STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS FOR OPTICIANS

Department Of Public Health

V.

Joseph Rodrigues. L.O.
110-12 Jobs Hill Road
Ellington. Connecticut 06029

Petition No. 940421-38-003

Frame 'n Eye Optical Shop
100 North Main Street
Bristol. Connecticut 06010

Petition No. 940421-57-004

FINAL DECISION

PROCEDURAL BACKGROUND:

The Department of Public Health ("Department") presented the Connecticut Board of Examiners for Opticians ("Board") with a Statement of Charges brought against Joseph Rodrigues. L.O ("Mr. Rodrigues")dated February 9. 1996. and a Statement of Charges brought against Frame 'n Eye Optical Shop ("the Optical Shop") dated February 9. 1996. These Statement of Charges. along with the Notice of Hearing. was served on counsel for Mr. Rodrigues. and the Optical Shop by certified mail. return receipt requested on April 25. 1996. The Notice of hearing scheduled a hearing for June 6. 1996.

On May 3. 1996. Mr. Rodrigues and the Optical Shop each filed a Request for Continuance (Ex. B-1 and B-2.)[1]. The Department responded on May 10. 1996. with an

[1] Various pleadings filed in this case were not designated as exhibits. For convenience of reference. the Board will now designate those pleadings as Board exhibits as specified in Attachment 1.

objection to a continuance (Ex. B-3.). The Board issued a decision on May 23, 1996, denying the request (Ex. B-4).

On May 3, 1996, Mr. Rodrigues and the Optical Shop each filed an Application For More Detailed And Definite Statement (Ex. B-5 and B-6). This was complied with by the filing of the Department's Response To Respondent's Motion for A More Detailed And Definite Statement on May 13, 1996 (Ex. B-7.).

On May 3, 1996, Mr. Rodrigues and the Optical Shop each filed a Motion To Inspect And Copy (Ex. B-8 and B-9). This was responded to by the Department on May 10, 1996. (Ex. B-10.)

On May 3, 1996, Mr. Rodrigues and the Optical Shop each filed an Application For Extension Of Time To File Answer (Ex. B-12 and B-13). The Department did not object. (Ex. B-14)

On May 31, 1996, Mr. Rodrigues and the Optical Shop each filed an Answer. (Ex. A and B.)

On May 3, 1996, Mr. Rodrigues and the Optical Shop each filed a Motion In Limine. (Ex. E and F.) The Department submitted an objection to this on May 10, 1996. The Board denied the motion on June 6, 1996.

On May 31, 1996, Mr. Rodrigues and the Optical Shop each filed a Motion To Dismiss Complaint (Ex. C and D.), which were objected to by the Department. The Board denied the motion on June 6, 1996.

On June 6, 1996, the Department filed a Motion for Joinder of Proceedings, which requested that Petition No. 940421-38-003 and Petition No. 940421-57-004 be joined. (Ex. 1.) With no objection, the Board granted the motion on June 6, 1996.

Prior to the initiation of the charges, the Department gave the Mr. Rodrigues the opportunity to attend a compliance conference scheduled for February 10, 1995, relative to his optician license, (Department Exhibit 7) and on December 1, 1995, he was given an opportunity to attend a compliance conference relative to Frame 'n Eye Optical Shop. (Department Exhibit 8).

The Board, consisting of Rene R. Rivard and Peter C. Ford conducted the hearing in accordance with Connecticut General Statutes Chapter 54 and the Regulations of Connecticut State Agencies §19-2a-1, et seq. Subsequent to the hearing they were replaced on the Board by two new members, Douglas H. Parker, L.O. and Genevieve Kapelewski, L.O., who have received and read copies of the entire record. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

FINDINGS OF FACT:

1. Mr. Rodrigues is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut optician license number 001242. (Department Exhibit 3.)

2. On or about February 10, 1994, J & M Optical, Inc. purchased Frame 'n Eye optical shop of Bristol, Connecticut. (Department Exhibit 10.)

3. Mr. Rodrigues is the president of J & M Optical, Inc. (Id.)

4. On April 15, 1994, Frame 'n Eye was issued optical shop permit number 001486. (Id.)

With Regard to the Statement of Charges regarding Mr. Rodrigues

5. In Paragraph 4, the Department alleged that on or after February 10, 1994, Mr. Rodrigues allowed the Optical Shop to be opened to the public without the direct and personal supervision of a licensed optician at all times, in violation of Connecticut General Statutes §20-153. (Exhibit 2, as modified by B-7.)

6. In Paragraph 5, the Department alleged that on or after February 10, 1994, Mr. Rodrigues allowed to perform optical services, Carmela Wagner, Christine Vieira and others who held neither a license pursuant to Connecticut General Statutes §20-146(a) nor a registration as an apprentice pursuant to Connecticut General Statutes § 20-159. (Id.)

With Regard to the Statement of Charges regarding the Optical Shop

7. In Paragraph 4, the Department alleged that on or after February 10, 1994, the Optical Shop was opened to the public without the direct and personal supervision of a licensed optician at all times, in violation of Connecticut General Statutes §20-153. (Id.)

8. In Paragraph 5, the Department alleged that on or after February 10, 1994, optical services were performed at the Optical Shop by, Carmela Wagner, Christine Vieira and others who held neither a license pursuant to Connecticut General Statutes §20-146(a) nor a registration as an apprentice pursuant to Connecticut General Statutes § 20-159. (Id.)

9. Christine Vieira was employed by Mr. Rodrigues at the Optical Shop between the end of April 1994 and approximately January 12, 1995. (Transcript at 48.)

10. During this period she was not licensed as an optician. (Transcript p. 52.)

11. On September 1, 1994, she was issued an optician apprentice registration which covered the period September 1, 1994 through August 31, 1995. (Exhibit 12.)

12. She was hired as a secretary, with her duties to include making appointments, taking care of insurance and handling patient files. (Transcript pp. 48-9.)

13. Between her start of employment and August of 1994, she also sold sunglasses and eyeglasses to customers and "[h]elped them with their contacts, adjust[ed] their frames [and] measure[d] for lenses." (Transcript p. 51.)

14. At times prior to September 1994, she gave glasses to customers. This included "[s]eeing if they could see well out of them [and]...[a]djusting them if they needed adjustment." (Transcript pp. 53-54.)

15. At times prior to September 1994, she dispensed prescriptions for contact lenses. She "would help [the customer] put their lenses in and make sure they could see right out of them [and] help them clean them and give them procedures on what to do." (Transcript p. 55.)

16. At times prior to September 1994, she was left alone in the Optical Shop while it was opened to the public, for from one to several hours. (Transcript p. 57.)

17. During the time that she was alone, her responsibilities included the "[d]isposal of contacts or eyeglasses [and] helping with the customers..." (Transcript pp. 59 and 84-5.)

18. Carmela Wagner was employed by Mr. Rodrigues at the Optical Shop from February 10, 1994 to April 5, 1994. (Transcript p. 95.)

19. She had been employed by the prior owner of the shop since September of 1991. (Transcript p. 93.)

20. While employed by Mr. Rodrigues she was not registered as an optician apprentice. (Transcript p. 105.)

21. She was employed by Mr. Rodrigues in the capacity of receptionist/office manager. (Transcript p. 94.)

22. As an employee of Mr. Rodrigues she was called upon to do "the adjustments and repairs and fitting of the glasses when [customers] picked them up..." (Transcript p. 102.)

23. While she was employed at the Optical Shop, there were times when she was alone in the shop because either Mr. Rodrigues was late in arriving or had left the shop for periods of up to a couple of hours. (Transcript pp. 107-9.)

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-154 provides in pertinent part that:

> 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 19a-7 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 or permittee; [and] ...violation of any provision of this chapter....

Connecticut General Statutes §20-153 provides in pertinent part that:

> The department may grant annually...an optical permit to any optical establishment, office, department or store conducted under the personal and direct supervision of a licensed optician, for permission to sell, dispense or supply to the ultimate wearer optical aids to vision, instruments, appliances, eyeglasses, spectacles and other kindred products. (Emphasis added.)

The Board has concluded that this language requires that an optician be on the premises at all times. This interpretation has been upheld by the Appellate Court. U.S. Vision, Inc. v. Board of Examiners for Opticians, 15 Conn. App. 205, 216 (1988). It is therefore a violation for an optical shop to be open for several hours without the proper supervision by an optician.

The evidence is convincing that at more than one time between February 10, 1994 and January 12, 1995, Mr. Rodrigues either arrived after the Optical Shop had opened or left for part of the day, and the shop was open for business without the presence of a licensed optician.

The evidence also established that during this period, employees who were not either an optician or an apprentice provided a broad range of services to customers. This covered measuring for lenses; dispensing eyeglasses (which included verifying that the customer could see well with the glasses and adjusting the glasses if necessary), and dispensing contact lenses.(which included helping the customer put the lenses in and giving them procedures on how to clean them).

As an owner of the Optical Shop and the responsible optician, Mr. Rodrigues is accountable for events occurring at the shop and the conduct of his employees. If the shop is opened to the public without a licensed optician, he must bear the fault. If there are licensed activities being performed by persons who are not a licensed optician or registered apprentice, he also must bear the responsibility.

The Department bears the burden of proof by a preponderance of the evidence. The Department has sustained its burden as to all of the allegations. The Board finds that there is sufficient evidence to establish that Mr. Rodrigues and the Optical Shop are subject to disciplinary action pursuant to Connecticut General Statutes §20-154.

ORDER:

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

1. Mr. Rodrigues is placed on probation for a period of six (6) months subject to the terms and conditions set forth in Paragraph 4 of this Order below.
2. The Optical Shop is placed on probation for a period of six (6) months subject to the terms and conditions set forth in Paragraph 4 of this Order below.
3. A licensed optician shall be on the licensed premises during all hours that the optical shop is open to the public.
4. During this probationary period, Mr. Rodrigues shall maintain a daily time sheet indicating who is supervising the Optical Shop and what other employees are on

duty. A copy of this log shall be sent monthly to Bonnie Pinkerton, Department of Public Health, 410 Capitol Avenue MS#12LEG, P.O. Box 340308, Hartford, Ct 06134-0308.

Connecticut Board of Examiners for Opticians

3/8/97
(Date)

By: Douglas H. Parker, L.O.
Chairman