



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

OFFICE OF CHAIRWOMAN
EDITH RAMIREZ

To: Donald Clark, Secretary
From: Kristen Anderson and Katia Barron
Date: January 13, 2017
Re: Proposed Changes to the Contact Lens Rule: Comments to be Placed on the Public Record

On December 15, 2016, representatives of the American Optometric Association (“AOA”) met with Chairwoman Edith Ramirez and FTC staff¹ regarding a Notice of Proposed Rulemaking (“NPRM”) regarding 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); and Kara Webb (Associate Director for Coding and Regulatory Policy).

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 December 15, 2016 meeting, the AOA 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 argued the requirement to obtain a signed acknowledgement would place a logistical burden on their members’ staffs, including an estimated thirty hours per month to discuss the acknowledgement with patients and then scan the signed acknowledgment, and could damage the doctor-patient relationship by necessitating a conversation about the doctor’s need to prove compliance with federal law. They asserted furnishing additional copies of prescriptions upon request also imposes a logistical burden on their members’ staffs, which receive approximately eight requests for copies of prescriptions per day. Lastly, the AOA representatives claimed their members’ administrative-staff turnover rate, with staff tenure averaging eleven to thirteen months, would result in a lack of necessary institutional knowledge to properly comply with the requirements.

As an alternative to obtaining a signed acknowledgment, the AOA representatives proposed that prescribers post signs setting forth the CLR’s requirements and the need for doctors to comply

¹ Also in attendance from the FTC were Chairwoman Ramirez’s Attorney Advisor Kristen Anderson, counsel from the FTC’s Office of the General Counsel Josephine Liu, and Chairwoman Ramirez’s Honors Paralegal Katia Barron.

with the CLR under federal law, which they said would mitigate the burden to AOA members and other prescribers. The AOA representatives asserted such signage would be endorsed by the AOA and could be sent to its members, and that state boards, with which the AOA collaborates, could easily check for and enforce compliance with a signage requirement.

The AOA representatives stated they would continue to educate AOA members about CLR compliance and would like to work with the FTC on this and related issues, including increasing understanding of the CLR throughout the industry.