



October 22, 2015

Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW.
Suite CC-5610 (Annex C)
Washington, DC 20580

RE: Contact Lens Rule, 16 CFR part 315, Project No. R511995

The Colorado Optometric Association represents over 500 doctors of optometry in our state and we appreciate the opportunity to offer our perspective. Our mission is to provide member optometrists with the resources necessary to deliver the highest standard of professional care to Colorado citizens.

The Contact Lens Rule was originally intended to enhance competition in the market for contact lenses by giving patients the right to receive their prescriptions from their eye doctors and to have that prescription verified and filled by a vendor of their choice. In our opinion, there are not any issues with the general premise and intent of the rule. However, we also believe that patient safety should not be jeopardized in pursuit of a competitive market place for contact lenses. We have heard of and experienced several instances where overly aggressive contact lens sellers have taken actions that have resulted in compromised patient safety and standard of care. The FTC should help to ensure that patient safety co-exists with the competitive marketplace.

We also feel that a few key changes would improve the rule. We have grouped our recommended changes to address particular areas of concern:

1) These recommended changes are all directed at improving patient safety, further benefitting the consumer.

- The FTC prohibiting the sale of contact lenses to a consumer with an expired prescription.
- Implementing a "maximum quantity" included with every prescription. This would ensure that patient prescriptions are evaluated at appropriate intervals and that they aren't able to fill beyond the expiration date.
- Putting a limit on the number of contact lens boxes that can be purchased from a retailer at one time.

2) These changes are geared to limiting or eliminating automated dialer calls (robocalls) and improving the efficiency of the doctor/retailer communication as it pertains to verifying prescriptions and answering physician questions. This would protect small businesses from these disruptive calls which often communicate incomplete information.

- Disallow the use of automatic dialers being used to verify patient prescriptions. We have documented complaints of “robocalls” being made to small businesses after hours and not giving sufficient office time to respond.
- Require that larger contact lens retailers have more than one individual to act as the contact person to answer physician questions and concerns.
- The FTC should develop a defined complaint submission process for contact lens related concerns.

These changes would help alleviate additional costs and allocation of resources that small businesses have been forced to bear as a result of the automated calls being used for verification. Making these small changes would help ensure patient safety and proper eye care while still maintaining the competitive marketplace for consumers. It should be noted that while the rule was intended to increase competition in the marketplace, a monopoly of sorts has emerged. On July 30, 2014, during a hearing before the Senate Judiciary Committee's antitrust panel, R. Joe Zeidner, General Counsel for 1-800 CONTACTS, indicated that his company controlled approximately three quarters of the online contact lens retail market. So rather than a highly competitive online retail environment, one large seller dominated the market.

In addition to the competition issue, a couple of other unintended consequences have arisen as a result of the rule and the lack of enforcement for those retailers who have filled expired prescription, filled with no prescriptions or other blatant violations. Most notably, the public's perception has been shifted. Because lenses are so widely available and because lenses are, in some cases, being provided to consumers with either no prescription or expired prescriptions, the public vies them as an over the counter product rather than the regulated medical devices that they are. That misperception leads people to discount the importance of proper lens care and doctor oversight in using lenses.

In 2014, the Centers for Disease Control and Prevention (CDC) reported that annually Americans make an estimated 930,000 visits to doctors' offices and outpatient clinics and 58,000 emergency room visits annually due to eye infections, adding \$175 million in health care costs connected to keratitis—a typically preventable eye infection associated with improper contact lens use.¹

All of this ultimately leads to a higher cost to consumers.

The Colorado Optometric Association recommends that modifications to The Contact Lens Rule need to be made to strengthen the original intent of the rule. These changes would help to ensure patient safety, ultimately lead to a lower cost for consumers and allow thousands of small businesses to redirect resources toward patient care. Enforcement and punishment of retailers who break rules needs to be increased as the breaking of those rules results in jeopardized patient safety.

¹ <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6345a3.htm>

Thank you for the opportunity to comment on this important issue. If you need additional information, please contact Kathi Williams at the Colorado Optometric Association at kwilliams@visioncare.org or 303-863-9778.

Sincerely,

Michelle Chaney, O.D.
President, Colorado Optometric Association