

STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS FOR OPTICIANS

Department of Health Services

v.

Edward Talaniec, L.O.

Petition No. 851022-38-008

MEMORANDUM OF DECISION

The Connecticut Board of Examiners for Opticians was presented by the Department of Health Services with a Statement of Charges dated June 2, 1986. The Statement of Charges alleged violation of Section 20-154 of the Connecticut General Statutes. The Notice of Hearing provided that the hearing would take place on June 30, 1986, at 8:30 A.M. in the Department of Health Services at 150 Washington Street, Hartford, Connecticut.

Each member of the Board involved in this decision attests that he has reviewed the record of the proceedings and that this decision is based entirely on the record.

Facts

The factual allegations contained in Subsections One, Two, Three and Four of the First Count were not contested by the respondent.

The Department of Health Services produced two witnesses. The first, a Connecticut licensed optician, Joel Stolz, testified that on two separate occasions during the same day and posing as a potential patient, he had telephone conversations with the respondent. Mr. Stoltz testified that on both occasions the respondent agreed to dispense to him contact lenses without the written or verbal order of a licensed physician or surgeon or a licensed optometrist.

The second witness, Jeff Kardys, an investigator for the Department of Health Services, testified that he presented himself to the respondent at his establishment at G. Fox Optical at Westfarms Mall, in the guise of a potential patient. Mr. Kardys then testified that he requested replacement contact lenses from the respondent without a written or verbal prescription from a licensed physician or surgeon or licensed optometrist. Mr. Kardys stated that the respondent agreed to replace contact lenses for him from a hypothetical prescription for contact lens design as presented verbally by Mr. Kardys and without verification of a written or verbal prescription for contact lenses from a licensed physician or surgeon or a licensed optometrist. After discussing fees for said lenses, Mr. Kardys revealed himself as an investigator for the Department of Health Services.

During direct examination, the respondent, Edward Talaniec, L.O., openly admitted to the allegations in Subsection Four and to his confrontation with the Department investigator. He could not deny the possibility of his conversation with Mr. Stoltz. Mr. Talaniec stated that he was unaware of any statute or regulation that governed the sale and fitting of contact lenses.

The Board recognizes that although a sale was not consummated by either witness, the intention of such a sale was nonetheless evident and confirmed by the testimony of the respondent.

Discussion

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

Section 20-141-10a of the Regulations of Connecticut State Agencies provides as follows: "Contact lenses may be fitted by licensed opticians in licensed optical establishments upon prescriptions for contact lenses"

Subsection Four of the First Count of the Statement of Charges alleges that the respondent violated Conn. Gen. Stat. § 20-154 by attempting to dispense contact lenses without first having obtained a written prescription to dispense contact lenses.

The Board recognizes that in lieu of a written prescription, a prescription in the form of a verbal order obtained from a licensed physician or surgeon or licensed optometrist is acceptable to fit, produce, manufacture or duplicate contact lenses. However, a proper prescription is always necessary.

The respondent's nonintentional ignorance of the statutes and regulations does not justify his violation of them. The respondent was willing on several occasions to dispense contact lenses without a written or verbal prescription from a licensed physician or surgeon or licensed optometrist. The Board has determined that the respondent's conduct constituted a violation of Conn. Gen. Stat. § 20-154 and Regulation § 20-141-10a.

ORDER

Pursuant to its authority under Conn. Gen. Stat. § 19a-17 and 20-154, the Connecticut Board of Examiners for Opticians hereby orders:

1. That a fine be levied upon the respondent, Edward Talaniec, in the amount of ONE HUNDRED (\$100.00) DOLLARS.

2. (a) That Edward Talaniec is placed on probationary status for a period of one year beginning at 9:00 A.M., September 30, 1986 and ending at 9:00 A.M., September 30, 1987.

(b) That within thirty days of the commencement of the probationary period, the respondent, Edward Talaniec, forward an affidavit to the Board stating that the respondent has read and to the best of his understanding, comprehends Chapter 381 of the Connecticut General Statutes, Sections 20-139 to 20-162, inclusive, and Department of Health Services Regulations, Sections 20-141-1 to 20-141-31, inclusive.

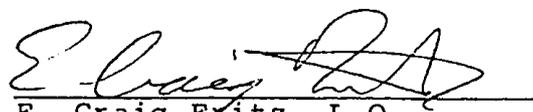
(c) That the respondent personally appear before the Board and that the Board review the personal file maintained by the Department of Health Services to determine compliance with this order. The respondent will be given reasonable notice of this required appearance which will take place at a regularly scheduled meeting of the Board.

Connecticut Board of
Examiners for Opticians

Date

9/15/86

By:


E. Craig Fritz, L.O.
Chairman