



BUREAU OF
CONSUMER PROTECTION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

COMMISSION DOCUMENTS
P 874683

May 14, 1987

The Honorable John A. Lynch
Majority Leader
New Jersey Senate
96 Bayard Street
New Brunswick, New Jersey 08901

Dear Mr. Lynch:

We are pleased to respond to your request for comments¹ on proposed Senate Bill No. 1367, which would permit opticians to fit² contact lenses provided that they first obtain certification as contact lens dispensers from the state board of opticians.³ While we express no specific opinion on the need for the proposed certification program, we do believe that allowing opticians to fit contact lenses is likely to benefit consumers by increasing competition and lowering prices for contact fitting services, without impairing the quality of eye care. We therefore support that portion of the bill.

The Federal Trade Commission is charged with maintaining competition and protecting consumers from restraints of trade.⁴ In accordance with this role, the Commission seeks to encourage competition among licensed professionals, including, among others, opticians and optometrists. The Commission's goal is to assist the states in identifying and removing restrictions that limit competition and increase costs without improving the quality of care or providing other countervailing consumer benefits.

¹ These comments represent the views of the Commission's Bureau of Consumer Protection, Economics, and Competition, and do not necessarily represent the views of the Commission itself. The Commission has, however, voted to authorize us to submit these comments to you.

² The process of fitting contact lenses includes taking measurements to determine the size, shape and specifications of contact lenses and adjusting the contact lenses to the patient's eyes.

³ The bill creates standards for such certification, including additional educational requirements.

⁴ See 15 U.S.C. §41 et. seq.

We believe that a restriction preventing opticians, regardless of their qualifications, from fitting contact lenses may have this effect. Such a restriction presently exists in New Jersey. Opticians are prohibited from fitting contact lenses, which can only be done by optometrists and ophthalmologists. This law clearly limits competition among members of these groups, and, in consequence, is likely to increase prices and decrease the availability of contact lens fitting services.⁵ Allowing opticians to enter this market can be expected to force all types of providers of contact lens fitting services, including optometrists and ophthalmologists, to lower their prices.

We believe that such competition is unlikely to have any adverse effects on the quality of eye care provided to consumers. A 1983 FTC staff study ("Contact Lens Study"), which was designed to examine whether bans on contact lens fitting by opticians are necessary to protect the public, supports this conclusion.⁶ The study examined the quality of cosmetic⁷ contact lens fitting among four types of eye care providers: opticians,⁸ private

⁵ This conclusion about the relationship between price and restrictions on competition is supported generally by economic analysis and by numerous studies. See, e.g., Bureau of Economics, Federal Trade Commission, *Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry* (1980).

⁶ Bureau of Consumer Protection and Economics, Federal Trade Commission, *A Comparative Analysis of Cosmetic Contact Lens Fitting by Ophthalmologists, Optometrists and Opticians* (1983). A copy of this report is attached.

⁷ The Contact Lens Study covered only cosmetic contact lenses -- lenses which are worn as an alternative to eyeglasses in correcting vision. It did not cover therapeutic lenses, which may be required for various medical reasons other than the simple correction of vision, such as for cataract surgery patients. The study also did not cover types of lenses which have only recently become available, such as extended wear lenses. Therefore, the study provides no evidence indicating that opticians can fit such lenses as well as other providers. On the other hand, we know of no evidence that opticians generally provide lower quality fitting of these lenses.

⁸ The opticians included in the study were permitted, under the laws of their states, to fit contact lenses.

optometrists, commercial optometrists⁹ and ophthalmologists. The study found that there was no significant difference in the quality of cosmetic contact lens fitting performed by the different classes of providers.¹⁰

The survey was carried out with the assistance of the major eye care professional organizations -- the American Academy of Ophthalmology, the American Optometric Association, and the Opticians Association of America. The association representatives agreed upon the appropriate procedures to use and standards to apply in examining the eyes of the study subjects. The study included over 500 cosmetic contact lens wearers located in 18 urban areas across the country.

All of the survey subjects had been fitted with contact lenses within the preceding three years and were still wearing them. An ophthalmologist, an optometrist, and an optician examined the subjects for the presence of seven potentially pathological conditions that are commonly associated with improper contact lens fitting. The procedures closely resembled those used by contact lens fitters to perform "follow-up" evaluations of their patients. The findings of the examiners for each of the seven conditions for each eye were used to create a summary quality score for each subject, which indicated the overall health of the subject's eyes. The study also examined the presence or absence of each of the seven eye conditions individually. Expert statistical consultants and the FTC staff, including economists with extensive expertise in survey research and analysis, then analyzed the study data.

The findings of the study indicate that restrictions on contact lens fitting by qualified opticians appear to be unnecessary to protect the public. The study found that the quality of cosmetic contact lens fitting provided by opticians was comparable to that provided by ophthalmologists and optometrists. We are aware of no reliable contrary evidence indicating that restrictions on contact lens fitting by opticians benefit consumers. Consequently, these restrictions are likely to result in consumer injury by reducing competition without providing countervailing consumer benefits.

⁹ Commercial optometrists included those who were associated with chain optical firms, used trade names or practiced in commercial locations.

¹⁰ The study also examined the prices of cosmetic contact lens fitting services and found that there was a wide range in prices. On average, ophthalmologists charged the highest prices, opticians and non-commercial optometrists the next highest prices, and commercial optometrists the lowest.

As to licensing and certification, the Contact Lens Study included opticians both from states that do and do not license opticians, but the data has not been analyzed to determine whether unlicensed opticians can fit contact lenses as well as licensed opticians. We express no opinion as to the need for the bill's certification requirements, but would like to raise two points that may be helpful in your deliberations. First, any licensing or state certification requirements will necessarily limit competition by restricting entry. We suggest careful examination of the proposed requirements to ensure that they go no further than necessary to ensure quality of care.

Second, you may wish to consider whether the statutory certification requirements are as precise and specific as possible, or whether they instead vest unnecessary discretion in the certifying board. For example, a certification standard that requires "completion of any educational programs required by the board," may not provide sufficient guidance to the board respecting what types of programs the legislature has in mind. Anticompetitive consequences would result if a board employed such broad language for unduly restricting entry into the profession.

In conclusion, we believe removing the current prohibition against contact lens fitting by all opticians, regardless of qualification, would benefit consumers by increasing competition without producing any decrease in the quality of care. We therefore support that portion of the bill. As to licensing or certification for opticians who fit contact lenses, we suggest that you carefully assess any such requirements to ensure that they are as narrow and specific as possible.

We appreciate having had this opportunity to give you our views. Please let me know if we can provide you with any additional information, or can be of further assistance in any other way.

Sincerely,

William MacLeod

William MacLeod
Director