

Contact Lens Rule
16 CFR Part 315
Project No. R511995
Comments of the Attorneys General of 20 States

Attorney General Thomas J. Miller of Iowa and Attorney General Eric T. Schneiderman of New York, on behalf of the Attorneys General of Alabama, Delaware, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont and Virginia provide comments in support of proposed amendments to the Contact Lens Rule.

We write in support of the Commission's proposed amendments to the Contact Lens Rule to require that prescribers of contact lenses obtain a signed acknowledgment from the patient after releasing a contact lens prescription to a patient and maintain that acknowledgment for a period of not less than three years.

The States have been interested in the Contact Lens Rule from the beginning. Early on, we commented on the FTC's proposed Spectacle Prescription Release rule urging that the protections there should be extended to contact lenses. In 1997, thirty-two states brought an antitrust action against optometrists for manipulating the market in contact lenses, resulting in a 2001 groundbreaking settlement in which several manufacturers agreed to provide contact lenses to sellers not owned by prescribers. In 2002, thirty-nine Attorneys General wrote in support of H.R. 2663, the Contact Lens Prescription Release Act of 2001. In 2003, Attorneys General wrote and testified in support of the Fairness to Contact Lens Consumers Act, by which Congress extended the protections for contact lens wearers. We are proud of our activities which, we believe, have resulted in significant benefit to consumers. It is in this context that we comment on the proposed changes to the Contact Lens Rule.

Section 315.3(a)(1) of the Rule currently requires a prescriber to provide a copy of the contact lens prescription to the patient after completing a contact lens fitting, regardless of whether it was requested by the patient. This provision, referred to as automatic prescription release, tracked the Fairness to Contact Lens Consumers Act ("FCLCA"), 15 U.S.C. § 7601(a)(1), directly and was intended to empower consumers to comparison shop for contact lenses, and to spur more competition and innovation among contact lens sellers and manufacturers. We believe that the provision has had the desired impact. Many more consumers are now aware of their right to obtain a written prescription, and many are able to take those prescriptions to the contact lens seller of their choice.

However, though the provision has been widely accepted and used, it is clear that more can be done to further the goals of the FCLCA. The States are aware, from their enforcement efforts and collective experience, that not all patients receive their prescription in writing as a

matter of course. It is equally clear that not all are aware of their right to be provided a prescription which can be filled by any contact lens dealer-- not only by their eye care provider. Moreover, some consumers have reported to the States that certain prescribers do not issue prescriptions for the minimum length of time required by the States' statutes or the FTC's rules. In short, the States' experience is consistent with the information the FTC received through its solicitation of comments regarding its initial review of the Contact Lens Rule. More can be done both to educate consumers of their rights regarding their contact lens prescriptions and to ensure that prescribers are complying with the appropriate laws and regulations governing those prescriptions.

Given the States' experience, we support the Commission's proposal to add a signed acknowledgment requirement. The addition of this requirement will inform patients of their right to their prescriptions, increase the number of patients who receive their prescriptions and, consequently, increase the number of purchases which will be made with initial presentations of complete and valid prescriptions. Moreover, the increased distribution of prescriptions would help educate consumers regarding the various statutes and regulations that govern their prescriptions and ensure that providers are issuing prescriptions for an appropriate period of time. Additionally, the requirement that the provider maintain a record of acknowledgments for a period of three years will significantly improve the likelihood that a copy of the prescription will be released to the consumer, and will enable the FTC to determine whether prescribers are complying with their obligations under the law. Because of the use of electronic medical records, this added acknowledgement requirement is a balanced approach which will not unduly burden the provider. Although not mandated under the current proposed rule, we also encourage increased use of the patient portal as a means to transmit and record the patients' prescription.

We also support the clarification of Section 315.3(a)(1) to specify that a prescriber must provide additional copies of contact lens prescriptions to patients, or their agents, including sellers of contact lenses, upon request. The amendment will clarify and support the intent of the rule to make it easier for contact lens sellers to obtain authentic and valid prescriptions from consumers or from prescribers, thereby enhancing the ability of consumers to obtain contact lenses from any seller they choose. We think this change will reinforce the intent of both the Act and the Rule.

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