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Opposition Testimony - Oregon SB 1576

February 8, 2016

Good afternoon, Mr. Chairman and members of the committee. My name is Dr. Carol Alexander and I am an optometrist. I've practiced optometry for over 20 years before joining Johnson & Johnson Vision Care, Inc. nine years ago. Today, I'm here on behalf of Johnson & Johnson Vision Care, Inc. to urge your opposition to SB 1576.

My testimony is about a Johnson & Johnson medical device — our line of contact lenses, perhaps best known by the brand name ACUVUE®. As a business in a competitive industry, we are constantly looking at ways to succeed and grow by supporting healthy vision and providing the best lenses at affordable prices to doctors and their patients. To help accomplish that goal, we introduced a new pricing policy in 2014, called a Unilateral Pricing Policy, or UPP.

Let me highlight the intent and outcome of our UPP:

- First, it was accompanied by a **drop in wholesale prices** on our ACUVUE® Brand products to all resellers, and most resellers have **passed those savings along to consumers** by lowering prices on ACUVUE® Brand Contact Lenses.
- Second, it allows doctor/patient conversations to **focus on eye care needs**, not special offers. Before our UPP, doctors and patients often spent valuable time talking through the many pricing deals and rebates on lenses.
- Third, it simplifies pricing on our products, so that **consumers can easily shop** and quickly see bottom line prices are not tied to rebates or other marketing gimmicks.
- And finally, it **maintains consumer choice** in the decision of where to buy their lenses. Whether online, in a store, or at a doctor's office, the choice continues to be the consumer's.

Over the last year and a half, **UPP has worked**. It has not only brought price transparency to our products but **it has lowered prices** for ACUVUE® Brand Contact Lenses for the majority of consumers. SB 1576 seeks to make unilateral pricing policies on contact lenses illegal, but it is not the answer. This legislation would interfere with our right as a manufacturer to compete in the marketplace using existing legal pricing policies.

To date, 12 states have considered legislation similar to SB 1576, and only one state – Utah, the home of 1800Contacts® – passed the legislation. The Utah legislation has been tied up in litigation since the time it was signed into law, and is now under review by the 10th Circuit Court of Appeals. As we await guidance from the courts, we welcome discussion on how to continue to improve the marketplace and ensure your constituents have access to these medical devices at affordable prices, but SB 1576 is not the answer.

Unfortunately, the reality is 1800Contacts® has not lowered their retail prices, and worse they've mischaracterized our policy. That brings us to what this bill is really about: One company seeking to increase market share at the expense of contact lens wearers. Rather than compete fairly in the marketplace, 1800Contacts® wants you to legislate an advantage for them.

Thank you, and I encourage you to oppose SB 1576.

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What is UPP?

Unilateral Pricing Policy

- A manufacturer unilaterally communicates a **minimum sales price** on their products
- The development of the policy or its content is made **without agreement** of/from resellers
- Sets a minimum price (floor price) below which the product cannot be sold or advertised
- Sellers **choose their own prices**
- If a seller chooses to price below the minimum specified in the policy, the manufacturer **will no longer sell to** the seller
- Discounts and Rebates are permitted if the final price, after the discount or rebate, remains above the prices specified in the policy
- Co-Promoting and selling with other products and services is permitted so long as the price on the products covered in the policy remain above the prices specified in the policy

®

Sony®

Tempur-Pedic®

Nikon®

Why did Johnson & Johnson Vision Care, Inc. Implement a UPP?

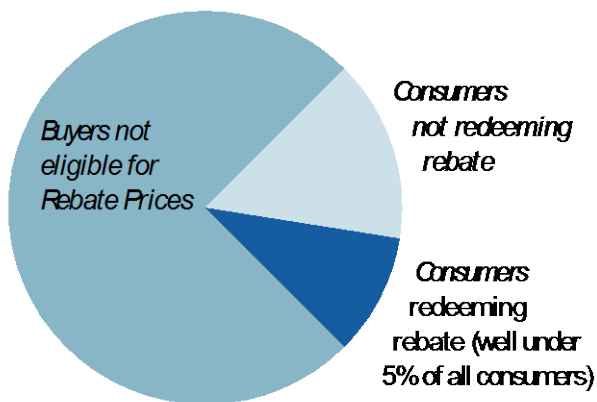
Business Goals

- **Reduce consumer prices** for 65% of consumers
- Remove rebates to enable simple and **transparent pricing for consumers**
- Improve consumer access to contact lenses, whether they are part-time wearers (who also wear glasses) or full-time wearers.

How

- Launched UPP with minimum **prices set below average** market prices
 - We believe these prices will have a “gravitational pull” in the market
- **Eliminated ineffective patient rebates** and reinvested cost savings into lower wholesale prices
- **Lowered wholesale prices** to all resellers
- Introduced **value packs**

Consumer Purchase Behavior



Rebates: Ineffective & Misleading

- Consumers are often **lured in by low advertised prices** that are based on rebate redemption, while most ACUVUE® patients (90-92%) will **never qualify** for the rebate, or **never redeem** it.
- Less than 1 of 20 people redeem rebates

1800contacts®
ACUVUE® OASYS® for ASTIGMATISM
by Johnson & Johnson
6 lenses per box
[View Details](#)

~~\$49.50 per box~~
Availability: In Stock

Now save \$64
When you buy 8 Boxes (Annual Supply)
~~\$49.50~~ \$41.50/Box after rebate

Common Internet Advertising

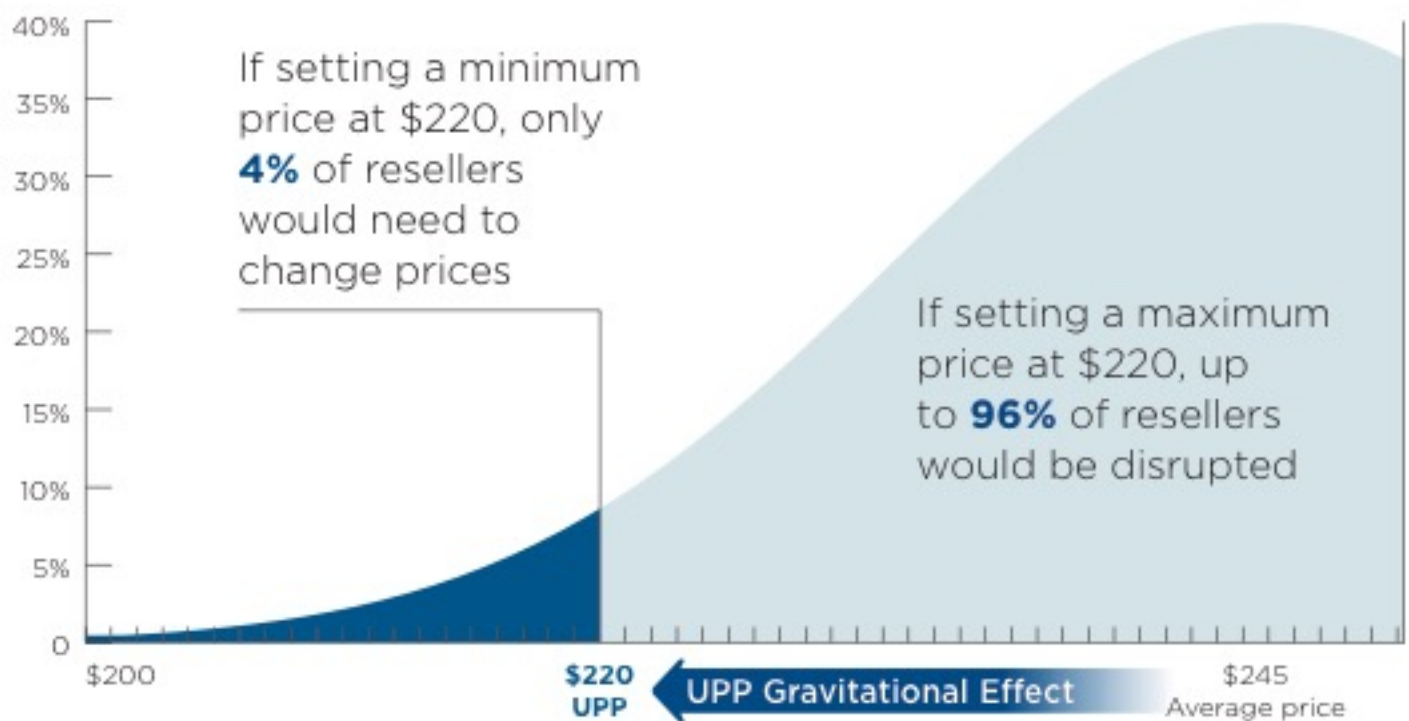
Despite \$49.50 being crossed out in this ad, it's the price for *all* patients who purchase this product on 1800Contacts.com every time they make a purchase.¹

For consumers to receive the \$41.50 per box price, they must:

- **Purchase 8 boxes**
- Complete the 1800Contacts.com **mail-in rebate**
- Wait 6-8 weeks for a rebate check

Minimum Price Versus a Maximum Price

Johnson & Johnson Vision Care, Inc. implemented a minimum price in order to minimize market disruption and expedite price stabilization



Taking a closer look...

- JJVCI made a business decision that implementing a price minimum would be advantageous to its ability to effectively compete with other manufacturers.
- JJVCI lowered wholesale prices and discontinued seldom-used rebates to improve pricing transparency to customers.
- Although setting a minimum price does prevent resellers from discounting the minimum prices in this policy, JJVCI's UPP minimum prices were set below the averages of 40,000+ resellers...and have had the effect of lowering prices for the majority of JJVCI contact lens customers.
- Under a UPP, the minimum price effectively becomes an anchor point.

UPP is a business issue.

- ➔ JJVCI made the **strategic business decision** to implement our UPP so we could more **effectively compete** with other contact lens manufacturers and at the same time reduce prices for the majority of ACUVUE® Brand wearers.
- ➔ Anti-UPP legislation would prohibit us from continuing our lawful business policy that has **reduced prices for nearly 65% of consumers** who buy ACUVUE® Brand products.
- ➔ Anti-UPP legislation is primarily supported by one online retailer that has chosen not to lower prices to consumers: 1800Contacts®.
- ➔ Our UPP did away with seldom redeemed and complicated rebates. Without rebates there is **transparency in the final price** consumers that will pay, which has revealed 1800Contacts®' prices to be equal to or even more expensive than other resellers.
- ➔ Instead of looking for ways to attract customers with new services or added value, **1800Contacts® is attempting to legislate a solution to its business** model and market share challenges.

UPPs are lawful.

- ➔ UPPs have been **permitted by the U.S. Supreme Court** since 1919 in recognition of a company's right to decide with whom it will do business and have been used by thousands of businesses, including those in the prescription eye glasses, sunglasses, electronics and smart phone industries.
- ➔ Enactment of anti-UPP state legislation creates a **dangerous precedent** because its provisions would bar practices that are common and lawful in other industries.
- ➔ A state UPP ban is **likely unenforceable** because there is no practical way of complying with the law in one state while continuing to implement our UPP in other states.

UPP is working FOR consumers.

- ➔ The results of our UPP confirm the reasons for making this business decision, because nearly 65% of consumers have seen a price reduction on ACUVUE® Brand products.
- ➔ Our UPP eliminates the seldom used and complicated mail-in rebate system in favor of built-in lower prices, which **makes prices more transparent and easier to understand.**
- ➔ Doctor/patient interactions can now be more **focused on patient vision** needs than pricing and rebates.

How Have Patient Prices Changed Since the Launch of the UPP?

An estimated **65%** of consumers are enjoying lower prices¹

- The majority of resellers are lowering their prices
- Our goal is to see 85% of consumers experience the benefits of our UPP

Consumer prices:

 decreased
  unchanged/mixed
  increased

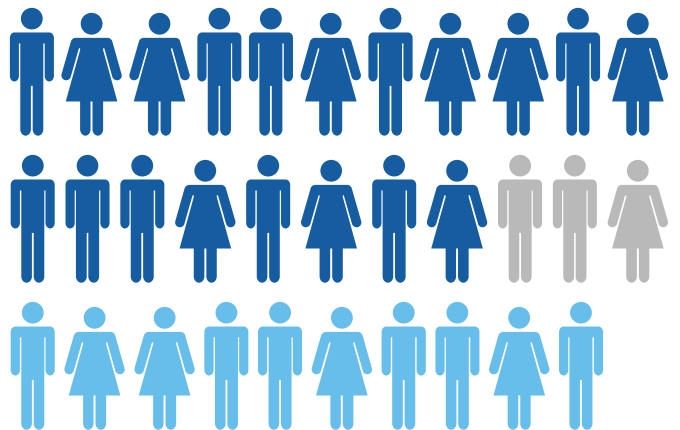
Independent ECPs - 55% of market



Internet - 13% of market



Retail - 32% of market



1800Contacts® Pricing: Pre- and Post-UPP

\$41.50 \$51.50 **24%**

1800 Contacts® Website Prices: Pre- and Post-Utah Law

In May of 2015, a new law was passed in Utah banning Unilateral Pricing Policies in that state, and allowed 1800 Contacts® to price contact lenses however they choose. However, since that time, not only have they kept prices well above our UPP minimum retail prices, but 1800 Contacts® has actually **raised their prices.**

Prices After UPP Launch¹



ACUVUE® OASYS® with HYDRACLEAR® PLUS 24 pack

by Johnson & Johnson
24 lenses per box

[View Details](#)

\$135.00 per box
Availability: In Stock

Now save \$50 When you buy 2 Boxes (Annual Supply)
~~\$136.00~~ \$110.00/Box after rebate



ACUVUE® OASYS® for PRESBYOPIA

by Johnson & Johnson
6 lenses per box

[View Details](#)

\$50.00 per box
Availability: In Stock

Now save \$80 When you buy 8 Boxes (Annual Supply)
~~\$60.00~~ \$40.00/Box after rebate



1-DAY ACUVUE® MOIST® 90 pack

by Johnson & Johnson
90 lenses per box

[View Details](#)

\$69.75 per box
Availability: In Stock

Now save \$20 When you buy 4 Boxes (6 Month Supply)
~~\$69.75~~ \$64.75/Box after rebate

Now save \$50 When you buy 8 Boxes (Annual Supply)
~~\$69.75~~ \$63.50/Box after rebate

Prices After Utah Law²

ACUVUE® OASYS® with HYDRACLEAR® PLUS 24 pack

by Johnson & Johnson
24 lenses per box

[View Details](#)

\$139.50 per box
Availability: In Stock

Now save \$50 When you buy 2 Boxes (Annual Supply)
~~\$139.50~~ \$114.50/Box after rebate

ACUVUE® OASYS® for PRESBYOPIA

by Johnson & Johnson
6 lenses per box

[View Details](#)

\$51.50 per box
Availability: In Stock

Now save \$80 When you buy 8 Boxes (Annual Supply)
~~\$61.50~~ \$41.50/Box after rebate

1-DAY ACUVUE® MOIST® 90 pack

by Johnson & Johnson
90 lenses per box

[View Details](#)

\$72.25 per box
Availability: In Stock

Now save \$20 When you buy 4 Boxes (6 Month Supply)
~~\$72.25~~ \$67.25/Box after rebate

Now save \$50 When you buy 8 Boxes (Annual Supply)
~~\$72.25~~ \$66.00/Box after rebate

Minimum Price

\$114.50

\$41.50

\$66.00

1800 Contacts® Website Price Comparison: January 31, 2016¹

- 1800 Contacts® prices ACUVUE® Brand Contact Lenses **above the UPP minimum & above other resellers**
- Other resellers provide lower prices, **without the use of rebates**
- The use of rebates translates to higher prices for more customers, since **fewer than 10% of customers redeem them**²

1800 Contacts®	UPP	Walmart®
 <p>ACUVUE® OASYS® with HYDRACLEAR® PLUS 24 pack \$139.50 per box Availability: In Stock</p> <p>by Johnson & Johnson 24 lenses per box</p> <p>View Details</p>	▼ \$114.50	\$114.50
\$25.00 higher per pack		

Now save \$50 When you buy 2 Boxes (Annual Supply)
~~\$139.50~~ \$114.50/Box after rebate

1800 Contacts®	UPP	Walmart®
 <p>ACUVUE® OASYS® for ASTIGMATISM \$49.50 per box Availability: In Stock</p> <p>by Johnson & Johnson 6 lenses per box</p> <p>View Details</p>	▼ \$41.50	\$41.50
\$8.00 higher per pack		

Now save \$64 When you buy 8 Boxes (Annual Supply)
~~\$49.50~~ \$41.50/Box after rebate

1800 Contacts®	UPP	Walmart®
 <p>ACUVUE® OASYS® for PRESBYOPIA \$51.50 per box Availability: In Stock</p> <p>by Johnson & Johnson 6 lenses per box</p> <p>View Details</p>	▼ \$41.50	\$41.50
\$10.00 higher per pack		

Now save \$80 When you buy 8 Boxes (Annual Supply)
~~\$61.50~~ \$41.50/Box after rebate

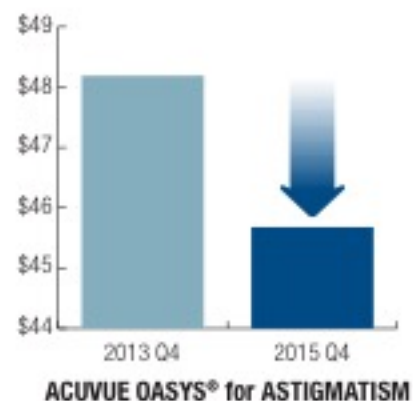
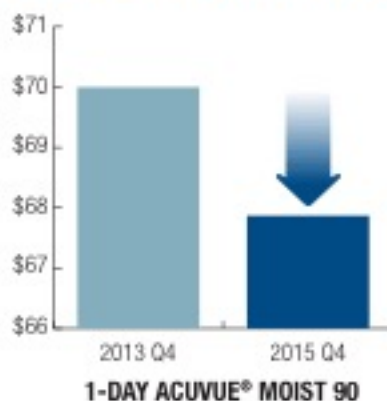
1800 Contacts®	UPP	Walmart®
 <p>1-DAY ACUVUE® MOIST® 90 pack \$72.25 per box Availability: In Stock</p> <p>by Johnson & Johnson 90 lenses per box</p> <p>View Details</p>	▼ \$66.00	\$66.00
\$6.25 higher per pack		

Now save \$20 When you buy 4 Boxes (6 Month Supply)
~~\$72.25~~ \$67.25/BOX after rebate

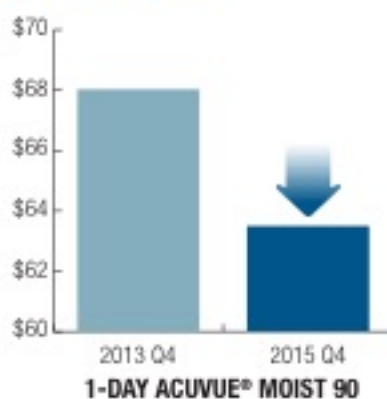
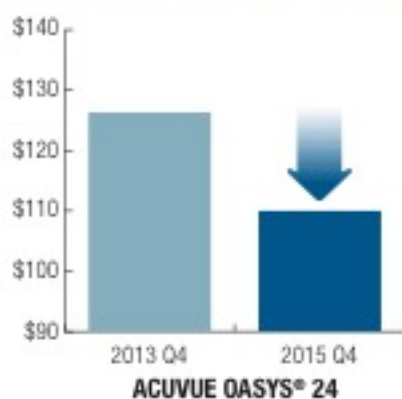
Now save \$50 When you buy 8 Boxes (Annual Supply)
~~\$72.25~~ \$66.00/Box after rebate

Consumer Price Trends: Three Largest Brands in JJVCI UPP

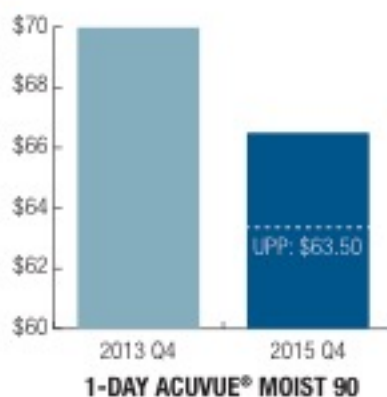
Independent Optometric Offices: 55% of Market¹



Retail Offices / Stores: 32% of Market²



1800Contacts Pricing Data¹



- 1800Contacts® prices remain above JJVCI UPP minimum prices.
- 1800Contacts® prices are as high as 22% above the minimum prices in the JJVCI UPP.
- 1800Contacts® is 70% of the internet contact lens market.

UPP Update

1 Year Later - Savings for Our Customers & Your Patients

Why Implement a Unilateral Pricing Policy (UPP)?

In July 2014, Johnson & Johnson Vision Care, Inc. (JJVCI) implemented a UPP on many ACUVUE® Brand Contact Lenses. Our objectives were to put **eye health and patient experience** at the center of your dialogue with patients, not cost or rebate instructions; to create simple and transparent pricing for patients, and to reduce patient prices to compete more effectively.

Creating a Better Patient Experience with ACUVUE®

Lowered Wholesale Prices

- > Made ACUVUE® Brand Contact Lenses more affordable

Eliminated Mail-In Rebates

- > Created **simple and transparent** pricing for patients
- > Redemption rate on qualified purchases was less than 10%
- > Post-rebate prices were advertised by some retailers creating confusion

Launched New Pack Sizes with Better Value

- > ACUVUE OASYS® 12 Pack
 - Twice the lenses as ACUVUE OASYS® 6 pack at less than twice the cost
- > Annual Supply Savings Packs:
 - ACUVUE OASYS® 24 Pack
 - ACUVUE OASYS® 54 Pack for 1-WEEK Overnight Use
 - ACUVUE OASYS® for ASTIGMATISM
 - 1-DAY ACUVUE® MOIST
 - 1-DAY ACUVUE® MOIST for ASTIGMATISM
 - 1-DAY ACUVUE® TruEye®

Established UPP

- > Reduced patient prices by establishing minimum prices set **below** average market prices
- > Allows doctors to focus more on **patient care** instead of pricing and rebates



Achieving Positive Results

Wholesale Cost

(average of all ACUVUE® UPP items from June '14 vs June '15)

-9%

average price decrease on ACUVUE® UPP sku's

% Purchases at the time of fit²

(total ACUVUE®)

+10%

increase in total ACUVUE® purchases at time of fit (50% to 55%)

% Annual Supply Dispense²

(ACUVUE OASYS® Brand CL's)

+28%

increase in ACUVUE OASYS® Annual Supply purchases (25% to 32%)

Price to Patients^{1,2}

(Avg price from June '14 vs Apr '15)

65%

of ACUVUE® patients are paying lower prices

¹ Internal analysis based on independent third party data Apr '15 / ABB Price Monitor / Your Lens Data

² GfK, Fit Panel Data, June 2014-December 2014

ACUVUE® Brand Contact Lenses are indicated for vision correction. As with any contact lens, eye problems, including corneal ulcers, can develop. Some wearers may experience mild irritation, itching or discomfort. Lenses should not be prescribed if patients have any eye infection, or experience eye discomfort, excessive tearing, vision changes, redness or other eye problems. Consult the package insert for complete information. Complete information is also available from Johnson & Johnson Vision Care, Inc., by calling 1-800-843-2020 or by visiting acuvueprofessional.com.

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