

TO: FEDERAL TRADE COMMISSION  
FROM: Kentucky Optometric Association

KY

DATE: April 5, 2004

RE: Contact Lens Rule, Project No. R 411002

### COMMENTS ON PROPOSED CONTACT LENS RULE

The state of Kentucky has a very strong contact lens law, KRS 367.680-690, that was passed to ensure that consumers have easy access to their prescriptions so they could shop for their best deal, while making sure that contact lenses were only sold with positively validated prescriptions so the consumer's eye health would be protected.

The Fairness to Contact Lens Consumer Act preempts several aspects of the Kentucky statute. The Kentucky statute requires active verification, and under no circumstance could a seller dispense lenses without a valid prescription. However, the FTC regulatory authority would permit several provisions of the Kentucky law that address the manner of verification to be implemented in federal regulations.

- **KRS 367.687. Mandatory provision of a toll free phone number exclusively for prescribers' use in replying to verification requests. The toll free number must be included in voice mail or messages left on answering machines.** Many incidents have been reported where the prescribers have been unable to contact sellers due to the lack of a phone number, busy signals, prerecorded messages, etc. These lines should be answered in real time so that the doctor can respond in the required time period. In addition, it is often impossible for prescribers to successfully get a fax back to the seller due to inadequate numbers of fax lines. If prescribers must respond within a set time, sellers must be required to have adequate numbers of lines for responses to be made in a timely fashion.
- **KRS 367.683. Prohibition of touchtone options for telephone verification requests.** Sellers leave voice mails, with instructions to hit a certain number on the phone to indicate a response. If the office is not open there is no way anyone could respond. Also, no time is allowed for staff to find the record of the patient to see if the prescription is valid. Telephone verification requests present many logistical problems for doctor's offices. In a busy practice, staff may not have the time to take down all the information over the phone needed to verify a prescription at the time of the call. It is too easy to make a mistake in the patient information, in the parameters of the prescription, etc. Written communications provide clarity for both parties.

- **KRS 367.367. Inclusion of the patient’s phone number in verification requests.** Often, two individuals have the same name, even same address, so the doctor’s office cannot determine which one the request is for. Also, many times patients have moved since they were last at the doctor’s office. The address on the verification request may be different. By providing a current phone number, the doctor has a means to contact the patient to clarify identification. It also allows the doctor to explain to the patient the reason a verification request is being denied.
- **KRS 367.367. Number of refills or lenses permitted is required as part of the prescription.** Sellers must be required to limit sales to the number specified on the prescription, which would be the amount of lenses needed to supply the patient for a year. Once the numbers of lenses are sold, the prescription would no longer be valid. Otherwise, the seller could sell the patient a year’s worth of lenses several times during the year. Doctors should be notified in writing when a prescription has been filled so the doctor would know how many, if any, refills are still available. A pharmaceutical prescription expires when all the quantity prescribed has been filled.
- **KRS 367.687. A written message to the patient whenever contact lenses are supplied.** *“Warning: If you are having any of the following symptoms remove your contact lenses immediately and consult your eye care practitioner before wearing your lenses again: unexplained eye discomfort, watering, vision change, or redness.”* This should be put in the regulations to ensure patient safety.

In addition to these features of the Kentucky law that can be incorporated into the federal regulations, we also urge the regulations to address the following issues.

- **The FCLCA Regulations must address the problem of an eight-hour verification limit to take into account the fact that in many rural areas offices are only open on a limited basis.** In a rural state like Kentucky, there are many counties where the limited population cannot support a full time practice. It is common for a doctor to operate two practices in rural areas, splitting time between them. For those offices that are only open one or two days a week, the eight-hour response time is impossible for the practitioner to meet. By requiring positive verification, the Kentucky law addressed that concern. Under FCLCA, the patient will have a written prescription that they can submit to the contact lens seller. The regulations should allow a mechanism for part-time offices to be recognized by the seller and the eight-hour limit modified. Otherwise, the majority of verification requests will receive no response and all the prescriptions will be assumed to be valid.

- **The eight business hours must be based on the time zone of the prescriber.** Kentucky is split between two time zones. This must be taken into consideration in starting the clock on the eight business **KRS 367.687** hours.
- **A uniform verification request form should be required under the FCLCA.** Every seller has a different form, and different procedures to verify. Some companies are just leaving a patient number and then the doctor is expected to call them, give the code number and then get the patient information. Others ignore written responses and only recognize a box being checked. Some routinely ignore the first denial and send a second one. An approved form would facilitate the prescriber's response and ensure that sellers are sending prescribers the appropriate information. It should have an area where doctors could simply check if the prescription is valid or the reason the prescription is not valid. This would include: not a patient of this practice, prescription time expired, etc. It should also include an area for the doctor to write in the correct prescription if one exists.
- **To ensure that consumers are able to get a copy of their prescription following fitting of contact lenses, the regulation should clarify that no one should be fitting contact lenses and selling them who is not licensed to write a prescription.** There are reports of vendors doing this, who then cannot release a prescription because they are not authorized by state law to write a prescription. They continue to sell lenses and force the patient to continue to buy lenses from them because there is no valid prescription to be issued. Anyone who fits and sells contact lenses must be able to release the prescription as required in FCLCA.
- **Prohibition on sellers from attempting to steer patients away from their existing prescriber to a network set up by the seller.** When doctors have legitimately reported that a prescription is not valid, sellers portray the doctor as uncooperative and attempt to steer the patient to someone on their panel. This interference with the doctor/patient relationship should be prohibited. This is a deceptive and misleading solicitation of patients.