

Contact Lens Rule

16 CFR 315

Comments of the Attorneys General of 27 Attorneys General

We, the undersigned Attorneys General, provide comments in support of the Commission's proposed modifications to the Contact Lens Rule (CLR) published on May 28, 2019 in the Supplemental Notice of Proposed Rulemaking (SNPRM). The proposed modifications in the SNPRM further the goals of the CLR by providing the consumer with the knowledge of their rights so they may make informed decisions in the marketplace. The modifications also strengthen the Commission's ability to verify compliance with the CLR. Increased compliance with the CLR ensures more contact lens-consumers have the necessary information to make informed decisions, spurring competition and consumer choice.

The Attorneys General have advocated for better protections for contact lens-consumers for decades. In 1978, the Commission promulgated the Eyeglass Rule which compelled prescribers to provide eyeglass-consumers with their eyeglass prescriptions; however, that rule did not include the same protections for contact lens-consumers. Attorneys General provided comments and urged the Commission to extend the same protections enjoyed by eyeglass-consumers to contact lens-consumers. Two decades later, thirty-two states reached a groundbreaking antitrust settlement when several contact lens manufacturers agreed to provide contact lenses to sellers not owned by prescribers. Recognizing the importance of providing protections to contact lens-consumers, thirty-nine Attorneys General wrote and testified in support of the passage of the Fairness to Contact Lens Consumers Act (FCLCA), which would extend protections to contact lens-consumers. In 2003, Congress enacted the FCLCA and the Commission promulgated the CLR in 2004 pursuant to that Act. The CLR ensures fair and open competition in the contact lens marketplace by requiring prescribers who complete a contact lens fitting to provide patients with a copy of the patient's prescription. The CLR also stipulates the process that prescribers must follow to accurately provide prescriptions to third-party sellers. The Attorneys General continue to support the CLR and recognize the significant benefits the Rule has had for consumers.

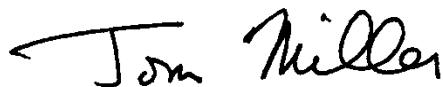
Section 315.3(a)(1) of the CLR, which came directly from the FCLCA provision 15 U.S.C. § 7601(a)(1), mandates that a prescriber who completes a contact lens fitting shall automatically provide the patient with a copy of the patient's prescription, regardless of whether the patient requested it from the prescriber. This provision, referred to by the Commission as the Confirmation of Prescription Release (CPR), was intended to equip the patient with the necessary information to shop for contact lenses on the open contact lens marketplace. This information empowers consumers to comparison shop for the preferred contact lenses of their choice. We believe this provision has positively impacted consumers. More consumers know of their right to access their prescription and, as a result, those consumers are better equipped to make informed decisions in the marketplace.

The proposed modifications in the SNPRM to the CPR provide additional benefits to consumers. The modifications provide consumers with four options to receive their CPR: three

options allow the consumer to receive a paper copy and a fourth option allows the consumer to receive a digital copy. The consumer can receive their digital copy through an online portal, electronic mail, or text message. Similarly, a proposed modification would permit a prescriber to send a digital copy of the prescription to the patient, instead of a paper copy, with the patient's verifiable affirmative consent. Digital access to the CPR makes it easier for the consumer to obtain and verify their own records, thereby enhancing the ability of consumers to obtain contact lenses from any seller they choose. We continue to support the provision of the CLR which requires the prescriber to provide additional copies of a patient's contact lens prescriptions upon the request of the patient or the patient's agent. This provision increases the likelihood that patients will have access to their prescriptions, thereby furthering the intent of the Rule and the Act.

While the proposed modifications are a step in the right direction, more can be done to ensure compliance with the CLR. Consumers continue to report to the States that some prescribers fail to automatically provide patient prescriptions in writing. Similarly, the Commission estimates 56-65% of patients do not receive their prescriptions automatically. States also receive reports that some prescribers issue prescriptions for less than the minimum length of time required by State statutes or the Commission's rules. More must be done to educate consumers on their rights, including their right to have any contact lens dealer provide their prescription—not only their eye care provider.

The Attorneys General remain committed to educating consumers of their rights, and we urge the Commission to continue its commitment. We will continue to protect the rights of consumers by supporting the CLR, and we urge the Commission to continue its enforcement efforts of the CLR. We believe the proposed modifications in the SNPRM are reasonable modifications that balance the interests of consumers, eye care professionals, and the eye care industry.



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Iowa Attorney General



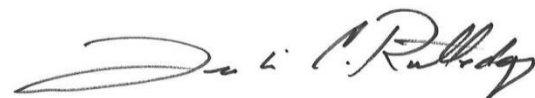
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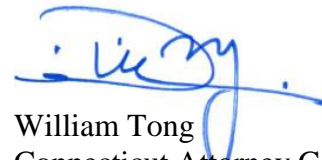
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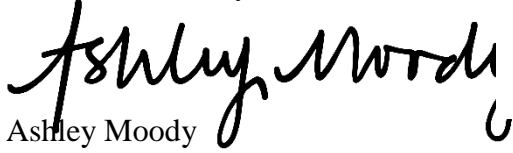
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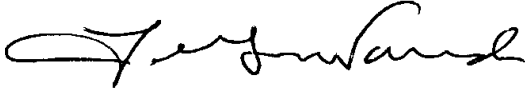
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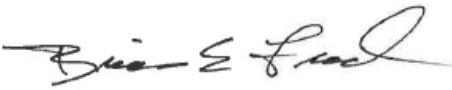
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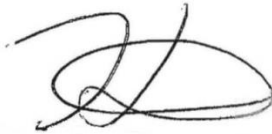
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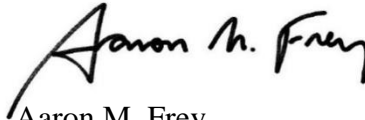
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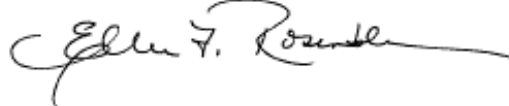
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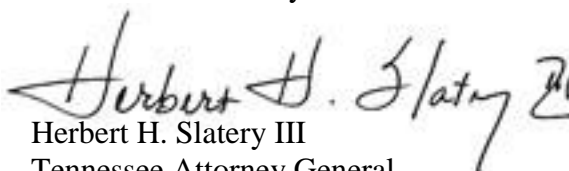
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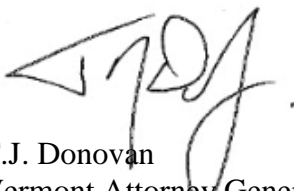
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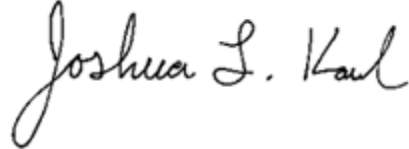
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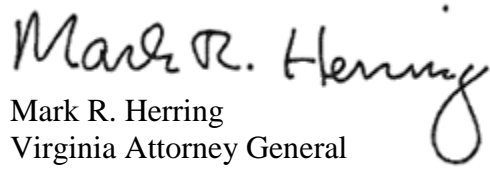
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