



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

THE OFFICE OF THE
CHAIRMAN

To: Donald Clark, Secretary
From: Svetlana Gans and Devon Bacon
Date: April 20, 2017
Re: Proposed Changes to the Contact Lens Rule: Comments to be Placed on the Public Record

On March 15, 2017, representatives of the American Optometric Association (“AOA”) and the American Academy of Ophthalmology (“AAO”) met with Acting Chairman Maureen K. Ohlhausen and her staff¹ regarding a Notice of Proposed Rulemaking (“NPRM”) concerning the Contact Lens Rule (“CLR”). Appearing on behalf of the AOA were Dr. David Cockrell (Past President); Rodney Peele (Associate General Counsel, Public Policy); Jon Hymes (Executive Director); Matt Willette (Director, Congressional Relations); and Kara Webb (Associate Director, Coding and Regulatory Policy). Appearing on behalf of the AAO were Rebecca Hyder (Director, Congressional Affairs) and Scott Haber (Government Affairs Representative).

The NPRM at issue was published in the Federal Register on December 7, 2016, in Volume 81 of the Federal Register at page 88,526. The NPRM announced the FTC’s proposal to amend the CLR to require that prescribers obtain a signed acknowledgment after releasing a contact lens prescription to a patient, and maintain each such acknowledgment for a period of not less than three years; and sought comment on that proposal and several other issues. This memorandum is to be placed on the public record pursuant to 16 C.F.R. § 1.26(b)(5) and the NPRM, under which summaries or transcripts of oral communications respecting the merits of the proposed rulemaking from any outside party to any Commissioner or Commissioner’s advisor are to be placed on the public record.

During the March 15, 2017 meeting, the AOA and AAO representatives raised concerns about the proposed requirement that prescribers obtain a signed acknowledgement after giving patients their prescriptions at the end of a contact lens fitting, and the requirement that prescribers furnish additional copies of prescriptions upon request. The AOA representatives claimed the percentage of contact lens sales and the percentage of profits from those sales are diminishing for optometrists, which they attributed to the emergence of the online contact lens market and increased competition. The AOA representatives stated the requirement to obtain a signed acknowledgement would place a logistical and financial burden on their members’ staffs, including an estimated \$20,000 per year in additional compliance costs for providers. The AOA representatives also claimed their members’ administrative-staff turnover rate would result in a lack of necessary institutional knowledge to properly comply with the requirements. The AAO representatives echoed similar concerns that the proposed requirement places

¹ Also in attendance from the FTC were Acting Chairman Ohlhausen’s Chief of Staff Svetlana Gans and Acting Chairman Ohlhausen’s Paralegal Devon Bacon.

logistical and financial burdens on their members' staffs. The AAO representatives claimed the percentage of ophthalmologists in the contact lens market is diminishing and that ophthalmologists spend more resources on the treatment of contact lens misuse than on the contact lens prescription process.

As an alternative to obtaining a signed acknowledgment, the AOA and AAO representatives proposed that prescribers post signs setting forth the CLR's requirements and the need for doctors to comply with the CLR under federal law, which they said would mitigate the burden to AOA and AAO members and other prescribers.