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ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

January 30, 2017

Edith Ramirez, Chairwoman
Office of the Secretary
Federal Trade Commission
Attention: Project No. R511995
Via Electronic Submission

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

Dear Chairwoman Ramirez,

As the Attorney General of Arizona, I file these comments in response to the Federal Trade Commission's (FTC) request for public comments on its proposed amendments to the Contact Lens Rule, 16 CFR Part 315, issued on November 10, 2016. To begin, I want to stress my firm support for the continued existence and enforcement of the Contact Lens Rule. This Rule has served to protect consumers and engender healthy competition in the marketplace for over a decade. In addition to expressing my ongoing support for the Rule, I also want to voice my support for at least one of the FTC's proposed changes to the Rule. The proposed change enhances the existing Rule by requiring prescribers to obtain a patient's signature upon release of their prescription.

The duty of an Attorney General is to enforce state antitrust laws, as well as ensure an open and competitive marketplace for our citizens - including those who rely on and purchase contact lenses. The U.S. Centers for Disease Control and Prevention estimates that there are 40.9 million contact lens wearers in the United States, which is more than 16 percent of the population.¹ In 2001, market manipulation and anti-consumer practices led to investigations by State Attorneys General that resulted in a landmark settlement with 32 states.² The 2001 settlement was followed by the federal Fairness to Contact Lens Consumers Act (2003), which gave the FTC the authority to promulgate the Contact Lens Rule, and ensure patients' access to their prescription and choice of lens providers.

¹ Jennifer R. Cope et al., "Contact Lens Wearer Demographics and Risk Behaviors for Contact Lens-Related Eye Infections—United States, 2014," *Morb. Mortal. Wkly. Rep.* 64(32):865-70, 866 (Aug. 21, 2015), available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6432a2.htm>.

² Plaintiff States: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin.

While the Contact Lens Rule has been in effect for years, recent comments collected by the FTC on the Rule show that problems in the market still exist and that “there is a continuing need for the Rule and that it benefits consumers and competition.”³ Indeed, a majority of comments submitted to the FTC requested “modifications to the Rule in order to maximize the benefits to consumers and competition, decrease the burden on businesses, protect consumers’ eye health, or improve overall compliance.”⁴ In response to these requests, the FTC has outlined several changes to the Rule.

Among the FTC’s proposed changes, I am chiefly in support of the added patient acknowledgment form. I agree with the FTC’s position that “improving compliance with automatic prescription release would further the goals of the Act,”⁵ and that the proposed amendment requiring a patient’s signature would assist in “reminding prescribers to release prescriptions, informing patients of their rights, reducing misunderstandings, and improving the Commission’s verification and enforcement ability.”⁶ Thus, the amended Rule will not only increase consumer awareness, but will also help prescribers fulfill their preexisting duties under the Rule. In short, the added patient acknowledgment form is an important and positive change to the Contact Lens Rule.

Although I support adding the patient acknowledgement form, I encourage the FTC to conduct further research on prescriber impact in two areas: (1) the length of the retention period and (2) the proposed eight hour requirement for responding to prescription requests. While protecting consumers and fostering competition is important, we also need to ensure that our prescribers are not overburdened by regulation.

These comments are submitted to affirm the value of some of the proposed changes to the Contact Lens Rule. To ensure that antitrust conditions do not resurface, and in the interest of protecting consumers and the market place, I advocate for the continued enforcement of the Contact Lens Rule and the adoption of the FTC’s proposed amendment regarding patient acknowledgment forms.

Sincerely,



Mark Brnovich
Attorney General of Arizona

³ U.S. Fed. Trade Comm’n, Contact Lens Rule, Notice of Proposed Rulemaking at 15.

⁴ *Id.*

⁵ *Id.* at 32.

⁶ *Id.* at 41.