



NEBRASKA OPTOMETRIC ASSOCIATION

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January 23, 2017

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 Nebraska Optometric Association represents 275 doctors of optometry in Nebraska. Our members are the primary providers of eye care and vision care to Nebraskans. Our association 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 association 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. We were 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 continue to hear from our members about marketing practices by retailers selling decorative lenses and other contact lenses that violate the FCLCA and the Contact Lens Rule, ignore requirements for valid prescriptions, and jeopardize consumer eye health. Our doctors repeatedly see patients who have received lenses that are inappropriate for their vision needs and compromise eye health, and see patients who have received little or no instruction from these retailers as to the proper fitting of lenses in order to assure eye health. 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 association is committed to continuing education of both prescribers and patients in our state regarding the requirements of the Rule. But, confusion over requirements for prescription release is not the public safety issue we should be addressing. The public safety issue involves violations of the FCLCA by online and brick and mortar retailers.

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, and many steps are already being taken by organizations such as ours to address education and understanding.

We oppose the 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 would otherwise be a violator of federal law.

The FTC seems to dismiss the potential burden on physicians for complying with this requirement. However, it will almost certainly 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. I am 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 like ours and with the American Optometric Association.

Thank you for the opportunity to comment on this important issue. If you need additional information, please feel free to contact me through our association office.

Sincerely,

Creston Myers, O.D.  
President