

California Association
of Dispensing Opticians

CA

April 1, 2004

By Express Mail and Email

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

Re: Contact Lens Rule, Project Number R411002 -Request to
include reference in rule to dispensing opticians

This letter is sent on behalf of the California Association
of Dispensing Opticians.

Our association is comprised of firms and individuals
registered by the Medical Board of California to act as
dispensing opticians and therefore engage in the business of
taking facial measurements and fitting and adjusting prescription
lenses to meet the requirements of prescriptions written by
ophthalmologists and optometrists. (California Business &
Professions Code §2550). Registered dispensing opticians in
California are specifically authorized to fit, adjust and
dispense prescription contact lenses (Business & Professions Code
§2542). Since 1995 firms registered as dispensing opticians have
fitted and adjusted contact lenses through or under the
supervision of a qualified employee registered as a contact lens
dispenser (Business & Professions Code §2560).

In 2002 the California legislature adopted a statute a year
before the adoption of the Federal Fairness to Contact Lens
Consumers Act to provide assurance that a contact lens consumer
will be furnished with a copy of the his or her contact lens
prescription, including fitting measurements, upon completion of
an eye examination and the contact lens fitting process.
(California Business & Professions Code §2541.2, subparagraph
(b)). That statute specifically recognizes that not only
ophthalmologists and optometrists but also registered dispensing
opticians are authorized to fit and adjust contact lenses. For
example subparagraph (f) of the statute provides that:

``The contact lens fitting process begins
after the initial comprehensive eye
examination, and includes an examination to
determine the lens specifications, an initial

evaluation of the fit of the lens on the patient's eye, ... and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved ..."

Section 2541.2, subparagraph (b), further provides that where the contact lens fitting is performed by a registered dispensing optician, the optician, upon completion of the fitting process, shall provide the patient with a copy of the patient's contact lens prescription. The prescription to be furnished to the patient is described in the California statute as well as in the Federal act to include not only the power of the lens but also all of the measurements necessary to enable the consumer to purchase replacement contact lenses from a seller selected by the patient.

With this background in mind, we turn to the Federal Trade Commission's proposed contact lens rule. Neither the proposed rule nor the explanatory materials make any reference to dispensing opticians. A prescriber is defined in §315.2 as "an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses." The reference to "other person" could possibly be interrupted to include a registered dispensing optician in states such as California, where a dispensing optician participates in part of the process (fitting and adjusting lenses) that is included within the matters that comprise a contact lens prescription. But to eliminate any ambiguity, the definition of "prescriber" could be expanded to include a dispensing optician where State law permits a dispensing optician to fit and adjust prescription lenses. That solution may not be the preferred one because traditionally the prescribing function involves determination of the power of the prescription lens (performed by ophthalmologists and optometrists) and the dispensing function involves fitting and adjusting lens and taking facial measurements (performed by dispensing opticians as well as by prescribing doctors). We therefore suggest as an alternative the following three modifications to the proposed contact lens rule.

First, the following definition would be added to §315.2:

"Dispensing optician means, with respect to contact lens prescriptions, a person other an ophthalmologist or optometrist, who is authorized or permitted under State law to perform ophthalmic and contact lens fitting services."

Second, the introductory clause of §315.3(a) would be modified to read as follows:

"(a) In general. When a prescriber or dispensing optician completes a contact lens

fitting, the prescriber or dispensing
optician:''

Third, the introductory clause of §315.3(b) would be
modified to read as follows:

``(b) *Limitations*. A prescriber or dispensing
optician may not:''

We believe these modifications to the proposed contact lens
rule are necessary to recognize the lawful functions performed by
dispensing opticians and also to make it clear that the rule is
intended to apply to situations where the fitting and adjusting
of contact lenses is performed by a registered dispensing
optician, rather than by the prescribing doctor. Without the
modifications we propose, it could be argued that the patient is
not entitled to a copy of his or her prescription, including
fitting measurements, where the fitting is performed by a
dispensing optician and not by a prescribing ophthalmologist or
optometrist.

Thank you for considering our comments.

Respectfully Submitted,

Richard Heimann, President

cc: By email to contactlensrule@ftc.gov