

Comment #928

From: Spwagner02@
Sent: Wednesday, March 24, 2004 10:46 PM
To: CONTACTLENSRULE
Subject: Re: Contact Lens Rule, Project No. R411002

To: FTC, Office of the Secretary

Re: Contact Lens Rule, Project No. R411002

I am writing to comment on several aspects of the new contact lens rule and ophthalmic practice rule 16 CFR Parts 315 and 456. I will address each comment in separate e-mails for clarity. I am an ophthalmologist in a small practice, and I fit and prescribe contact lenses. Thank you for the opportunity to provide comments.

In the proposed rule, "the Commission does not believe that the proposed rule will impose a significant economic impact on a substantial number of small businesses." This is stated in reference to writing out prescriptions, stating medical reasons not to fill a prescription and verifying prescriptions to other sellers. I wish to report a significant economic impact for my practice and other like practices.

The requirement to respond within eight (8) business hours is problematic for certain small practices with satellite offices. These types of satellite offices can be found in many rural and underserved medical areas. They are often remote from a practice's main office. For myself it is a 40 minute round trip by car. The satellite office may only be open manned and being used one day or only a few days a week. Sometimes there are several satellite offices spread over a wide area. Due to the distances involved, patient records are usually kept at the satellite (remote) location. These records may not be accessible within the eight business hours required for response under the rule, unless a special trip is made to get the records. This takes support staff away from the office where patients are being seen, at a cost of mileage and worktime at the totally random occurrence of a fax printing out. This is an unacceptable imposition on a small office.

As for my practice, we have located our contact lens patients' charts at our central office to allow us to quickly respond to a patients request for ordering contact lenses. The problem comes in that in the past, before the enactment of the rule, if the patient requested a prescription, and did not order contacts from our practice, their chart likely was kept at the remote location, because quick access for ordering was not needed, since the patient was taking care of that by taking the prescription elsewhere themselves. Now, if a request for verification comes in, I don't have any way of knowing if I have prescribed contact lenses for the patient, unless the chart is retrieved from the remote office. Another problem arises from the patient that I may have seen for a general eye exam, without providing any contact lens fitting services. They may have gone to a different practitioner for a contact lens fitting, but put my name on the request for the prescription to be filled by the seller. The chart is at the remote office--I have no way of knowing if I have ever seen the patient regarding contact lenses if I do not have the chart.

I think that a reasonable way to address this problem is to follow the spirit of the rule by responding to the faxed request in kind within the eight (8) business hours with a specific statement that the patient's records are at a remote location, and that the records will be available for review at such and such a date (a time certain) For most purposes, this will be within one business week. For example, a fax comes in Monday at 10 AM for a patient who's chart is at my remote location. That office is not open until Thursday at 9 AM. I should be able to follow the spirit of the rule by faxing back within eight hours that the prescription will be able to be reviewed and if OK, be verified on Thursday, stating the date that I can respond. This will protect the safety of the patient by permitting proper review of the chart, and not disrupting the ability of the office to see scheduled patients in the medical office because staff would have to leave to retrieve a chart.

These instances should be few, but are real, as this very circumstance occurred in my office two days ago. We had no record in our computer of the patient ever receiving any contact lens services in our office. Trying to inform 1-800 Contacts that I would be able to verify the request three days later, on Thursday, I repeatedly received faxes stating that my response was in violation of the Fairness to Contact Lens Consumers Act of 2003. I was not allowed to talk to any real person at 1-800 Contacts to explain the situation, but was repeatedly dumped into voice mail, assured that a response would come "if deemed appropriate." This caused me great concern. It turned out after a 40 minute drive to the remote location and back, that the patient had never been evaluated for contacts, and no prescription had ever been issued by our office. Without the chart, my only other recourse in this case would have been to invalidate the prescription, because I had no other information. If the prescription was really valid, this would be wrong. If the seller followed the rule, and implied that I had not provided a valid response within the eight (8) business hours they would

have dispensed the contacts in my name, even though I had never prescribed them, and attempted to tell them I could not verify it until the other office opened. This would be a worse wrong.

I do not think this unfairly causes the patient to wait. If a patient really has an "emergency," that they have no contacts and truly need them right away, they should be encouraged to contact the physician's or optometrist's office who prescribed them directly, as this can expedite getting the prescription--this communication is part of the doctor-patient relationship. Otherwise we would not know if it was just a routine request. If a request is urgent, and the chart is unavailable, special arrangements can be made. Often if I have a contact lens patient in that situation, I may provide a sample lens until they can get the prescription filled. Another safety encouragement for patients is that they have a pair of glasses for back up that they can wear in such a time, or if their eyes become irritated and they have to take the lenses out.

Thank you for the opportunity to comment and suggest reasonable ways to respond with the proper information in a time manner consistent with the spirit of the rule, and thank you for your consideration.

Stephen Wagner, MD
Ophthalmologist