



# *State of Rhode Island*

HOUSE OF REPRESENTATIVES

## **REPRESENTATIVE BRIAN PATRICK KENNEDY**

*Chairman, House Committee on Corporations*

*Co-Chairman, Permanent Joint Legislative Committee on Health Care Oversight*

*Dean of the Rhode Island House*

**District #38**

October 22, 2015

Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, D.C. 20580

Re: Contact Lens Rule, Matter No. R511995

To Whom It May Concern:

This year in Rhode Island, I sponsored pro-competitive consumer legislation that would have prohibited price fixing in the contact lens market and thereby extended to Rhode Island consumers purchasing options not currently available in any other state. The hearings, meetings, and testimony that accompanied this legislation were an eye opening experience. I am grateful for the opportunity to submit these comments to the Federal Trade Commission.

As the Chairman of the House Committee on Corporations, I have witnessed many battles between competitors and business interests, but none that had such an adverse impact to consumers as the unilateral pricing policies implemented by the contact lens manufacturers. This legislative battle brought forward many spurious claims that definitely deserve more attention, perhaps even during your review of the Contact Lens Rule.

Quite frankly, some of the most spurious claims were made by individuals and organizations associated with the optometry profession. Indeed, the contact lens industry appears to be riddled with a variety of anti-consumer issues, such as prescribers selling eye care merchandise to patients because they have a beneficial and financial interest in moving product; prescribers failing or in most cases **refusing** to automatically release contact lens prescriptions; a history of collusion between contact lens manufacturers and optometrists and their associations; and most grievous are the false health claims being promulgated by the eye care providers and manufacturers, even after being directed by the courts to stop making such claims

Notwithstanding my concerns with this industry, my comments will specifically address aspects of the Contact Lens Rule that the Commission should consider as they review the Rule. First, patients are not automatically being provided a copy of their prescription as is required by the Fairness to Contact Lens Consumers Act. As a key pillar of the FCLCA, this becomes a problem for consumers, who are seeking to benefit from the federal legislation but their portability to purchase product is so very limited.

Second, as I have researched the FTC's complaint process it appears heavily slanted in favor of eye care providers and their ability to file complaints against resellers of contact lenses while consumer complaints against eye care providers are largely if not intentionally not addressed. I would propose that the FTC consider simplifying the complaint process to make it easier for consumers to file complaints against their eye care provider as well as replacement contact lens resellers. The complaint process needs to be easy to navigate and impartial as to which entity a consumer may choose to submit a claim.

Third, evidence presented to our committee in Rhode Island suggests that eye care providers are purposely interfering with consumer purchases from third party sellers. This flies in the face of the intent of the FCLCA and harms consumers. Technological advances in the availability and distribution of contact lenses have drastically improved convenience and reduced the cost of contact lenses for customers.

The games and gimmicks that we've become aware of during the legislative hearing process, prove to be obstacles for consumers. The Commission should revisit the investigative tools and enforcement mechanisms necessary to protect consumer choice in this market and allow new, innovative technologies to thrive.

The protectionism and anti-consumerism that occurs in this industry is by far one of the most extreme of any industry that I have ever encountered while researching and legislating health issues. It is important that the Commission take every step possible and use every means necessary to encourage and ensure competition and reduce the obvious conflict of interest that exists in the contact lens market today.

Thank you for this opportunity to offer comments on this important issue and I hope that the Commission will truly address the necessary changes to protect the most important people dealing with this matter, the American consumer.

Sincerely,

  
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State Representative

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