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Federal Trade Commission  
Office of the Secretary  
Room 159-H, Annex A  
600 Pennsylvania Ave, NW  
Washington, DC 20580

RE: Contact Lens Rule, Project #R41102

Please accept the Illinois Optometric Association's comments on the proposed rules for the Fairness to Contact Lens Consumers Act. The IOA represents the majority of optometrists in the State of Illinois. Its primary goal is to strengthen optometry as a profession, and we realize the only way to accomplish that goal is to make certain the citizens of our State receive the best possible eyecare. It is in that spirit these comments are offered:

**315.2 Definitions-Business hour.** The current definition of eight business hours may allow abuse of the intended access to contact lens prescriptions. The spirit of the law is to allow patients a choice of where to purchase contact lenses that are right for their eyes. If a prescriber does not have an opportunity to respond to a seller, many people will obtain contact lenses that will not be right for their eyes. Many sellers of contact lenses are interpreting proposed rule to be their business hours. This creates a great deal of confusion for the doctors who may be in different time zones or may only open a rural office one or two days a week. We would recommend that the time frame be lengthened to forty-eight hours. Since most prescribers have staff that maintains the office in the doctor's absence, forty-eight hours should give the prescriber's representatives adequate time to research the patient's file and to respond to the seller. In some circumstances the prescriber's staff may need to clarify information with the doctor to verify a contact lens prescription or to locate a file. This extension of time would address vacation days, holidays and illnesses. The extension to forty-eight hours would allow the doctor to

utilize current staff to respond and would not result in the increase in health care costs that will be necessary to meet the current eight-hour requirement.

**315.2 Definitions- Contact Lens Fitting (3).** "Medically necessary" is a term that does not adequately describe the endpoint of a contact lens fitting. The purpose of a contact lens fitting is to reduce the risk of contact lens induced complications to the eye to the lowest possible level. "Medically necessary" implies the follow evaluations are only necessary if there is imminent risk of morbidity. An analogy would be to say wearing seatbelts while in an automobile is medically necessary. It is a fact that wearing seat belts does reduce your risk of injury or death in an automobile accident, but whether it is "medically necessary" is certainly questionable. The proposed change to the aforementioned part of the definition would be, "(c) medically necessary follow-up examinations and/or sufficient follow up and lens parameter adjustment to minimize the risks of contact lens complications as much as clinically possible."

**315.2 Definitions- Contact Lens Prescriptions.** The current definition of contact lens prescription does not require a number of lenses that can be dispensed. The impact of this language is to effectively circumvent the one-year prescription expiration provision. If a patient can buy an unlimited number of lenses they can effectively buy a lifetime worth of lenses with their first prescription. Therefore, the definition of a contact lens prescription should include the number of lenses to be dispensed within the one-year eligibility period.

In section 315.2 (8), the last sentence should be changed from "name of equivalent brand name." to "name of identical brand name." This is consistent with 315.5 (e), *No alteration of prescription.*

Email addresses should not be required on the prescription due to their relative transient nature. If a system is developed that would allow email addresses to remain constant this would allow email to be an effective tool. In many rural markets, doctors are forced to change their email addresses frequently as the technology changes.

**315.2 Definitions- Contact Lenses.** The Commission expressly asked for comments on whether the term contact lens should be defined. It should be considered any item that is placed on the surface of the eye either for corrective or cosmetic purposes. It should include lenses that are worn merely to change eye color because they require the same parameters and fitting as contact lenses designed to correct vision. If the "cosmetic" contact lens is ill fitting the consequences to the vision and eye health are the same as with corrective contact lenses.

**315.2 Definitions- Direct Communication.** The impact of the current definition would allow email and automated telephone messages from the seller to the prescriber. These technologies are not reliable enough to allow in a passive verification system. Changes in or problems with an email provider may keep the prescriber from receiving the prescription request within the eight business hour period. Automated systems effectively shorten the response time to the length of the phone call, not the eight

business hours described in the law, by asking the prescriber's representative to punch in certain responses to verify the prescription or other number if you wish to deny the prescription.

**315.3 Availability of contact lens prescriptions to patients- (b)(1)** This section should contain language making it clear that the fitting fee may include the cost of custom contact lenses used to determine the contact lens prescription. If a variety of contact lens does not have free trial contact lenses available from the manufacturer, the prescriber must purchase one or more of the contact lenses that the patient needs to obtain a fit. It should be clear that the prescriber can build that cost into the fitting fee so that there is no questions that this is an acceptable practice.

**315.3 Availability of contact lens prescriptions to patients- (b)** Within this section it should be made clear that requiring a comprehensive eye exam before a contact lens fitting can be performed is an acceptable prerequisite to releasing the contact lens prescription. Standard of care dictates that an optometrist must rule out eye disease as the cause of any visual complaints before they move on to correct such symptoms with glasses or contact lenses. If a patient presents to the optometrist's office requesting a contact lens prescription, part of determining the contact lens prescription is insuring there is no eye health problems.

**315.3 Availability of contact lens prescriptions to patients- (b)(2)** Typically the receipt a patient receives from an eye examination and contact lens fitting will itemize the charges into accepted insurance codes. This will give the consumer the chance to compare each component of the fees and no further itemization is necessary.

**315.5 Prescriber verification- (a) Prescription requirement.** This section should expressly prohibit copies of prescriptions as being valid. If a patient can use a copy they will be able to obtain lenses for far longer than the designated one-year expiration date by purchasing multiple year supplies from multiple suppliers within the first year. All paper prescriptions should be confirmed by the seller with the prescriber. Saving the paper copy and having it filled along with a supply filled by fax would result in the patient getting more than a year's supply of lenses.

**315.5 Prescriber verification- (b) Information for verification (6)** This section should also further state the contact person or their representative will be available for eight hours after the request for verification is made. By keeping the contact person unavailable for eight hours the seller can guarantee they will receive passive verification.

**315.5 Prescriber verification- (d) Invalid prescription** This section should go further by limiting the verification requests to one, if the initial request is denied. There have been cases where the prescriber has told the seller the prescription was invalid, only to receive another request moments later. If the prescriber assumes his previous denial will still stand the seller will have received passive verification in a deceitful manner. Sellers should not only be prohibited from this practice but should be fined to cover the prescriber's and therefore the patient's increased cost.

The previous comments have been referenced to specific sections of the proposed rule as was requested in the request for comments on those rules. The following are general comments to the rule, not specific to any particular section of the rule.

- The act does direct a study be done to see how the statute will effect competition. One practice already in force by the largest seller of contact lenses in the country is to refer consumers to a certain list of doctors. These doctors agree not to sell any contact lenses to patients referred to them by the seller, rather they will give the prescription to the patient and direct them to purchase the lenses from the seller. This practice in itself is between the seller and the doctors that agree to be on their preferred list. The negative impact on competition is exerted when the seller directs patients with established prescribers to this list of prescribers. When this referral is made the seller implies that the patient may not obtain a contact lens prescription if they go to their original prescriber. This practice is known as steering and is unethical and illegal in many states.
- It has been reported that some sellers will take the patients credit card number and run charges through before the prescription is verified. When the prescriber informs this seller the prescription is invalid they refuse to credit the patient's account. We feel this is deceptive practice and should be expressly prohibited in rule.