

Florida Board of Optometry

Len Schlofman, O.D.
Chairman

Joe Baker, Jr.
Executive Director

April 2, 2004

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

Re: Contact Lens Rule; Project No. R411002

To Whom It May Concern:

The Florida Board of Optometry appreciates this opportunity to comment on the proposed rules which were published in the *Federal Register* on February 4, 2004.

We are supportive of the Federal Trade Commission's work to implement the Fairness to Contact Lens Consumers Act, particularly your proposed definition of "business hour" and prescriber verification information. The FTC has appropriately addressed concerns we had about reasonable time frames to respond to requests for a prescription and for the ability of practitioners to know with whom we are dealing on these requests. Specifically, we concur that the procedures set forth in the definition for verification requests received by a prescriber during non-business hours that calculate the eight business hours to begin at 9:00am on the next week day that is not a Federal holiday remain in proposed section 315.2 in order to provide sufficient time for prescriber verification.

We must, however, comment in opposition to your proposed rules not addressing issues of patient confidentiality. Our board rules, which implement Florida law, define confidential information and disclosure in rule 64B13-3.001(1) (2), F.A.C., as:

64B13-3.001 Confidential Information; Disclosure.

(1) A licensed practitioner shall keep in confidence whatever he or she may learn about a patient in the discharge of his or her professional duties. All reports and records relating to the patient, including those records relating to the identity, examination, and treatment of the patient, shall constitute "patient records". Except upon written authorization of the patient or as otherwise provided by law, such records may not be furnished to and the condition of the patient may not be discussed with any person other than the patient or his legal representative or other health care providers licensed under Chapter 463, 458, or 459, Florida Statutes, who are involved in the diagnosis and treatment of that patient. Provided, however, that this shall not prohibit a licensed practitioner from providing copies of a patient prescription in accordance with Section 463.012, Florida Statutes, or Rule 64B13-3.012, F.A.C.

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(2) It is the responsibility of a licensed practitioner to insure that his or her employees, as well as any personnel who are not his or her employees but who are performing assigned ministerial duties, tasks, and functions, do not violate the confidentiality of patient records.

Therefore, the requirements of the proposed rules do not adequately protect confidentiality of patient medical information and may, in fact, require our optometrists to violate the confidentiality of patient records as set forth in Section 456.057, Florida Statutes. When an optometrist receives a request for verification of information from a purported contact lens seller, the optometrist is unable to verify that the person calling or writing has, in fact, obtained patient consent to seek the patient information. What protections will there be for an optometrist who releases patient information?

The board's utmost concern is patient privacy and the release of patient information without appropriate consent. The aforementioned board rule and Florida law mandate that patient records shall not be released without written authorization of the patient.

We clearly support the Act and initiatives to prohibit the inappropriate release of contact lenses to the public; however, confidentiality needs to be addressed and regulated in the proposed rules.

Sincerely,

Len Schlofman, O.D.
Chairman

ALS/jb/jmb

Cc: Association of Regulatory Boards of Optometry
American Optometric Association