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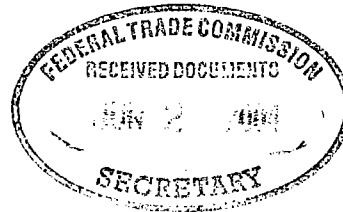
June 1, 2004

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**SENT VIA FEDERAL EXPRESS**

FEDERAL TRADE COMMISSION  
Office of the Secretary  
Room H-159 (Annex L)  
600 Pennsylvania Avenue N.W.  
Washington, DC 20580

**RE: Contact Lens Study Project No. V040010 - Comments of the California Optometric Association**

Dear Ladies and Gentlemen:

The California Optometric Association (hereafter "COA") appreciates the opportunity to comment on Questions 29 and 30 the Commission's request for public comment regarding the Fairness to Contact Lens Consumers Act 15 U.S.C. §§ 7601 et seq.

California consumers obtain contact lenses from a variety of providers in the marketplace, and the California contact lens market is an active, competitive market as is set forth in COA's response to Questions 29 and 30 which are repeated for convenience.

**29. Do state licensing requirements affect out-of-state sellers' abilities to compete with in-state sellers or prescribers for the sale of prescription contact lenses?**

California law does not affect the ability of out-of-state sellers to compete with in-state sellers or prescribers in the sale of prescription contact lenses. The California Non-Resident Contact Lens Statute<sup>1</sup> requires out-of-state sellers of contact lenses to register with the Division of Licensing of the Medical Board of California.

The Act limits the activity of out-of-state sellers to providing replacement contact lenses.

<sup>1</sup> Business & Professions Code § 2546, et seq.

In order to qualify for registration, an out-of-state seller must meet basic and non-intrusive requirements including the following: the seller must be in good standing in the state where its business is located and from which the lenses are sold; the seller must comply with requests for information made by the medical board; must maintain records of contact lenses shipped, mailed or delivered to patients in California for a period of at least three years; must provide a toll free telephone service for responding to patient questions and complaints during the applicants regular hours of operation but in no event less than six days per week and 40 hours per week; provide a notice to consumers advising them to contact an eye care practitioner in the event of discomfort or other visual problem; provide a toll free number, facsimile line and electronic mail address for the use of prescribers in confirming contact lens prescriptions.

Additionally, California law requires that contact lenses may be sold by mail only upon receipt of a current prescription and, lastly, a certificate of registration as a non-resident contact lens seller may be denied, suspended or revoked or otherwise subject to discipline for incompetence, gross negligence, dishonesty or fraud.

The California statute contains provisions that have already been brought to the Commission's attention through COA's comments on the proposed ophthalmic practice rules and will not be repeated except to reiterate that the California statute was, COA believes, the model for the "Fairness to Contact Lens Consumers Act."

The registration requirements for non-resident contact lens sellers are reasonable, non-intrusive, and provide a level of regulation for the non-resident sellers that is no more severe than requirements that are placed on in-state sellers or prescribers of contact lenses. In that regard, the Medical Practice Act<sup>2</sup>, the Optometric Practice Act<sup>3</sup> and California laws pertaining to registered dispensing opticians<sup>4</sup> and pharmacists<sup>5</sup> would all be applicable to in-state sellers in these disciplines.

**30. What role do state licensing requirements applicable to sellers of contact lenses play in protecting consumers?**

The California statute set forth above protects consumers in dealings with out-of-state contact lens sellers by providing accountability on the part of the out-of-state sellers. By obtaining a license, the out-of-state seller is subjecting itself to the jurisdiction of the Medical Board of California, and agreeing to abide by the reasonable requirements that the law requires for certification. Maintaining a 1-800 number through which consumers can communicate with the out-of-state seller, maintaining records of sales in California for a period of three years, agreeing to comply with all directives and requests for information made by the Board, providing

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<sup>2</sup> Business & Professions Code § 2000, et seq.

<sup>3</sup> Business & Professions Code § 3000, et seq.

<sup>4</sup> Business & Professions Code § 2550, et seq.

<sup>5</sup> Business & Professions Code § 4000, et seq.

FEDERAL TRADE COMMISSION

June 1, 2004

Page 3

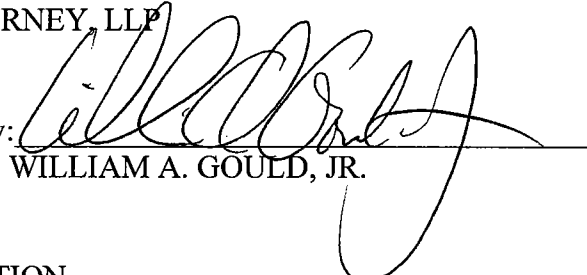
directions for medical involvement in the event of the onset of vision problems as a result of the contact lenses are all reasonable consumer safeguards.

The sale of replacement contact lenses in California is competitive and, in the opinion of COA, there is no evidence that the California regulatory scheme has had any adverse affect on any purveyors of replacement contacts. As stated in California State Board of Optometry v. FTC 910 F2d 976, the regulation of health care is primarily a responsibility of the states. California statutes regulating the sale of replacement contact lenses are in furtherance of that responsibility.

Respectfully submitted,

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WAG:cas

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