

Comments in response to FTC's questions in the "Notice of Proposed Rulemaking" for the Contact Lens Rule:

- 1) Regarding section 315.2 and the definition of "business hour," the commission asks, "is this definition sufficiently clear?" and "should the definition include provisions addressing . . . prescriber vacation days, state or local holidays, weekend days, or other exceptions to normal business hours?"

Please take into consideration that many professional offices, i.e. many "prescribers," have business hours which vary from those of retail businesses and certainly vary dramatically from internet businesses. It is common for professional offices (physicians and optometrists) to be closed all day on Saturday and Sunday, and it is also common for these offices to have extended hours on a couple of week days and then be completely closed on a particular weekday. Your definition of the response time should be very carefully considered, so this rule will be one which serves the best interests and safety of the consumers, not just those of contact lens sellers. These communications are not of an emergency nature, and hopefully that will be reflected in the commission's definition of the response time. Aside from variations in business hours, there will also be times of vacation, holidays (in addition to the federal holidays), illness and personal emergency when a prescriber may not be in the office to receive the communication from the lens seller.

- 2) Regarding section 315.2 and the definition of "direct communication," the commission asks, "is it appropriate to include messages left on telephone answering machines in this definition?" Please consider that the detailed nature of the information being confirmed makes a telephone answering machine or voice mail system inadequate for this purpose.
- 3) Section 315.3(b) states "a prescriber may not . . . require the purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription." The commission asks for comments: "Do prescribers itemize charges and fees in a manner that distinguishes the amount the patient is paying for an eye examination, fitting, and evaluation from the amount he or she is paying for other goods and services?" Your question is an important one. In the course of the contact lens fitting, contact lenses will be used to complete the fitting process. The cost of these goods should legitimately be included in the cost of the fitting process. Because of the other wording in the act prohibiting the requirement to purchase lenses from the prescriber, additional wording should be added which expressly allows the prescriber to charge for the cost of all lenses used in the fitting process. This may best be addressed in the definition of "contact lens fitting" by adding these goods to the list of things "such term may include."

Thank you for considering these comments.

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