

Congress of the United States

Washington, D.C. 20515

September 17, 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 Fairness to Contact Lens Consumers Act (FCLCA), including the requirements 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 contact lens fitting.

After concluding its scheduled 10-year review of the regulations implementing the FCLCA, the FTC issued a proposed rule change, which, rather than addressing serious 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 had provided them with a copy of their contact lens prescription. According to 2017 Freedom of Information Act data, the FTC received a total of 309 consumer complaints out of roughly 200 million prescriptions issued between 2011 and 2016. 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 more effective strategy aimed at ensuring maximum doctor compliance and that patients are fully aware of their rights 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 effective California contact lens signage model.

At the same time, we are concerned that the FTC proposal fails to address its other obligations under the FCLCA aimed at protecting patient health and safety by fighting illegal sales of contact lenses, including filling of expired prescriptions and filling of prescriptions with devices other than what was prescribed. Currently, dozens of websites 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 optometrists 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 encourage the Commission to consider requiring the posting of signage instead of imposing a new paperwork requirement on doctors and patients. Further, we encourage the FTC to devote more time and resources to combatting illegal contact lens sales, which can pose a serious threat to patient health and safety.


Sincerely,


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Member of Congress


LUCILLE ROYBAL-ALLARD
Member of Congress


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