

April 2, 2004

TO: Federal Trade Commission

FROM: North Carolina State Optometric Society
Dr. J. Michael Burke, President

RE: Contact Lens Rule, Project No. R411002

The following comments are being filed on behalf of the members of the North Carolina State Optometric Society (NCSOS). As President of the NCSOS I have visited many of our District Optometric Societies and solicited comments from our members concerning problems that they have encountered. I have also read some of the comments previously submitted to the FTC and recognize that there may be significant repetition but our member's desire that their voice be heard.

EXPANDING THE EIGHT BUSINESS HOUR RESPONSE TIME: The majority of requests received for prescription verification are currently coming in via fax. Many of our members have branch offices that are not staffed on a full time basis and may only be open two or three days a week. In addition some close for extended periods in the summer for vacation and there are also weather related closures that will extend response time. Simply turning off a fax machine when the office is unoccupied is not a viable solution. Many insurance authorizations and other documents also come by fax and that requires the machines to be left on. We feel that extending response time to a twenty four or sixteen business hour window will be the only way to successfully address this problem.

NO AUTOMATED PHONE CALLS: It is impossible to respond to an automated phone call accurately while seeing patients. It has been the experience of our members that a large number of the requests they receive for verification are for patients that have not been into the office for some time or may have never been in their office. While some offices are computerized for the vast majority this requires an extended manual search of files that may even involve old files stored off site. At the very least an automated call needs to provide call back information to allow an option of speaking to a live operator. Automated calls should be totally banned after traditional business hours.

REFILLS AND NOTIFICATION: Forms requesting verification should include space for quantities approved for refill. In cases where the patients purchase their supplies in increments throughout the year repeated requests for verification are not efficient for all parties concerned. One verification per seller for a years supply should be sufficient provided that doctors are notified when supplies are dispensed throughout the year so that proper entries can be made in the patient's record and compliance can be verified. This will also be required to avoid the problem of patients purchasing supplies from multiple sources. Since we are required to provide a written copy of the prescription to patients it

would be impossible to track purchases from multiple suppliers without this notification from the sellers. We feel this is in direct conflict with the implied intent of the Burr Bill.

STANDARDIZATION OF VERIFICATION REQUEST FORMS: The rules should specify exactly what is to be included on a valid verification request form. The use of automated systems by sellers does not allow for the doctor to write in any explanation of unusual circumstances as well. The following items should be included as mandatory on any verification form:

- 1) Name, Address and contact information of seller.
- 2) Name, Address and phone number of patient.
- 3) Space for all contact lens parameters including manufacturer.
- 4) Space for designating total quantity of lenses to be dispensed with this verification.
- 5) Space for exam date and expiration date.
- 6) Space for indicating status of verification; fill, incorrect, expired, not a patient in this practice, other.
- 7) Space for comments.
- 8) Check box for substitution allowed, not allowed.
- 9) Instructions on how to contact a live operator if needed.

LIVE OPERATOR CALLS: While we see no problem with the usage of live operators to make verification calls there needs to be a call back option available or the option of requesting a fax form. In a busy medical practice there may not be anyone available to provide an immediate response without deserting patients that are seeking care onsite. This is particularly true when an extensive record search is required which is often the case. Operators have been very insistent to the point of rudeness when calling our members' offices. When told that they will need to call back or asked if a fax can be sent the operators accuse our doctors of not being in compliance with federal law.

MULTIPLE REQUESTS AND FRIVOLOUS REQUESTS: Many of our doctors are complaining of receiving two or more requests on the same patient for a suspiciously high percentage of patients. This would imply that some sellers are adopting a shot-gun approach in the hopes that a doctors office will fail to respond to one of the requests if they are persistent enough. Also there appears to be no attempt from most sellers to ascertain if the buyer has had an eye exam in the last year. This causes a lot of requests for patients that have not been in for several years (The record in my office is six years from last exam date.) Rules need to provide for sanctions against sellers that have repeated complaints for multiple or frivolous verification requests.

WAIVER FOR ANNUAL SUPPLIES: In cases where the patients purchase a full years supply of contact lenses at the time of their eye exam the prescription has in affect already been filled. While most of our doctors additionally provide the patient with an informational copy this should be at the prescribers' discretion and not subject to penalty under law when not provided under these circumstances.

FALSE ADVERTISING: Since this law is directed towards protecting the rights of the consumer it would naturally seem to pass that protection from false or misleading advertising would also be appropriate. Patients are routinely bombarded with ads that proclaim savings of 60% or more. It is our position that these ads are not only inaccurate but are definitely borderline with regard to the spirit of the law. Precedence has already been set in this area by restricting claims that can be made by Refractive Surgery Centers to their perspective patients.

The North Carolina State Optometric Society has always encouraged our members to release all contact lens prescriptions upon request. In addition our State Board of Optometry also has a long standing mandate that contact lens prescriptions should be released. It is our desire that the "Fairness to Contact Lens Consumers Act" protect the right of the consumer to purchase lenses from the vendor of their choice while providing balance with rules that will protect the health of our patients and not expose them to unnecessary elevated risk associated with contact lens wear. We sincerely hope that the above comments will be considered in that light. Thank you for your diligence in undertaking a very difficult task.

Sincerely,

Dr. J. Michael Burke
President
North Carolina State Optometric Society