menus, search boxes, box scans, filters, etc.
- Prescriptively regulating how sellers can accept orders will likely prove difficult and may constrain innovation

In Summary, the FCLCA Works When All Players Comply With Obligations in Good Faith

Prescribers automatically release prescriptions



Consumers are enabled to shop around



If verification is needed, sellers verify:

- With high-quality verification requests
 - For the lenses selected by the consumer
- 

Prescribers pay attention to verification requests and respond when appropriate

Thank You