

Congress of the United States
Washington, DC 20515

27 July 2018

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580-0001

Dear Chairman Simons:

As you are aware, the Federal Trade Commission (FTC) plays an important role in overseeing and enforcing key provisions of the 2003 Fairness to Contact Lens Consumers Act (FCLCA), including the requirement that third-party sellers verify each prescription with a patient's eye doctor and that eye doctors provide all patients with a copy of their contact lens prescription upon completion of the fitting.

After concluding its scheduled 10-year review of the regulations implementing the FCLCA, the FTC issued a proposed rule change in late 2016, which, rather than addressing increasing reports of illegal contact lens sales, would require that eye doctors obtain from each contact lens patient a signed acknowledgement form certifying that their doctor provided them with a copy of their contact lens prescription. Eye doctors would then be required to retain these documents for at least three years to aid in future federal investigations. The proposal is expected to add additional administrative costs of \$18,000 per doctor, per year.

While the FTC asserts that the new proposal is needed because it believes that eye doctors are not following the law, 2017 Freedom of Information Act data shows that, out of the roughly 200 million prescriptions issued between 2011 and 2016, only 309 complaints regarding prescription release were lodged with the FTC. While we believe that every complaint should be taken seriously and that eye doctors found to be in violation of the law should be punished, we also believe that the FTC should instead consider a less burdensome and more effective strategy aimed at ensuring doctor compliance and informing patients of their right under the law. One such alternative is to follow the California example.

In 2015, the State of California examined this same issue and, instead of imposing a new paperwork requirement, passed a law (California Code of Regulations, Title 18, sections 1566 and 1566.1) requiring that eye doctors conspicuously post a sign informing patients of their right to a copy of their prescription and informing them of where and how to file a complaint if they feel these rights have been violated. An independent survey of California residents found that 97 percent of California contact lens wearers think the law makes patients more aware of their rights and 88 percent believe the law is the best way to make sure contact lens wearers are as informed as possible about their contact lens purchasing options. Further, the National Consumers League, a leading consumer advocate, has urged the FTC to withdraw its paperwork proposal and instead consider mirroring the more efficient and effective California contact lens signage model.

While we believe that requiring this signage will be good for patients, we are concerned that the FTC proposal fails to address its other FCLCA obligations to protect patient health and safety by fighting illegal sales of contact lenses, including filling of expired prescriptions and filling of prescriptions with devices

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other than what was prescribed. To this day, websites openly advertise “no prescription needed” and “skip the trip to the eye doctor” even though contact lenses are federally-recognized Class II and Class III medical devices that require an eye doctor’s prescription because they present a moderate to high risk of illness or injury. That’s why eye doctors (both optometrist and ophthalmologists), the U.S. Food and Drug Administration, and the U.S. Centers for Disease Control and Prevention agree that the key to keeping contact lens wearers safe and healthy is to support the doctor-patient relationship, rather than to have it undermined through illegal sales.

As the FTC moves closer to finalizing its proposal, we would encourage the Commission to continue to work to consider requiring the posting of signage instead of imposing a new paperwork requirement on doctors and patients. Further, we would encourage the FTC to focus on factors of illegal contact lens sales, which can pose a serious threat to patient health and safety.

Sincerely,



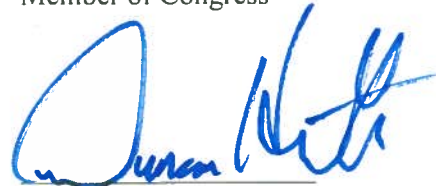
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