

To: Federal Trade Commission
Re: Contact Lens Rule, Project No. R411002

Dear Sir or Madam,

As requested in the Federal Register, Federal Trade Commission, 16 CFR Parts 315 and 456, RIN 3084-AA95, Contact Lens Rule: Ophthalmic Practice Rules, I am offering comments and suggestion in an effort to assist in developing a contact lens release rule that is fair and equitable for all concerned.

Comments by Section

315.5 (c) Prescriber Verification

Verification of a contact lens prescription should not create a cost for prescribers verifying prescriptions in the form of phone or fax related communications. The sellers of contact lenses requesting prescription verification for contact lens prescription verification must provide "Toll Free" phone and fax numbers for returned phone calls and fax responses.

315.5 (f) Record Keeping Requirement

Any sellers of contact lenses who are requesting contact lens prescriptions or verification of contact lens prescriptions should be held to the same record keeping standards that the prescribers are held to under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA was put into law to: Assure health insurance portability by eliminating job-lock due to pre-existing medical conditions, reduce healthcare fraud and abuse, enforce standards for health information, and guarantee security and privacy of health information. HIPAA regulates the manner in which a patient's healthcare information can be stored and transferred as well as be used for communicating with the patients among other things. The sellers of contact lenses should be required to meet the same HIPAA standards as the prescribers of contact lenses.

315.6 Expiration of Contact Lens Prescriptions

There needs to be clarification regarding the date that contact lenses are first "prescribed" and the date that a contact lens prescription is "issued." For example; a patient has a contact lens fitting or their contact lens fitting is concluded on January 15th, 2004 and contact lenses are "prescribed". If the patient requests another copy of the contact lens prescription on July 15th, 2004 the "issue date" of the contact lens prescription written that day (July 15th, 2004) should be January 15th. If there is confusion over the "issue date" and a prescriber provides an "issue date" based on the day that the duplicate

prescription is written then the patient could have the contact lens prescription filled up to eighteen months past the date of the fitting rather than 1 year from that date (January 15th, 2005) as is intended by the Contact Lens Rule.

The Contact Lens Rule requires that a contact lens prescription be provided at the completion of the fitting, so let the 1 year expiration period begin the date that the fitting or annual contact lens evaluation is completed.

**Contact Lens Rule Section III
Overview of the Proposed Clerical Amendments to the Ophthalmic Practice
Rules (16 CFR Part 456)
Subsection VI, paragraph 3**

Regarding the FTC staffs' estimation of time required for a prescriber to verify a contact lens prescription being 1 minute. Before the prescriber can verify the contact lens prescription, office staff of the prescriber must receive and conduct a telephone call or retrieve a fax. Once the request for a contact lens prescription verification has been received then the staff member must pull the patients chart or record of professional services, deliver it to the prescriber who then can make a determination as to whether verifying the contact lens prescription is appropriate or whether the request for verification should be denied. Then, the staff member must return the communication to the seller requesting the contact lens prescription or the verification of the prescription.

Prescriber's staff time at an average of \$10.00 per hour [\$10.00 X 300,000 hours = \$3 Million] which is \$3 million more than your published estimate.

If the FTC staff estimate of the time it takes on the seller side of the contact lens prescription confirmation process is correct, then the prescriber, with one [1] minute of his or her time and five [5] minutes of their staff time has more time and cost invested in the process than the seller does.

**Contact Lens Rule Section IX
Overview of the Proposed Clerical Amendments to the Ophthalmic Practice
Rules (16 CFR Part 456)**

Regarding the defining of contact lenses; Contact lenses that are worn cosmetically even with no prescription subject the cornea and other ocular tissues to the same physiological and metabolic compromise that a prescription contact lens does. The appropriate examination, contact lens fitting and follow up are necessary to insure that patients can safely wear contact lenses.

Cosmetic contact lenses should not be excluded from the prescription and prescription verification process.

Content of Advertisements and Other Representations

The content of all advertising and information including internet based websites should be monitored by the FTC for accuracy so as to eliminate deceptive and misleading information from sellers or contact lenses. The FTC should provide and publish the appropriate methods for reporting any such deceptive or misleading information and offer Phone, fax, email and physical address opportunities for reporting. In addition, the FTC should report to the public the names of contact lens sellers who have been found to be in violation.

I appreciate the opportunity to offer comments and provide insights relative to the Contact Lens Release Rule. I would like to offer additional input regarding the development of the Contact Lens release Rule.

TN

Sincerely,

Walter D. West, O.D., F.A.A.O.