

**STATE OF CONNECTICUT  
CONNECTICUT BOARD OF EXAMINERS FOR OPTICIANS**

Jeffrey Fine, L.O.  
License No. 001105

Petition No. 2012-198

**MEMORANDUM OF DECISION**  
*Procedural Background*

On May 9, 2012, the Department of Public Health ("Department") filed a Motion for Summary Suspension ("Motion") and a Statement of Charges ("Charges") with the Connecticut Board of Examiners for Opticians ("Board"). Bd. Exh. 1. The Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("Statutes") by Jeffrey Fine ("Respondent") which would subject Respondent's license to practice as an optician to disciplinary action pursuant to §§ 19a-17 and 20-154 of the Statutes.

On May 10, 2012, based on the allegations in the Charges and the affidavits and reports accompanying the Motion, the Board found that Respondent's continued practice as a licensed optician presented a clear and immediate danger to public health and safety and ordered, pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, that Respondent's optician license be summarily suspended pending a final determination by the Board of the allegations contained in the Charges ("Order"). Bd. Exh. 2.

On May 10, 2012, the Charges, the Order, and a Notice of Hearing were sent to Respondent via Attorney James Sulick, by electronic mail.<sup>1</sup> Bd. Exh. 4. On May 14, 2012, the same documents were sent to Respondent by facsimile transmission. Bd. Exh. 4.

On May 15, 2012, Respondent requested a continuance of the hearing scheduled for May 17, 2012, due to a conflict in Attorney Sulick's schedule.<sup>2</sup> Bd. Exh. 5. The Department had no objection to Respondent's request (Bd. Exh. 6), and the continuance was granted. Bd. Exh. 7. On May 18, 2012, a new notice was sent to Respondent with two scheduled hearing dates: June 8 and June 15, 2012. Bd. Exh. 8.

On May 25, 2012, the Department filed a Motion to Permit Telephonic Testimony of the complaining witness. Bd. Exh. 9. On May 29, 2012, the Hearing Office faxed the Department's Motion to Permit Telephonic Testimony to Respondent. On May 31, 2012, Respondent

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<sup>1</sup> Correspondence from Respondent referenced Attorney Sulick as possibly representing him. *See*, Bd. Exh. 5.

<sup>2</sup> In this correspondence, Respondent indicated that he was requesting a continuance because "the attorney that I am requesting to represent me (James E. Sulick) will be unable to attend on that date [May 17, 2012]." Bd. Exh. 5.

acknowledged receipt of the facsimile transmission and stated “I have forwarded the attached to my lawyer for a response.” Bd. Exh. 9. The Motion stated that “[t]he Department ... brings this motion requesting that the Board permit telephonic testimony of witness C.M., at the hearing *presently scheduled to commence* before the Board on *June 8, 2012.*” Bd. Exh. 9. Emphasis added. Respondent did not object to the Department’s Motion and on June 5, 2012, the Motion was granted.

On June 5, 2012, the Hearing Office faxed to Respondent the Board’s ruling on the Department’s Motion to Permit Telephonic Testimony. This ruling also stated that the telephonic testimony was to be held during the hearing on June 8, 2012. The record includes the page confirming receipt of the facsimile. Bd. Exh. 10.

On June 8, 2012, the Board held an administrative hearing. Respondent neither appeared nor was represented. Attorney Sulick did not file an appearance stating that he was representing Respondent in this matter. Tr. p. 8. Attorney Ellen Shanley represented the Department.

On the record, Attorney Shanley requested that the Board rule on a June 1, 2012 Motion to Deem the Allegations Admitted (“Motion to Deem”) she had filed due to Respondent’s failure to file an Answer. Tr. pp. 9-10. The Board granted the Motion. Tr. p. 11.

The Board conducted the hearing in accordance with Chapter 54 of the Statutes and §§19a-9-1, *et seq.* of the Regulations of the State Agencies (“Regulations”). All Board members received copies of the entire record. All Board members attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence. *Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994).

On June 14, 2012, Respondent’s attorney for administrative and civil matters, Donald Gaudreau, filed his letter of appearance and requested a continuance. Attorney Gaudreau was informed that the hearing was held on June 8, 2012, that the Department’s Motion to Deem was granted because Respondent failed to file an Answer, and the record was closed.

On June 21, 2012, Respondent, through his attorney, moved to reopen the record. On June 26, 2012, the Department filed an objection. On August 17, 2012, Respondent, represented by Attorney Gaudreau, and the Department appeared before the Board to present oral argument regarding Respondent’s Motion. On September 12, 2012, the Board denied Respondent’s Motion.

*Allegations*

1. In paragraph 1 of the Charges, the Department alleges that Respondent of Middletown, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut license optician number 001105.<sup>3</sup>
2. In paragraph 2 of the Charges, the Department alleges Respondent was employed as an optician at Meeting House Opticians, Middletown, Connecticut (“optical shop”).
3. In paragraph 3 of the Charges, the Department alleges that on or about June 28, 2011, Respondent invited a woman, C.M., into the optical shop.
4. In paragraph 4 of the Charges, the Department alleges that on or about June 28, 2011, Respondent made inappropriate physical and/or sexual contact with C.M. at the optical shop.
5. In paragraph 5 of the Charges, the Department alleges that Respondent exceeded his scope of practice when he attempted to treat/provide care and treatment to C.M. at the optical shop by cleaning and/or applying ointment to C.M.’s skin.
6. In paragraph 6 of the Charges, the Department alleges that the above-referenced conduct constitutes violations of § 20-154 of the Statutes.

*Findings of Fact*

1. On May 10, 2012, the Board ordered the summary suspension of Respondent’s license. A hearing was scheduled for May 17, 2012. Bd. Exh. 4.
2. On May 15, 2012, Respondent requested a continuance of the May 17, 2012 hearing. Bd. Exh. 5.
3. On May 16, 2012, the Board granted Respondent’s request for a continuance. Bd. Exh. 7.
4. On May 18, 2012, a new Notice of Hearing was sent to Respondent with two scheduled hearing dates: June 8 and June 15, 2012. Bd. Exh. 8.
5. The Department provided Respondent with reasonable and adequate notice of the June 8, 2012 hearing. Bd. Exhs. 8-10.
6. Respondent did not request any additional continuances and he did not appear at the hearing on June 8, 2012. Tr. p. 8.
7. Respondent did not file an Answer to the Charges. Tr. pp. 9-10.

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<sup>3</sup> During the hearing, the Department orally amended the Charges to correct a typographical error in Respondent’s license number. Tr. pp. 6, 9.

8. All of the allegations set forth in the Charges are deemed admitted and true. Tr. p. 11.

### *Discussion and Conclusions of Law*

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008).

Section 19a-10 of the Statutes provides in pertinent part, “The boards and commissions listed in subsection (b) of section 19a-14 may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with chapter 54 and the regulations established by the Commissioner of Public Health.”

Section 20-154 of the Statutes provides, in pertinent part, that, “. . . the . . . license of any optician . . . may be revoked, . . . or any action taken under section 19a-17<sup>4</sup> upon decision after notice and hearing by the board for any of the following reasons: . . . illegal or incompetent or negligent conduct of his business as such licensee . . . ”

Since Respondent did not file an Answer, the allegations are deemed admitted. §19a-9-20 of the Regulations. The Department established by the allegations deemed admitted that, on June 28, 2011, Respondent exceeded his scope of practice when he attempted to treat and/or provide care and treatment to C.M. at the optical shop by cleaning and/or applying ointment to C.M.’s skin; and that Respondent also made inappropriate physical and/or sexual contact with C.M. at the optical shop. Accordingly, the Board finds that Respondent violated § 20-154 of the Statutes.

Furthermore, in making its determination regarding what disciplinary actions should be imposed in this matter, the Board also took into consideration two previous Consent Orders in which Respondent admitted violating § 20-154 of the Statutes. The first Consent Order was a pre-licensure Consent Order executed in 1986, in which Respondent committed numerous statutory violations before he was licensed and, in doing so, failed to conform to the accepted standards of Opticians from 1982 through 1985. For these violations, Respondent’s license was suspended, and then stayed, for five years under certain stipulations. Dept. Exh. 2. The second Consent Order was executed in 2002, in which Respondent pleaded no contest regarding sexual

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<sup>4</sup> Section 19a-17 of the Statutes provides in pertinent part, that “[e]ach board. . . may take any of the following actions, . . . based on . . . finding the existence of good cause: (1) revoke a practitioner’s license or permit, . . . ”

contact with a female at his place of business, for which his license was placed on probation for two years, and included a requirement to complete course work in ethics and boundary issues.

Dept. Exh. 3.

Pursuant to the authority vested in it by §§ 19a-17 and 20-154 of the Statutes, the Board finds that the misconduct alleged and deemed admitted in this matter and Respondent's admissions of misconduct in two previous Consent Orders, warrants the following disciplinary action imposed in the case of Jeffrey Fine, L.O., the holder of Connecticut optician license number 001105, in Petition No. 2012-198:

1. Respondent's license number 001105 to practice as an optician in the State of Connecticut is hereby revoked.
2. This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Board of Examiners for Opticians

Dec 5, 2012  
Date

Linda Conlin, L.O.  
By: Linda Conlin, L.O., Chairperson

**CERTIFICATION**

I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was provided to respondent in-hand and was mailed this 5<sup>th</sup> day of December 2012, by certified mail, return receipt requested to:

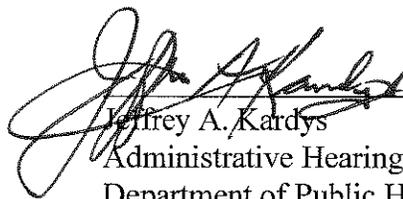
Jeffrey Fine, LO  
Meeting House Opticians  
506 Main Street  
Middletown, CT 06457

**Certified Mail RRR #91-7199-9991-7030-9619-0005**

Jeffrey Fine, LO  
37 Fairview Street  
Portland, CT 06480  
and via email to:

**Certified Mail RRR #91-7199-9991-7030-9618-9993**

Matthew Antonetti, Principal Attorney  
Legal Office  
Department of Public Health  
410 Capitol Avenue, MS #12LEG  
Hartford, CT 06134-0308



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Jeffrey A. Kardys  
Administrative Hearings Specialist/Board Liaison  
Department of Public Health  
Public Health Hearing Office