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February 25, 2004

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

The California State Board of Optometry (Board) is pleased to submit the following comments regarding the proposed regulations to implement the Fairness to Contact Lens Consumer Act (Act) as proposed by the Federal Trade Commission (FTC).

We note that much of the Act and the resulting proposed regulations are generally consistent with existing California law [California Business and Professions (B&P) Code Sections 2541.2, 2543, 2545, 2546.5, 2546.6, 2546.10, and 2564.6]. There are a number of substantive discrepancies between the California law and proposed regulations and we encourage the FTC to consider modeling the regulations more closely to the California law. Specifically, we note that California law has adopted a different deadline for prescription verification and has established exemptions from providing prescriptions for certain types of lenses. The Board encourages the FTC to consider the provisions in California law, which were negotiated with multiple interested parties, including contact lens distributors.

We note that the Act calls for verification of contact lens prescription within 8 business hours, or similar time as defined by the FTC. We encourage the FTC to consider modifying the proposed regulatory language to reflect the deadline established in California law, which is 2 p.m. of the next business day or the same time of day the seller requested confirmation, whichever is sooner. California law [B&P Code Section 2546.6(a)(2)] also recognizes Saturdays as a business day. This provision was established in order to accommodate operational needs of contact lens sellers and has proven to be a successful model.

The Act does not appear to allow for professional discretion regarding the release of prescriptions for rigid gas permeable, bitoric gas permeable, bifocal gas permeable, and keratoconus lenses. California law [B&P Code Section 2541.2(c)] expressly permits these exemptions due to the nature of these lenses, which require higher level of medical decision making. Patients using these lenses have a much higher propensity to harm ocular function if the lenses are misused or incorrectly fitted. Custom lenses are also exempted because they

often require complicated multiple fittings. We encourage the FTC to consider implementing similar exemptions.

Finally, we suggest the FTC consider implementing an outreach program to educate consumers regarding contact lens and eyeglass prescription release laws.

Sincerely,

Edward P. Hernandez, O.D.
President