



State of Rhode Island and Providence Plantations

HOUSE OF REPRESENTATIVES

REPRESENTATIVE BRIAN PATRICK KENNEDY *District 38*
Chairman, Committee on Corporations

January 30, 2017

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex C)
Washington, DC 200580

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

To Whom It May Concern:

In October 2015, I submitted comments to the Federal Trade Commission ("Commission") regarding the Contact Lens Rule ("CLR"). In those comments, I addressed some of the issues that I had become aware of in the contact lens industry after I had sponsored legislation in the State of Rhode Island that would protect contact lens wearers from anti-competitive pricing policies by the contact lens manufacturers. After an extensive legislative hearing on that proposal, it became very clear that some of the issues that surfaced included the lack of compliance with the requirement to automatically release contact lens prescriptions to patients, the slanted process for filing complaints that favored the eye care providers, and the interference with consumers and their ability to purchase from third party resellers.

I am pleased to read of the Commission's proposed changes to the Contact Lens Rule ("CLR") that seeks to strengthen the automatic release provision of the Fairness to Contact Lens Consumers Act ("FCLCA"). By requiring an acknowledgement of prescription release, consumers will be able to realize the full benefits of the FCLCA and the CLR, and it will provide the Commission a means to enforce the Rule.

I would encourage the Commission to continue reviewing its complaint process to be as simple and understandable as possible for consumers. The anti-competitive nature of the contact lens industry demands that more be done in order to protect consumer interests from the natural conflict of interest that exists in the industry. By simplifying complaints, the Commission could ease the consumer experiences in an industry that was found to be, "anticompetitive, partly because eye-care professionals prescribe, and often sell, brand-specific contact- lenses. It noted that "[i]n almost no other medical context does the prescriber of a medical device have the power to control both the brand the patient must use and also sell the particular medical device in the same breath."¹ 1 Language from *Johnson and Johnson v. Sean Reyes*, (December 19, 2016) (Nos. 15-4071, 15-4072 & 15-4073 (D.C. Nos. 2:15-CV-00252-DB, 2:15-CV-00257-DB, 2:15-CV-00259-DB) (D. Utah)

As you move forward with the final Rule, I thank you for this opportunity to offer comments on this important issue.

Sincerely, /

Brian Patrick Kennedy
State Representative
Speaker Pro Tempore