

Fairness to Contact Lens Consumers Act (FCLCA)

1. Does a patient have to request a copy of their contact lens prescription?

NO. You must automatically give the patient a copy of their contact lens prescription whether or not the patient requests it. This is the same as the long-existing Federal Trade Commission (FTC) Eyeglasses Rule.

2. When do I give the patient a copy of the patient's contact lens prescription?

The patient is entitled to a copy of the contact lens prescription when you complete a contact lens fitting for the patient. This is the point when you should give the patient a copy of the contact lens prescription. A contact lens fitting is defined by Section 11 of the FCLCA to mean the process beginning after your initial eye examination of the patient and ending when a successful fit has been achieved or, in the case of a renewal prescription, ending when you determine that no change in prescription is required. The fitting process may include an examination to determine lens specifications, an initial evaluation of the fit of the lens on the eye (but not for a renewal of a prescription), and any medically necessary follow-up examinations.

3. Can I charge a patient a fee for providing them with a copy of their contact lens prescription or for verifying a contact lens prescription to a seller?

NO. You cannot charge such a fee.

4. Can I refuse to give the patient a copy of the patient's contact lens prescription if the patient does not pay for their eye examination, fitting, and evaluation, and I require such immediate payment of all patients, even if their examination reveals no need for contact lenses or any other ophthalmic goods?

YES. Section 3 of the FCLCA allows that under this limited circumstance you may refuse to give a patient a copy of their contact lens prescription. However, a patient cannot be denied a copy of their contact lens prescription just on the basis that the patient owes a past debt to the practice - it has to be based on a failure to pay for the current eye examination, fitting, and evaluation, and you have to require all patients to make such immediate payment, even those who do not need ophthalmic goods of any kind. And if the patient presents proof of insurance coverage for the service rendered, that constitutes an immediate payment and the patient must be given a copy of the patient's contact lens prescription.

5. Will the FTC fine me if I fail to verify a contact lens prescription to a seller?

NO. The FCLCA states that a prescriber "shall, as directed by any person designated to act on behalf of the patient provide or verify the contact lens prescription by electronic or other means." If a prescriber fails to communicate with a seller within eight (8) business hours, or a similar time frame as defined by the Federal Trade Commission, after receiving from the seller a verification request, the consequence is that the seller will be able to sell the patient the contact lenses. You cannot be fined by the FTC for allowing the eight (8) business hours to elapse. That is a verification event for which no fine can be imposed.

6. Am I liable for the seller giving the patient incorrect contact lenses?

NO. You are not liable for the ophthalmic goods and services dispensed by another seller pursuant to your correctly verified prescription. Section 7 of the FCLCA specifically exempts you from such liability. However, you would be liable to potential malpractice lawsuits if you incorrectly verify a prescription, or if you knowingly fail to correct an incorrect prescription that causes harm to your patient.

7. Can I have a patient sign a waiver of my liability for the accuracy of my eye examination?

NO. Under Section 7 of the FCLCA, you can neither require a patient to sign such a liability waiver, nor place such a liability waiver on any contact lens prescription, nor deliver any such liability waiver form to a patient.

8. Can I have a patient sign a waiver or release of any kind as a condition of verifying or releasing the patient's contact lens prescription?

NO. Under Section 2 of the FCLCA, you cannot require the patient to sign a waiver or release of any kind as a condition of verifying or releasing the patient's contact lens prescription.

9. Can I require a patient to purchase contact lenses from me or another person as a condition of providing a copy of the patient's contact lens prescription or verifying a patient's contact lens prescription?

NO. You cannot require a patient to purchase contact lenses from you or another person as a condition of providing a copy of the patient's contact lens prescription or verifying a patient's contact lens prescription.

10. What is the expiration date for a contact lens prescription?

Section 5 of the FCLCA sets a 1- (one-) year expiration date for contact lens prescriptions, unless a state law sets a longer expiration date. If you have a valid medical reason with respect to the ocular health of the patient, you may set an expiration date shorter than 1 (one) year. Such medical reasons would need to be well documented in the patient's record.

11. Can a seller dispense lenses if I verify that the contact lens prescription is expired, inaccurate, or otherwise invalid?

NO. The seller can be fined by the FTC up to \$11,000 per incident for filling a contact lens prescription that you have verified as being expired, inaccurate, or otherwise invalid. However, if the prescription communicated to you by the seller is inaccurate, you must correct it.

12. Can the FTC fine me as the doctor for anything?

YES. You are subject to the same potential FTC fines of up to \$11,000 per incident if you fail to obey the provisions of the FCLCA. However, you cannot be fined merely because you allow 8 or more business hours to elapse in the contact lens prescription verification process. That is not an event that triggers any FTC penalty for you as the doctor.

Sample recommended "New Patient Information" and "Contact Lens Prescription" forms are available from the Mississippi State Board Office and the American Optometric Association web site.