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Federal Trade Commission  
Office of the Secretary  
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Washington, DC 20580

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

The New Jersey Society of Optometric Physicians (NJSOP) represents over 700 doctors of optometry in New Jersey. New Jersey’s Optometrists are trained to examine, diagnose, treat, and manage diseases, injuries, and disorders of the visual system, the eye, and associated structures as well as identify related systemic conditions affecting the eye. They prescribe medications, low vision rehabilitation, vision therapy, spectacle lenses, contact lenses, and counsel their patients regarding surgical and non-surgical options that meet their visual needs related to their occupations, avocations, and lifestyle. The NJSOP appreciates this opportunity to offer comment to the Federal Trade Commission on proposed changes to the Contact Lens Rule [Federal Register / Vol. 81, No. 235 / Wednesday, December 7, 2016 / Proposed Rules]

Foremost, our organization believes that to ensure a competitive and safe contact lens marketplace, there must be full compliance with the Fairness to Contact Lens Consumers Act and the Contact Lens Rule by both prescribers and contact lens retailers. Our organization was disappointed to see that the Commission offered no proposals which would better address the retailers that openly violate the FCLCA and the Rule by selling contact lenses without a prescription. The FTC statement that “The Commission does not find the evidence proffered in this Rule review sufficient to support a conclusion that the Rule inadequately protects consumer eye health” is especially concerning given the number of online and brick and mortar retailers that sell these regulated medical devices without a prescription. We have documented one case that had the potential of becoming a “life threatening issue” due to the patient history of metastatic cancer with potential for ocular involvement.

Patient presented for an exam on 04-03-2015. He has very significant medical history that can have a direct relationship to his eyes and potential for life threatening events - having a metastatic testicular cancer. He had previously received lenses delivered to him from lenscom.uk and more recently was supplied lenses from a friend that works for 800contacts. He was wearing Acuvue Oasis improperly for 3-4 weeks.

The issue in this case is the most fearful of all scenarios. While this particular patient was doing well, he was being treated for metastatic cancer which had metastasized to the liver and kidneys. The potential certainly exists for ocular and/or brain involvement through further metastasis and requires periodic dilated eye examinations working with the oncologist. In this case, his friend
working at 800contacts has directly violated the law as well as probable 800contacts corporate policy in supplying lenses to the patient with complete disregard for his friend’s well-being.

In another case we can document they are selling products at or near “expiration” as an inventory “fire sale”. Close to or expired products are a consumer safety issue. Lenses near or at expiration have the risks of:

- Contamination due to old blister pack seals; and
- Risk of parameter changes due to pH shifts in the packing solution leading to corneal compromise and discomfort to the patient

Our organization believes that those who violate the Contact Lens Rule should face enforcement action. The Commission indicated that prescribers may be mistaken in assessing their compliance with the Rule and that patients may be confused regarding the timing of prescription release. To address these issues, our organization is committed to continuing education of both prescribers and patients in our state regarding the requirements of the Rule.

The FTC has indicated that its objectives are to: remind prescribers to release prescriptions, inform patients of their rights, reduce misunderstandings, and improve the Commission’s verification and enforcement ability. We believe that these goals can be achieved through approaches that are reasonable and balanced. We oppose the new FTC proposal to require that all contact lens wearing patients sign an acknowledgement of receipt of a contact lens prescription and that the form be kept on file for three years. This requirement is a heavy-handed step which presupposes that all doctors of optometry are not complying with federal law. It also would disrupt the doctor-patient relationship by communicating to patients, without justification, that they should be wary of their physician and presume that their eye doctor is a violator of federal law. Additionally, while the FTC seems to dismiss the potential burden on physicians for complying with this requirement, the proposal would undoubtedly add new costs for doctors and patients. It would require an additional step in the patient engagement process, which would necessitate ongoing staff training to ensure that doctors are meeting this unprecedented requirement. In the past, FTC has underestimated and subsequently corrected the estimated burden on physicians for complying with the Contact Lens Rule. We are concerned that the FTC is again underestimating the potential impact of these changes. We urge the FTC not to finalize this approach and instead to focus on increased education efforts by partnering with state optometric organizations and the American Optometric Association.

Thank you for the opportunity to comment on this important issue. If you need additional information, please contact our executive director, Mr. Howard R. Cooper at

William J. Ference, OD
President