

Comment on 16 C.F.R. 456 (Ophthalmic Practice Rules)

Alisha Humphrey
Erica Burchell
Savanna Roughen

We are writing in response to the notice of proposed rulemaking to propose 16 C.F.R. 456 (Ophthalmic Practice Rules), which requires optometrists and ophthalmologists to provide a prescription to a patient at the conclusion of a doctor's visit. After consideration, we propose that the rule remain relatively unchanged.

Below we address several of the general and specific questions proposed by the agency.

GENERAL ISSUES

1. The Continuing Need for the Law:

- The cost of eye care is incredibly high, and health insurance does not do enough to offset the cost. Most individuals require supplemental plans that force them to choose between benefits that cover the price of contacts or benefits that reduce the price of glasses. Even with insurance, the policies only cover the most basic polycarbonate lenses; though technological advancement has allowed for superior lenses to enter the market.

The cost of eye care and corrective lenses led to the advent of companies like 1-800-Contacts and www.glasses.com. Both of these websites offer affordable options for individuals who need the assistance of corrective lenses, generally for lower prices than the doctor's office. However, as more people opt for these alternatives, doctors will watch their profits steadily decline. We fear that allowing doctors to withhold prescriptions from patients, unless explicitly asked, would create an incentive for doctors to complicate the process, withhold the prescription for an unnecessarily long amount of time, or charge extra for the release of the prescription.

2. The Benefits Provided to Consumers:

- One of the main ways the Eyeglass Rule benefits consumers is the ability it gives the consumers to actively engage in the market for glasses. Requiring optometrists and ophthalmologists to provide a prescription at the end of every appointment allows for immediate choices: purchase the glasses at the eye doctor or use an alternative provider. Providing the prescription to the patient allows that individual to enter the market for glasses and take advantage of lower prices and a larger selection. Further, by requiring the release of the prescription, ophthalmologists and optometrists are prevented from acting opportunistically or discouraging consumer from participating in the market by implementing fees or complex systems consumers must maneuver to obtain the prescription. Eye care providers must find other ways to remain competitive in the market which leads to better prices and higher quality glasses.

SPECIFIC ISSUES

1. Should the definition of “prescription” be modified to include pupillary distance? Why or why not?

The existing regulation, 16 C.F.R. 456.1(g), defines “prescription” as “the written specifications for lenses for eyeglasses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain lenses for eyeglasses.” To properly fit patients for glasses, optometrists and ophthalmologists use pupillary distance measurements to ensure the prescription functions properly. Without a proper pupillary distance measurement, glasses would be completely ineffective. Because pupillary distance measurements are integral to

properly fitted glasses and contacts, physicians should be required to include measurements on the prescription.

(B) How would this modification affect the costs the Rule imposes on businesses, including small businesses?

- The added costs to businesses by requiring pupillary distance measurements to be included on the prescription would be minimal. There would be an initial increased cost in changing the forms. Afterwards businesses should not see any extra costs.
- One concern for businesses, however, would be whether the exam was now mandated. Many providers charge extra fees to accurately read pupillary distance, while the majority include the measurement in their eye exam. The regulation would need to allow individuals to forego that portion of the exam, thereby eliminating the information from the prescription. If not, small businesses may be forced to purchase more equipment. Further, small businesses may need to hire an additional employee to work the machinery, especially if the staff is already busy with other tasks.

(A) How would this modification affect the benefits to consumers?

- Consumers would have the added benefit of having more accurate information when entering the market in search of glasses. Additionally, companies entering the market would be able to provide better products to consumers because of the additional information.

The benefit to the consumer of having the best possible correction in lenses extends outward to the public-at-large. Consumers who wear corrective

eyewear drive, work in their communities, read newspapers, and are members of society. Having better vision will allow consumers to be better drivers, better workers, be better informed of societal triumphs and challenges, and be better situated members of society overall.

- Unfortunately, consumers may also bear the burden of an additional fee during their eye exam. Some providers currently charge an extra fee for pupillary distance measurements. However, if the rule is carefully drafted to allow for individuals to decline the exam and forego the information on their prescription, then consumers can still avoid the extra cost.

2. Should the Rule be extended to require that a prescriber provide a duplicate copy of a prescription to a patient who does not currently have access to the original?

The rule should be extended to cover duplicate copies of the original. Many eye care providers have policies that require individuals to pay a fee to obtain their records after the initial visit. Once the consumer has a copy of their prescription, it should be the consumer's responsibility to adequately safeguard that information. If the consumer misplaces or destroys their copy, the burden should be on the consumer not the business to replace that information. By requiring businesses to provide the information a second time, the business is now being required to shoulder extra costs. Additionally, by requiring the business to provide duplicates, businesses are effectively precluded from charging the patient a fee for the extra service provided.

Doctors should still be able to recover some of the administrative costs associated with rewriting or providing copies of prescriptions to individuals. However, the fee charged by the doctor to rewrite or provide a copy of the prescription should be curtailed. An administrative charge that reflects the cost of the paper, time, other office supplies, and office staff necessary to

provide a duplicate prescription should not be a profit-making mechanism for the doctor's office nor a deterrent to the consumer from obtaining necessary corrective eyewear. A fee ranging from \$2.00 to \$10.00 might be appropriate in the current market. Balancing the consumer's need for the corrective eyewear with the doctor's office's need for economic sustainability is important.

Contact Information:

- Alisha Humphrey:
- Erica Burchell:
- Savanna Roughen: