

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

Meeting House Opticians
Permit No. 001395

Petition No. 2012-1147

MEMORANDUM OF DECISION
Procedural Background

On December 5, 2012, the Department of Public Health ("Department") filed a Motion for Summary Suspension ("Motion") and a Statement of Charges with the Connecticut Board of Examiners for Opticians ("Board"). Bd. Exhs. 1-4. The Charges allege violations of certain provisions of Chapter 381 of the General Statutes ("Statutes") by Meeting House Opticians ("Respondent") which would subject Respondent's optical permit to disciplinary action pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes.

On December 5, 2012, based on the allegations in the Charges and the affidavits and reports accompanying the Motion, the Board found that Respondent's continued operation as an optical establishment 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 optical permit be summarily suspended pending a final determination by the Board of the allegations contained in the Charges ("Order"). Bd. Exhs. 2-3.

On December 5, 2012, the Charges, the Order, and a Notice of Hearing were hand-delivered to Mr. Jeffrey Fine, as the optician of record, at Respondent's address at 506 Main Street, Middletown, CT. On December 5, 2012, the Charges, the Order and a Notice of Hearing were also sent by certified mail to Respondent's address at 506 Main Street and to Mr. Jeffrey Fine's home address at 37 Fairview Street, Portland, CT 06480. Bd. Exhs. 7-8.

Also, on December 5, 2012, the Department filed a Motion to Amend the Statement of Charges ("Charges"). Bd. Exh. 5. The Charges were amended to correct a typographical error.¹ Bd. Exh. 6; Transcript ("Tr.") p. 3. On December 12, 2012, the Board granted the Motion to amend the Charges. Bd. Exh. 6; Tr. p. 6. On December 12, 2012, the Board held an administrative hearing. Respondent neither appeared nor was represented. The United States

¹ The Statement of Charges incorrectly referred to Jeffrey Fine as "Dr. Fine." Bd. Exh. 4. The Statement of Charges were amended to correct this typographical error and change the reference to "Mr. Fine." Bd. Exhs. 5, 6.

Postal Service ("USPS") confirmed that the certified mail was delivered to the Portland, CT address on December 8, 2012 (Bd. Exh. 8), and that Mr. Fine's wife, Fiona Fine, signed for the certified mail. Bd. Exh. 9. Attorney Matthew Antonetti represented the Department. Tr. pp. 2, 5.

On the record, Attorney Antonetti moved that the Board grant a Motion to Deem the Allegations Admitted ("Motion to Deem") due to Respondent's failure to file an Answer. Tr. pp. 7-8. The Board granted the Motion. Tr. pp. 8-9.

The Board conducted the hearing in accordance with Chapter 54 of the Statutes (the Uniform Administrative Procedure Act) and §§ 19a-9-1, *et seq.* of the Regulations of 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).

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 optical selling permit number 001395.
2. In paragraph 2 of the Charges, the Department alleges that Jeffrey Fine's license number 001105 to practice as an optician was summarily suspended by the Board on or about May 10, 2012, in Petition No. 2012-198.
3. In paragraph 3 of the Charges, the Department alleges that on or about July 23, 2012, despite the suspension of Mr. Fine's license, [he] listed himself as the optician of record to obtain a renewal of the optical permit for Respondent.
4. In paragraph 4 of the Charges, the Department alleges that on or about September 17, 2012, Mr. Fine was informed that Respondent required a licensed optician of record with an active license and that Respondent should not operate until a new licensed optician of record was identified.
5. In paragraph 5 of the Charges, the Department alleges that on or about October 12, 2012, despite the continued suspension of Mr. Fine's license and despite [the fact that there was] no alternative optician of record identified for Respondent, Mr. Fine was present at Respondent's business address and offered to fill a prescription for eyeglass lenses and/or fit said lenses in an eyeglass frame for a Department special investigator.

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. Respondent of 506 Main Street, Middletown, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut optical permit number 001395. Bd. Exh. 6.
2. Mr. Jeffrey Fine was an employee and the optician of record at Respondent's business establishment. Jeffrey Fine, L.O. Petition No. 2012-198, Memorandum of Decision (December 5, 2012).
3. On May 10, 2012, Mr. Fine's license number 001105 to practice as an optician was summarily suspended by the Board in Petition No. 2012-198.² Bd. Exh. 6.
4. On or about July 23, 2012, despite the suspension of Mr. Fine's license, [he] listed himself as the optician of record to obtain a renewal of the optical permit for Respondent. Bd. Exh. 6.
5. On or about September 17, 2012, Mr. Fine was informed that Respondent required a licensed optician of record with an active license and that Respondent should not operate until a new licensed optician of record was identified. Bd. Exh. 6.
6. On or about October 12, 2012, despite the continued suspension of Mr. Fine's license and despite [the fact that there was] no alternative optician of record identified for Respondent, Mr. Fine was present at Respondent's business address and offered to fill a prescription for eyeglass lenses and/or fit said lenses in an eyeglass frame for a Department special investigator. Bd. Exh. 6.
7. On December 5, 2012, Respondent's optical permit was summarily suspended by the Board. Bd. Exh. 3.
8. On December 5, 2012, the Department provided Respondent with reasonable and adequate notice of the hearing regarding the summary suspension by hand-delivery to Mr. Fine, as the optician of record, at Respondent's business address. Tr. pp. 4-5.
9. On December 7, 2012, the USPS left a notice of the certified mail at Respondent's business address. Bd. Exh. 7.
10. On December 8, 2012, at 2:32 p.m., the USPS delivered the certified mail to Mr. Fine's home address. Bd. Exh. 8. Fiona M. Fine is Mr. Fine's wife. Mrs. Fine printed "Fiona M. Fine" and signed her name "Mrs. [first name initial] Fine" on the certified mail receipt. Bd. Exh. 9; Tr. pp. 4-5.

² On December 5, 2012, the Board revoked Mr. Fine's license to practice as an optician. See, Jeffrey Fine, L.O. Petition No. 2012-198, Memorandum of Decision (December 5, 2012).

11. Respondent did not file an Answer to the Charges. Tr. p. 8.
12. Respondent did not request a continuance and no one representing Respondent appeared at the hearing on December 12, 2012. Tr. pp. 4-5.
13. All of the allegations set forth in the Charges are deemed admitted and true. Tr. pp. 8-9.

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, 821 (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." The Connecticut Board of Examiners for Opticians is listed at § 19a-14(b)(8) of the Statutes.

Section 20-154 of the Statutes provides, in pertinent part, that, "... the ... permit ... of any optical permittee may be revoked, ... under section 19a-17³ upon decision after notice and hearing by the board for any of the following reasons: ... aiding or abetting any unlicensed person whose license has been suspended or revoked, ..."

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 October 12, 2012, despite the continued suspension of Mr. Fine's optician license as the optician of record for Respondent, and despite the fact that no alternative licensed optician had been identified for Respondent, Mr. Fine was present at Respondent's business establishment and offered to fill a prescription for eyeglass lenses and/or fit such lenses in an eyeglass frame for a Department special investigator. Accordingly, the Board finds that Respondent violated § 20-154 of the Statutes.

As discussed above, despite the May 10, 2012 summary suspension of his optician's license, on July 23, 2012, Mr. Fine listed himself as the optician of record in order to renew

³ 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) [r]evoke a practitioner's license or permit; ... (6) [a]ssess a civil penalty of up to twenty-five thousand dollars; ..."

Respondent's optical permit. On September 17, 2012, the Department notified Mr. Fine that Respondent required a licensed optician of record with an *active* license in order to obtain an optical permit (emphasis added). Mr. Fine was also informed that Respondent should not operate until a new licensed optician of record was identified. Rather than comply with the Department's instructions, Respondent aided and abetted Mr. Fine's unlicensed practice while Respondent continued to operate as an optical establishment. On October 12, 2012, Mr. Fine was present at Respondent's establishment when a Department special investigator visited the establishment and requested optical services. Although Mr. Fine's license to practice was still under suspension and there was no other licensed optician of record identified so that Respondent could legally conduct business, Mr. Fine offered to fill a prescription for eyeglass lenses and/or fit such lenses in an eyeglass frame for the special investigator.

In making its determination regarding what disciplinary actions should be imposed in this matter, the Board took into consideration Respondent's involvement in Mr. Fine's flagrant and continuous disregard for the numerous disciplinary actions the Board has previously imposed on his optician's license as Respondent's optician of record.⁴

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, warrants the following disciplinary actions, to be imposed in the case of Meeting House Opticians, the holder of Connecticut optical permit number 001395, in Petition No. 2012-1147.

⁴ Mr. Fine executed two previous Consent Orders in which he admitted violating certain provisions of § 20-154 of the Statutes. The first Consent Order (Petition No. 860722-00-031) was a pre-licensure Consent Order executed in 1986, in which Mr. Fine 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, Mr. Fine's license was suspended, and then stayed, for five years under certain stipulations. The second Consent Order (Petition No. 990428-038-002) was executed in 2002, in which Mr. Fine, as the optician of record, pleaded no contest regarding sexual contact with a female at Respondent's business establishment. Mr. Fine's license was placed on probation for two years and included a requirement to complete course work in ethics and boundary issues. Ultimately, Mr. Fine's license to practice as an optician was revoked, based on the Board's recent findings that Mr. Fine exceeded his scope of practice when he attempted to treat and/or provide care and treatment of a female's skin condition and made inappropriate physical and/or sexual contact with this same female in Respondent's business establishment. *See, Jeffrey Fine, L.O. Petition No. 2012-198, Memorandum of Decision* (December 5, 2012).

Order

1. Respondent shall pay a civil penalty of twenty thousand dollars (\$20,000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.
2. Respondent's optical permit is hereby revoked.
3. The civil penalty shall be mailed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308
4. This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Board of Examiners for Opticians

7/27/13
Date

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

CERTIFICATION

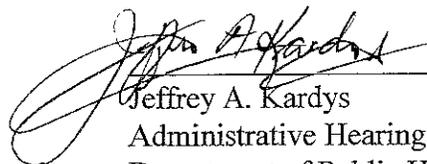
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was provided to respondent in-hand and was mailed this 27th day of February 2013, by certified mail, return receipt requested to:

Jeffrey Fine, LO
37 Fairview Street
Portland, CT 06480

Certified Mail RRR #91-7199-9991-7030-9732-9879

and via email to:

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



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