

# OPTERNATIVE

October 26, 2015

Chairwoman Edith Ramirez  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Re: Contact Lens Rule Review, Project No. R511995

Dear Chairwoman Ramirez:

I am writing in regards to the Federal Trade Commission's ("Commission") ten-year review of the Contact Lens Rule, 16 CFR Part 315 ("Rule"). The Commission's Advanced Notice of Proposed Rulemaking ("Notice") requests comment on whether there is a continuing need for the Rule. As a leading telehealth provider in ophthalmic care, Opternative, Inc. welcomes this opportunity to provide comments to the Commission.

The intent of the Rule is to protect a patient's freedom to choose an ophthalmic contact lens seller by separating the patient's right to obtain a prescription from any obligation to purchase contact lenses directly or indirectly from the prescriber. Based on interactions with our patients, Opternative believes that the intent of the Rule is being fulfilled and there is most certainly a continuing need for the Rule in order to ensure greater consumer control over obtaining copies of their prescriptions and the ability to comparison shop for contact lenses, as stated in the Background Section of the Notice.

Since its issuance in 2004, the Rule has lived up to its purpose of offering consumers greater choice in purchasing contact lenses, resulting in greater competition among sellers and thus lower prices and more convenience for consumers. Now, with new advances in technology allowing for telehealth to provide rapid, convenient, and cost effective quality prescription services, consumers have an ever-increasing need to ensure their right to obtain a copy of their prescription or to authorize verification to a third-party in a timely manner. Under the Rule, a seller's ability to actively or passively verify a consumer's prescription with the consumer's eye care provider, thereby expediting the use of telehealth technologies, furthers the purpose of the Rule by allowing consumers to obtain their prescription for contacts lenses more conveniently and efficiently.

In addition to continuing the Rule, we recommend that the Commission consider expanding the verification requirements so that prescribers' obligations also apply to any other third party, including other prescribers, that is authorized by the patient. This modification is consistent with the original intent and furthers the purpose of the Rule to ensure patients the ability to obtain a prescription from the prescriber without further obligation.

The Commission should take note that the Rule and our proposed modification are consistent with a patient's right to access medical records as prescribed in the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. § 164.524(a)(1), which specifically states that "an individual has a right of access to inspect and obtain a copy of protected health information about the individual" (emphasis added). The patient's prescription is the exact type of health information that was contemplated by HIPAA.

While we, as prescribers, recognize that this modification appears to create a new obligation for the prescriber, we strongly support a patient's right to obtain or authorize the disclosure of a copy of the prescription in furtherance of the patient's right to purchase ophthalmic eyewear from any appropriate retailer without undue consumer constraint. We are willing to take on this burden as prescribers because it will lead to greater consumer choice.

We thank the Commission for the opportunity to provide comment on this Rule, and are available to provide further information if useful.

Sincerely,

  


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Aaron Dallek, CEO  
Opternative, Inc.