

From: Gerard Lozada
Sent: Friday, April 02, 2004 6:26 PM
To: CONTACTLENSRULE
Subject: Comments Regarding FCLCA (#2)

March 16, 2004

TO: FEDERAL TRADE COMMISSION

FROM: DR. GERARD LOZADA

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RE: CONTACT LENS RULE, PROJECT NO. R411002
CONSIDERATIONS REGARDING
THE FAIRNESS TO CONTACT LENS CONSUMERS ACT (FCLCA)

My primary concern for patients is their long-term eye health. Because of this, and recent experiences with contact lens verification, which I have outlined in the attached case studies (Exhibits A and B), I would like the FTC to consider the following:

I suggest to the FTC that eight (8) hours for verification of a contact lens prescription is insufficient. This is especially true when minimal, or incorrect, information has been provided and I suggest that 24 hours (excluding weekends and holidays) would be more appropriate. Provisions for doctors who are ill or out of town should be addressed, as well.

I suggest to the FTC that third party contact lens vendors must provide verification to the prescribing doctor as to whether or not a contact lens prescription has been filled and include the quantity of lenses supplied. When I have experienced problems with verification, the end result was never known. Additionally, some contact lens suppliers openly advertise on their websites substantial discounts for what is called the "Next Order." This has the net effect of enticing patients to purchase contact lens quantities that may be greater than what has been prescribed. Provisions for patients who attempt to obtain multiple supplies of contact lenses from multiple suppliers should be addressed.

I suggest to the FTC that contact lens prescriptions made of RGP material be exempt from the FCLCA. These contact lenses are custom made specifically for each patient and require the combined effort between a doctor and the contact lens manufacturer so as to obtain an optimum fit.

I suggest to the FTC that the role of "contact lens diverters" be investigated. Diverters are individuals who are in the business of ordering mass quantities of contact lenses from manufacturers and then "diverting" them to inappropriate third party contact lens vendors including gas stations, beauty salons, flea markets, etc. Cases have been reported of patients receiving contact lenses labeled in a foreign language, composed of contact lenses from different lots or opened packages (hence product tampering), and even counterfeit contact lenses. The FDA has strict guidelines concerning product labeling, tampering, and counterfeiting, yet contact lenses are somehow falling through the cracks.

I suggest to the FTC that the current language of FCLCA be modified. Third

party vendors are using the wording of FCLCA to promote themselves and contact lens sales, but not to promote proper eye care nor the relationship between patients and their doctors.

Thank you for your consideration.

EXHIBIT A

The following occurred in my office on March 6, 2003. Upon arriving, the staff informed me of an unusual message on the answering machine. The complete message was:

We have noted that your office will not respond to your patient's request that you verify the prescription information your patient has provided to us.

No identifying formation of any type nor call back phone number was provided. I had no idea who had called, who the message was intended for, nor could I imagine why a pharmacy would use such an ominous tone with a doctor's office. By late afternoon, it occurred to me that this may involve a contact lens prescription and decided to call the largest internet contact lens supplier, 1800CONTACTS.

I spoke to a representative, identified as Tammy, who was unable to answer any of my questions. Only two options were given, either I leave a voice mail message or send a fax describing the problem. I wanted to take care of this issue as soon as possible, due to the messages tone, and asked if I could speak to a supervisor. Tammy replied that no supervisors were available. After being placed on hold numerous times, I was finally given the name of two persons who were indeed patients of my office and was then asked to fax their contact lens prescriptions to 1800CONTACTS. In 2003, Kansas law required written "positive verification", thus I requested a fax to which I could reply. Tammy informed me that this would be done, but no fax was received. To date, the outcome remains unknown.

EXHIBIT B

The following occurred in my office on May 19, 2003. Upon arriving, the staff once again informed me of an unusual message on the answering machine. The complete message was the same as in EXHIBIT A:

We have noted that your office will not respond to your patient's request that you verify the prescription information your patient has provided to us.

Since a phone call to 1800CONTACTS did not resolve the first incident to my satisfaction, I decided to send an email on the 1800CONTACTS web site describing the problem. An email response was sent by a representative, identified as Debbie, who asked for the time and day of the message and the office phone number. My second email reiterated that I had no additional information to provide and that the call had been sent over the weekend. Debbie replied with the following:

We sent over a request for a patient J--- Benson. And she may be under a different last name Schnaken----. I hope this clears it up for you.

While trying to identify the patient, we received a phone call from Debbie who provided a patient date of birth as well. After a thorough computer search, no patient with either name was found in our record system nor did we even find a patient with the date of birth given. I sent a third email requesting a fax to comply with positive verification. The fourth communication was to deny authorization for both persons named since neither was a patient of mine. Due to the tone of the initial phone message, I further asked that my office not been listed as unwilling to release a prescription despite a patient's request. In all, my office would receive the same message for five separate patients in 2003. The outcome of all five case studies remains unknown.