



December 20, 2022

Samuel Levine
Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Director Levine,

The American Optometric Association (AOA) represents more than 48,000 doctors of optometry, optometric professionals and optometry students. The AOA is the voice of the nation's family eye doctors and a leading authority on eye health, vision care, and patient safety issues. On a daily basis, doctors of optometry prescribe contact lenses to patients, and are essential in ensuring safe use of them. Since the enactment of the Fairness to Contact Lens Consumers Act (FCLCA) in December 2003 and the finalization of the Contact Lens Rule in July 2004, the AOA has educated our members on the requirements of each and has guided our members and the public to report violations of them.

The Contact Lens Rule requires that doctors who receive requests for additional copies of contact lens prescriptions from anyone who is designated to act on behalf of the patient, including contact lens sellers, respond within forty business hours. The AOA seeks FTC clarification on one aspect of this requirement. We understand that certain contact lens sellers request patient authorization to obtain a copy of the patient's prescription when the patient makes an initial order. (Appendix A) According to AOA members, one contact lens retailer will often wait several months after patient authorization has been obtained before reaching out to the physician on behalf of the patient. In one specific case, the retailer's request for a copy of the contact lens prescription was not received by the doctor of optometry until after the patient had received LASIK surgery and no longer wore contact lenses. We are concerned that some retailers are seeking copies of prescriptions close to their expiration date so that they can sell additional lenses to the patient after the original prescription expires.

The AOA believes the authorization to act as the patient's agent should expire after a reasonable and specific amount of time. To conform with health care precedent, the expiration date could model Health Insurance Portability and Accountability Act of 1996 (HIPAA) Rules. The HIPAA Privacy Rule requires that an "authorization contain either an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure....An Authorization remains valid until its expiration date or event, unless effectively revoked in writing by the individual before that date or event."¹ We recommend that FTC establish a rule whereby the authorization to act on behalf of the patient remains valid for no longer than 90 days. In health care, there are numerous state governments, hospital systems and private

¹ <https://www.hhs.gov/hipaa/for-professionals/faq/476/must-an-authorization-include-an-expiration-date/index.html>

businesses who limit authorizations for health information disclosures to 90 days.^{2,3,4,5,6,7,8,9,10} We believe this is a reasonable timeframe to honor the patient's request. We also recommend that FTC require retailers to disclose when authorization was received to serve as the patient's agent.

We would welcome the opportunity to further discuss this policy issue and urge the agency to issue guidance for sellers related to the validity of patient authorizations. If additional information is needed, or to schedule a meeting to discuss this issue, please contact Kara Webb at kcwebb@aoa.org

Sincerely,



Robert Layman, O.D.
President, American Optometric Association

² <https://www.chfs.ky.gov/agencies/dCBS/dafm/Documents/chfs305fillable.pdf>

³ <https://neurocenter.com/wp-content/uploads/2020/11/Medical-Records-Release-2020.pdf>

⁴ <https://goodsamsanjose.com/util/forms/GSHO-PHI-Release-English.pdf>

⁵ <https://uhs.princeton.edu/sites/uhs/files/Health-Record-Release-Medical-Services.pdf>

⁶ <https://www.nova.edu/healthcare/forms/pharmacy-clinic-form.pdf>

⁷ https://shoremedicalcenter.org/files/form_7181_300__111411_authorization_to_use_and_disclose_phi.pdf

⁸ <https://www.tgh.org/-/media/files/authorization-to-disclose-health-information-form.pdf?rev=b6dfbaa88e47433c90048cb50ccef4f3&hash=95D44118C9B51E4E6CFC273A606F5F16>

⁹ <https://www.lahey.org/lhmc/wp-content/uploads/sites/2/2019/02/Auth-for-Use-or-Disclosure-of-Medical-Record-Information.pdf>

¹⁰ <https://www.rush.edu/sites/default/files/2020-09/phi-release.pdf>

Appendix A

Enter your prescription



You can find your prescription on the side of your box.

Right Eye (OD)	Left Eye (OS)
Power/Sphere	 Add Left Eye
BC	
DIA 14.0	

Give 1-800 Contacts permission to obtain a copy of your prescription to verify future orders. That way we can ship your contacts even faster.