California Academy of Eye Physicians & Surgeons

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January 29, 2017

Maureen K. Ohlhausen
Acting Chairman
Federal Trade Commission (FTC)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: ***FTC-2016-0098-0001***

Dear Acting Chairman Ohlhausen:

On behalf of the California Academy of Eye Physicians and Surgeons, which represents the interests of the approximately 2,000 ophthalmologists practicing in our state, I am writing to provide comments to your agency regarding "Contact Lens Rule, 16 CFR part 315, Project No. R511995."

Contact lenses are – first and foremost – medical devices regulated by the Food and Drug Administration, and are prescription items for good reason. As an ophthalmologist and corneal specialist myself, I am fully aware of their significant potential to cause ocular harm – up to and including blindness – and have treated many patients who have suffered severe ocular injuries from misuse and failure to seek appropriate follow-up and emergency care.

We share the Commission's apparent view that unreasonable barriers to a patient's ability to receive properly prescribed and managed contact lenses in a safe manner and at the lowest reasonable cost should be minimized. However, we are very concerned that the administrative responsibilities that above-referenced proposed regulation would impose on prescribers would do nothing to further those goals, making carrying them out an unreasonable burden.

We fail to see how having prescribers retain a signed sheet of paper in a chart will help the FTC in its enforcement activities. Those who ***do*** give the patient a prescription – which at this point we believe is happening in the vast majority of cases given your ***existing*** rule on this matter – will be wasting their time as they are compliant. The remaining small fraction of situations become obvious by the fact that the patient can complain to you that they were not given a prescription and the relevant ***chart can reasonably be audited to confirm***.

Furthermore, the online retailers from whom a consumer might obtain lenses and whose concerns likely led to your proposal are not "shy" about informing the small number of consumers who might not receive a prescription of their rights.

Since we are writing, we also believe you should consider changes to extend the amount of time a prescriber is permitted to respond to a request for verification. The existing 8-hour rule, after which a prescription proffered by a patient is "deemed" valid, likely results in far more harm to patients from improper dispensing (and therefore potential for ocular damage).

We therefore respectfully ask you withdraw this unneeded and burdensome proposal.

Sincerely,

Craig H. Kliger, MD
Executive Vice President