

Some background: At our meeting with 1-800 a few weeks ago and from continuous personal experience, sellers who do not receive a response to a contact lens verification request consider the prescription to be valid. This is called passive verification. Therefore they will sell lenses forever until the patient tries to buy lenses with parameters that are different than what is in the sellers system as being the buyer's prescription.

Utah Optometry Practice Act http://le.utah.gov/xcode/Title58/Chapter16A/C58-16a_1800010118000101.pdf

Fairness to Contact Lens Consumers Act (FCLCA) <https://www.gpo.gov/fdsys/pkg/PLAW-108publ164/pdf/PLAW-108publ164.pdf>

Considering an Rx valid if there is no response from a verification request is allowed by the FCLCA under Section 4(d).

(d) VERIFICATION EVENTS.—A prescription is verified under this

Act only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate

by direct communication with the seller.

(2) The prescriber informs the seller that the prescription

is inaccurate and provides the accurate prescription.

~~(3) The prescriber fails to communicate with the seller~~

~~within 8 business hours, or a similar time as defined by the~~

~~Federal Trade Commission, after receiving from the seller the~~

~~information described in subsection (c).~~

According to the FCLCA Section 11(3) a contact lens Rx will have an expiration date,

(3) CONTACT LENS PRESCRIPTION.—The term “contact lens prescription” means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription, including the following:

- (A) Name of the patient.
- (B) Date of examination.
- (C) Issue date and ~~expiration date~~ of prescription.
- (D) Name, postal address, telephone number, and facsimile telephone number of prescriber.
- (E) Power, material or manufacturer or both.
- (F) Base curve or appropriate designation.
- (G) Diameter, when appropriate.
- (H) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

and that date will be specified by the State in which it was written: Section 5(a)(1).

SEC. 5. EXPIRATION OF CONTACT LENS PRESCRIPTIONS.

- (a) IN GENERAL.—~~A contact lens prescription shall expire—~~
 - (1) ~~on the date specified by the law of the State in which the prescription was written,~~ if that date is one year or more after the issue date of the prescription;

(2) not less than one year after the issue date of the prescription if such State law specifies no date or a date that is less than one year after the issue date of the prescription;

or

(3) notwithstanding paragraphs (1) and (2), on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

The Utah Optometry Practice Act defines a contact lens prescription to include an expiration date as well under Definitions 58-16a-102(3)(a)(ii), and that expiration date shall be two years unless documented medical reasons require otherwise: 58-16a-102(3)(b)(ii)

(3)(a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:

(i) the commencement date of the prescription;

(ii) the base curve, power, diameter, material or brand name, and expiration date;

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which shall be two years from the commencement date, unless documented medical reasons require otherwise.

Section 58-16a-801(1)(c) says a seller needs to sell in accordance with a valid contact lens prescription.

58-16a-801 Contact lens and ophthalmic lens seller or provider.

(1) A person may sell or provide contact lenses if the person:

(a) does so in the ordinary course of trade from a permanently located and established place of business;

(b) does not perform refractions, over-refractions, or attempts to traffic upon assumed skill in testing the eye;

(c) provides all contact lenses consistent with and in accordance with a valid contact lens prescription;

Section 58-16a-501(3) says it is unlawful conduct to sell a contact lens in a manner inconsistent with Section 58-16a-801. (above)

58-16a-501 Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(1) buying, selling, or fraudulently obtaining, any optometry diploma, license, certificate, or

registration;

(2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry diploma,

license, certificate, or registration;

(3) selling or providing contact lenses or ophthalmic lenses in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling or providing the lenses is a licensed optometrist or ophthalmologist; or

Our argument is that a seller cannot sell contact lenses past 2 years from the prescription date. Whether or not a response was received from the prescriber to the seller, passive verification does not allow the seller to sell lenses past the expiration date. Passive verification does not give permission to sell for as long as the seller wants to sell or the buyer wants to buy. By law, a contact lens prescription is valid for no more than 2 years. Period.