

STATE OF CONNECTICUT  
BOARD OF EXAMINERS FOR OPTICIANS

In re: Henry A. Jesionka, L.O.  
License No. 000734  
Petition No. 860515-38-005

MEMORANDUM OF DECISION

The Connecticut Board of Examiners for Opticians was presented by the Department of Health Services with a Statement of Charges dated April 3, 1987. The Statement of Charges alleges violations of section 20-154 of the Connecticut General Statutes. A Notice of Hearing dated May 8, 1987 provided that a hearing on the charges would be held on June 1, 1987 at 9:00 a.m. at the Department of Health Services, 150 Washington Street, Hartford, Connecticut.

On December 2, 1986, the Department of Health Services had sent a certified letter to the Respondent to schedule a compliance conference. The letter was sent to 696 S. W. Violet Avenue, Port St. Lucie, Florida 33452, an address the Respondent had given the Department by a letter dated May 24, 1986. The letter was accepted by an agent for the Respondent on December 8, 1986. The Respondent replied to the compliance conference letter and listed his address again as 696 S. W. Violet Avenue, Port St. Lucie, Florida, 33452.

The Statement of Charges was sent by certified mail on April 28, 1987 to the Respondent at the Port St. Lucie, Florida address. A letter attached to the Statement of Charges stated that the Notice of Hearing would be sent at a future time. Delivery of the April 28, 1987 letter and Statement of Charges was attempted twice, on May 6, 1987 and again on May 16, 1987. On May 18, 1987, the letter and Statement of Charges were returned to the Department marked "Unclaimed."

A Notice of Hearing, together with a copy of the Statement of Charges, was sent to the same address by certified mail, return receipt requested, on May 8, 1987. The receipt for this letter was not introduced by the Department at the time of the hearing on the charges, which was held on June 1, 1987. Further, the Respondent was neither present nor represented by counsel at the hearing. The Department was represented by Attorney Ellen Shanley.

In reviewing the record, the Board found that the issue of notice was not adequately resolved at the June 1, 1987 hearing. Specifically, as stated above, the certified mail return receipt for the Notice of Hearing and Statement of Charges sent on May 8, 1987 was not presented at that hearing.

On the sole and limited issue of the provision of the Notice of Hearing, the Board reopened the hearing. Notice of the Reopened Hearing, scheduled for October 19, 1987, was sent to the Respondent's Port St. Lucie, Florida address via certified mail on September 14, 1987. The return receipt from the Notice for the Reopened Hearing was returned to the Department marked "refused."

At the reopened hearing on October 19, 1987 the Department was again represented by Attorney Ellen Shanley. The Respondent was neither present nor represented by counsel at the reopened hearing of October 19, 1987.

On October 19, 1987, the Department introduced into evidence the return receipt for the Notice of Hearing and Statement of Charges sent on May 8, 1987, which receipt was marked "unclaimed".

The members of the Board involved in this decision attest that they have read the record and/or were present at both the June 1, 1987 and October 19, 1987 hearings.

#### Finding of Facts

1. On or about Friday, April 25, 1986, Ms. Mary Freitag placed an order for certain professional ophthalmic services with the Respondent at his place of business in Vernon,

Connecticut. Those services included the provision of a new eyeglass lens and contact lens to fit her current prescription.

2. On said date, Ms. Freitag paid the Respondent in full for the ordered services, which the Respondent said would be completed on or about Tuesday, April 29, 1986.

3. On Wednesday, April 30, 1986, after failing to hear from the Respondent on the day he had indicated, Ms. Freitag returned to the Respondent's place of business in Vernon, Connecticut. She discovered the shop to be closed and vacant. No notice of a change of address was posted.

4. On the same day, Ms. Freitag telephoned the Respondent at home, and discovered his number was no longer in service. She went to his residence address, and discovered that the premises had been vacated.

5. It was later discovered that the Respondent had left a blank eyeglass lens and a contact lens, together with a physician's prescription for "Mary Freitag", with James Fisher, L.O., of Fisher Opticians in Vernon. Mr. Fisher had agreed to hold the contact lens for pick-up by a customer of the Respondent. No adequate records concerning the ophthalmic goods were provided to Mr. Fisher by the Respondent.

6. Ms. Freitag has not worn the contact lens which Mr. Fisher had held in his possession, as its accuracy for her prescription has not been verifiable. For the completion (edging) of the eyeglass lens left in Mr. Fisher's possession, Ms. Freitag paid Mr. Fisher \$20.00.

7. By letter dated and postmarked April 24, 1986, the Respondent notified the Department of Health Services as follows: "I will cease operations as Spectacle Opticians ... on April 28, 1986."

8. By letter dated May 24, 1986, the Respondent notified the Department of Health Services of a change in address to:

696 S.W. Violet Avenue  
Port St. Lucie, Florida 33452  
(305) 878-5273

9. On December 2, 1986, the Department of Health Services Hearing Office sent, by certified mail, a letter to the Respondent at his Florida address, scheduling a compliance conference pursuant to Section 4-182(c) of the Connecticut General Statutes.

10. By letter of December 10, 1986, the Respondent answered the Department of Health Services, indicating that the purpose of his letter was to "explain my position and, appeal to

any board of inquiry...." He also indicated that "it would be impossible for me to attend any meeting in order to defend myself personally."

11. On April 28, 1987, the Department of Health Services Hearing Office sent, by certified mail, a Statement of Charges to the Respondent at his address in Florida. On May 18, 1987, this mailing was returned to the Department marked "unclaimed".

12. On May 8, 1987, the Department of Health Services sent, by certified mail, a Notice of Hearing, together with a copy of the Statement of Charges, to the Respondent at his Florida address. The return receipt for this mailing was returned to the Department marked "unclaimed".

13. On September 14, 1987 a Notice of Reopening of the Hearing was sent, by certified mail, to the Respondent's Florida address. This mailing was returned marked "refused".

#### Discussion and Conclusions

Section 20-154 of the Connecticut General Statutes provides in pertinent part as follows:

The certificate of registration, permit or license of any optician, or of any optical permittee, may be revoked, suspended or annulled or any action taken under section 19a-17 upon decision after notice and hearing

by the board for any of the following reasons: Fraudulent, dishonest, illegal or incompetent or negligent conduct of his business as such licensee or permittee....

Paragraph Five of the First Count of the Statement of Charges alleges that the Respondent's conduct in this matter violated Section 20-154, in that his actions were fraudulent, dishonest, illegal or incompetent or negligent in one or more of the following ways:

- a. He accepted Mary Freitag's order at a part when he knew or should have known that he would not be available to properly dispense her order;
- b. He failed to inform Mary Freitag that he anticipated closing his business before the anticipated delivery date of her order;
- c. He failed to inform Mary Freitag that her order would be assigned to another optician to be completed or to request permission to assign her order and failed to include her records after assigning her order;
- d. He failed to inform Mary Freitag of the name or location of the optician with whom he left the order.

The evidence establishes that the Respondent was fully aware that his practice would no longer exist by the promised delivery date of optical goods and services. By accepting an ophthalmic prescription with a promise of professional services,

the Respondent accepted the responsibility of trust and good will. It is absolutely necessary to maintain the quality of standards outlined in Chapter 381 of the Connecticut General Statutes. By accepting payment for service, and failing to provide the same service, the Board finds Mr. Jesionka demonstrated fraud and dishonesty in the conduct of his practice.

The Board also notes that Mr. Jesionka accepted a prescription change order for a contact lens, but could not provide adequate follow-up care for the dispensing of the new prescription device. By allowing the dispensing of a prescription device without providing adequate records to an accepting professional for the responsibility of follow-up care, this Board determines that the Respondent was also negligent and incompetent in the conduct of his practice.

The Board finds that the Respondent was given due notice of the June 1, 1987 and October 19, 1987 hearings on these charges.

ORDER

Pursuant to its authority under Connecticut General Statutes Sections 19a-17 and 20-154, the Connecticut Board of Examiners for Opticians hereby orders:

1. That a civil penalty be paid in full by the Respondent, Henry A. Jesionka, in the amount of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS, by certified check made payable to the State of Connecticut, and mailed to the Board of Examiners of Opticians, Department of Health Services, 150 Washington Street, Hartford, Connecticut 06106 on or before MARCH 28, 1988 1988;

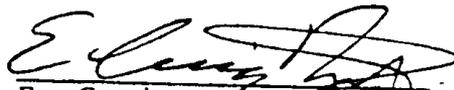
2. That, should the Respondent decide to return to Connecticut to practice as a licensed optician:

a. The Board of Examiners for Opticians must, in advance, be advised of the date the Respondent will recommence his practice in Connecticut;

b. Henry Jesionka shall be placed on probationary status, effective on the date of his recommencement of practice as an optician in Connecticut, and ending one year thereafter; and

c. At the end of the stated probationary period, the Respondent shall personally appear before the Board, which shall then determine whether this Order has been complied with in full.

By: Connecticut Board of Examiners  
for Opticians

  
E. Craig Fritz, L.O.  
Chairman

1/11/88  
Date