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## United States Senate

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ENVIRONMENT AND PUBLIC WORKS  
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SMALL BUSINESS  
AND ENTREPRENEURSHIP

November 9, 2017

The Honorable Maureen Ohlhausen  
Acting Chair  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, D.C. 20002

Dear Chair Ohlhausen:

Please see attached letters that I have received from the Illinois College of Optometry and the National Consumers League about the Federal Trade Commission's proposed rule under the Fairness to Contact Lens Consumer Act of 2014.

I hope you give this input due consideration and that they provide insight as you move towards your final rule decision.

Sincerely,





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October 6, 2017

The Honorable Tammy Duckworth  
United States Senator  
524 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Duckworth,

On behalf of the 8,000 optometrists who are alumni of the Illinois College of Optometry, I write you today about the Federal Trade Commission's (FTC) proposed rule under the Fairness to Contact Lens Consumer Act (FCLCA) of 2004. As you may know, the FTC's proposed rule would require eye doctors who prescribe contact lenses to obtain from each patient a signed document indicating that the patient received a copy of their contact lens prescription. This proposal is both misguided and inconsistent with the doctor-patient relationship and we believe there is a better way to protect consumers and promote competition in the contact lens market.

Under the FTC's proposed rule, eye doctors would be required to maintain the signed acknowledgement document for at least three years, a substantial record keeping burden that over time, will encompass most, if not all, 40 million Americans who wear contact lenses. In fact, the proposed rule, if finalized, could cost an eye doctor practice with one doctor and one support staff member nearly \$20,000 in the initial year of implementation.

We also believe the proposed rule would negatively impact the doctor-patient relationship. While most patients are accustomed to signing many forms at the doctor's office, we can't think of any other form that requires a patient to certify receipt of a prescription. By mandating this requirement, the FTC would signal to patients that the eye doctor has something to hide or that there should otherwise be an adversarial relationship between doctor and patient, which is why we believe strongly that the proposed rule would diminish this important relationship.

And finally, the proposed rule would inflict unnecessary reputational harm on eye doctors. Other health care providers sell to their patients both over-the-counter and prescription medicines that could be purchased elsewhere.



Yet to our knowledge, no other health care provider is subject to the same recordkeeping requirement as the one the FTC proposes to require of eye doctors. That optometrists and ophthalmologists are singled-out in this regard strikes us as uniquely punitive and an overreaction to the purported problem. According to the FTC's own data, there were only 309 complaints regarding prescription release over the 5-year period between 2011-2016 – a relatively small percentage of complaints in relation to the nearly 40 million contact lens prescriptions that eye doctors write each year.

Notwithstanding our belief that the signed acknowledgment form is unnecessary and burdensome, we are mindful that our patients should know about their options to purchase contact lenses upon receipt of a prescription. For this reason, we believe that the FTC's competition and consumer protection goals could be easily met by requiring eye doctors to post a sign notifying patients of their rights under the law. After all, doctors frequently notify patients of their rights through the prominent posting of signs in their offices. To this end, a signage requirement could inform patients of their rights under the FCLCA without burdening eye doctors, many of whom are small business owners.

In light of your position on the Senate Commerce, Science, and Transportation Committee, which has jurisdiction over the FTC, we hope you will be willing to weigh-in with the FTC and urge them to reconsider their proposal. For the reasons noted above, we would encourage the FTC to consider supporting the posting of signage notifying patients of their rights under the law.

Thank you for your consideration of this issue.

Sincerely,

Arol Augsburger, O.D.  
President  
Illinois College of Optometry



## NATIONAL CONSUMERS LEAGUE

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September 18, 2017

The Honorable Maureen K. Ohlhausen  
Acting Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Acting Chairwoman Ohlhausen:

As you know, Congress provided the Federal Trade Commission with the authority to oversee and enforce The Fairness to Contact Lens Consumers Act (FCLCA), which became law in 2004. The law and accompanying regulations require contact lens prescribers to provide a copy of the prescription to the consumer at the end of the contact lens fitting, even if the consumer doesn't request it. As part of the FTC's ten-year review of regulations implementing the FCLCA, the Commission is looking at new ways to ensure that consumers are well informed of their rights under the law.

We understand from the *Federal Register* December 7, 2016 Contact Lens Rule posting that the Commission has considered a number of suggested approaches to improving compliance with the requirement that consumers receive their prescriptions upon completion of the eye exam. We have reviewed those and, in the interest of best informing consumers of their rights, NCL believes it would be a positive and reasonable approach to require all contact lens prescribers to post a sign in their offices, which is clear and conspicuous, noting that patients have a right to a copy of their contact lens prescription at the completion of their contact lens fitting. This type of posted signage is already mandatory in California, seems to be working well there, and we think it should be emulated on the federal level. That's a better solution, in our view, than having patients sign a form, which, like many other forms consumers and patients are asked to sign, they may or may not understand, and will result in more paperwork without necessarily achieving the desired result.

In summary, NCL encourages the FTC to support measures that are most likely to get the desired outcome – making patients aware of their rights to their contact lens prescription - and the best way to do that is to post a sign in clear and conspicuous language informing them of this right when they get their exam - rather than by requiring patients to sign an additional form. Thank you for taking the time to consider our views on this timely issue.

Sincerely,

A handwritten signature in black ink, reading "Sally Greenberg". The signature is fluid and cursive, with the first name "Sally" and last name "Greenberg" clearly distinguishable.

Sally Greenberg  
Executive Director  
National Consumers League