



October 23, 2015

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex A)
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Re: Lens.com - Comments on the Contact Lens Rule

To Whom It May Concern:

Lens.com has been a major player in the retail sale of contact lenses since 1995. We take great pride in our ability to provide fast and efficient customer service and look for every opportunity to improve our company, our brand, and our business processes in an effort to facilitate outstanding customer service.

The Fairness to Contact Lens Consumers Act (the "FCLCA") has provided an excellent set of standards that both frame and govern the contact lens industry in a manner that was sorely needed for many years. This industry was replete with practices from both manufacturers and prescribers that were extremely detrimental to contact lens wearing consumers prior to the FCLCA's passage. While many of the anti-competitive issues were resolved with the passage and implementation of the FCLCA, there are still issues that exist in terms of prescriber behavior and their compliance with the FCLCA. Lens.com applauds the Commission on the drafting and implementation of the Contact Lens Rule (the "CLR") and we whole-heartedly support the FCLCA and the CLR.

We feel the CLR provided essentially two important cornerstones to facilitate better customer service to all contact lens wearers: automatic prescription release and passive verification; without these, consumers would continue to be taken advantage of in meaningful prescription portability and increased consumer choice and pricing of contact lenses. While the CLR went to great lengths in the delineation of passive verification requirements, e.g. specific verification data points, methods of direct communication, eight-hour business delay, enforcement, and storage requirements, it was essentially silent on automatic prescription release obligations. Retailers have a huge financial and procedural burden in order to comply with proper verification to consummate a sale while very little is expected or even enforced when it comes to automatic prescription release by prescribers.

Lens.com recognizes its duty under the FCLCA and CLR and takes these enumerated obligations very seriously. However, we feel that more, much more, could be done to ensure that consumers

are not taken advantage of by enforcing existing prescription release rules and implementing additional language to clarify those rights for consumers.

The FCLCA is unequivocal with regard to a prescriber's duty to release:

“When a prescriber completes a contact lens fitting, the prescriber –
(1) whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription [.]”

Moreover, the CLR and Statement of Basis and Purpose adopted this language without any modification in the final rule. In other words, this language was not qualified and did not have any contingencies placed upon it after extensive industry input and final review by the Commission. In fact, the very intent of the act is *“to allow consumers to receive their contact lens prescriptions so they can easily shop around to buy their lenses from any number of suppliers.”* Unfortunately, this intent is lost on prescribers as they continue to refuse to automatically release prescriptions. We feel that prescribers flaunt the CLR's automatic release language precisely because there are no explicit penalties or procedural requirements outlined in the release portion of the rule nor have there been any meaningful enforcement actions taken against prescribers in the ensuing years since the FCLCA was promulgated – prescribers know it and lack of enforcement is their cover.

Prescription release much less automatic prescription release would never be an issue if eye care providers were not allowed to sell what they prescribe. It is no secret that prescribers are conflicted and even motivated to retain their patient's prescription in an attempt to improve their bottom line. Why else would a prescriber refuse to provide a prescription if economic motivation were a non-factor. Given the current state of this profession, and until the link between profiting and prescribing is severed, it is imperative that the Commission promulgate additional rules to bolster enforcement around automatic prescription release and provide a mechanism with which to audit a prescriber's compliance just as the Commission has done with retailer's verification activities.

There are pundits who will attempt to divert the Commission's attention away from enforcement against prescribers who refuse to release their patient's prescriptions. In fact, the AOA, State optometry boards, and independent optometrists recklessly throw out eye health claims in an attempt to distract the public from the real issue: automatic prescription release. All one has to do is read some of the propaganda published by these entities to see what I am talking about. Early submissions to the FTC for the CLR comments bear this out.

The Virginia Optometric Association (VOA) goes to great pains to tell us that “patient safety” is their biggest concern so much so that they take the opportunity to beat that drum into just about every question they answer. They even go so far as to misinterpret findings from a flawed 2014 CDC study. I'm surprised they didn't point to the findings in the 2015 CDC study that stated that “more than 99 percent of survey respondents reported at least one risky behavior” when it comes to wearing and storing contact lenses. Some of these risky behaviors included the following: using contact lens cases too long, “topping off” solutions in the case, sleeping in lenses, showering or swimming with lenses.

What prescribers fail to recognize is that patient safety begins and ends with them. What better time and who is better positioned to educate patients/consumers than when a patient is getting an eye exam and is the captive audience of their prescriber. Is proper contact lens wear education not included in the eye exam fees? The 2015 CDC study stated that “almost all of the 41 million contact lens wearers” engage in a risky behavior. Whose fault is that? The manufacturers and retailers who may never see or talk with customers or the prescriber who is hovering over them in a white coat and slit lamp for 20+ minutes. Quite simply contact lens wearers would be best served if doctors prescribed and educated rather than prescribed and sold. Focusing on and protecting their economic interests will always get in the way of true patient safety and health care. Pointing the finger of blame at alternative sellers does not permit prescribers to abdicate their professional responsibilities.

These entities may even point to a handful of prescribers who always release their patient’s prescriptions, but this is not what is common. To be sure, there will be prescribers always releasing and adding an audit component will be uneventful for these individuals. However, the non-compliant prescribers know who they are and will need a shove from the Commission to fulfill their legal duty; a signed Acknowledgment of release to the patient will serve as that shove.

In a perfect world, automatic prescription release would occur on a daily basis thereby bringing to fruition House Judiciary Committee Chairman’s elocution of the FCLCA’s intent. Such a world would benefit retailer and consumer alike - verification decreases as prescription release increases – because the ability to eliminate or minimize the expense to retain and maintain verification processes could be passed on in the form of lower contact lens prices. Since 100% automatic release is not the case today and since massive changes will not be imposed on this profession, improvements need to be made to the CLR.

Therefore, Lens.com proposes that the Commission require prescribers to provide a document to each patient that outlines their rights as a contact lens wearer and correspondingly require each patient to sign this document to acknowledge receipt of their prescription. Absent such a requirement, this self-interested profession will continue to ignore the automatic release obligation until penalty laden enforcement occurs or the next 10 year review period brings it back to the public’s conscience.

Sincerely,

Cary Samourkachian

Cary Samourkachian
Lens.com, Inc.
Founder & CEO