

FEB 07 2002



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
NEW JERSEY STATE BOARD OF OPTOMETRISTS  
124 HALSEY STREET, 6TH FLOOR, NEWARK NJ

DONALD T. DiFRANCESCO  
*Acting Governor*

JOHN J. FARMER, JR.  
*Attorney General*  
MARK S. HERR  
*Director*

October 30, 2001

*Mailing Address:*  
P.O. Box 45012  
Newark, NJ 07101  
(973) 504-6440

By Certified and Regular Mail

Paul F. Speesler, O.D.  
Burlington EyeCare Center  
132 Burlington Center  
Burlington, NJ 08016

Re: Offer of Settlement In Lieu of Filing a Formal Disciplinary Complaint

Dear Dr. Speesler:

This letter is to advise you that the New Jersey State Board of Optometrists (the "Board") has had an opportunity to review information concerning the optometric services you provided to Trudy Maroccia. Specifically, the information reviewed included:

1. Letter dated May 24, 2001 from Trudy Maroccia
2. Copy of prescription blank prescribing "Clear Comfort DW", OD-.75, OS-2.75
3. Your letter dated May 28, 2001 to Vision Service Plan re: Trudy Maroccia
4. Patient records of Trudy Maroccia.
5. Letter received on July 31, 2001 from Thomas R. Shone, Vice President of Marketing of CooperVision, manufacturer of both Cooper Clear and Clear Comfort.

Upon review of all available information, the Board has preliminarily found that probable cause exists to support a finding that you violated N.J.S.A. 45:1-21(b) in that you prescribed Clear Comfort contacts to your patient, Trudy Maroccia and when the patient informed you that she could not obtain the prescribed lenses from a mail order company you provided the patient with a prescription for Cooper Clear lenses, which you described as the common or generic name for Clear Comfort lenses. Your letter dated May 29, 2001 to the Vision Service Plan indicated that "you fitted this patient with soft contact lens made by CooperVision known by private label as Clear Comfort, which is a contact lens for flexible wear, ie, can be used as daily wear or as an extended wear." Further you advised

the Vision Service Plan " that this brand of lens can be ordered by the name of Cooper Clear."

The Board's investigation has determined that CooperVision does manufacture both Cooper Clear and Clear Comfort. However, your statement and understanding that these two brands are the same are incorrect. CooperVision in its letter received on July 31, 2001 noted that there are "several significant differences between the two lens brands". Clear Comfort is manufactured in the U.K. with a fully cast molded production system and is packed in a blister pack configuration, is made of the polymer methafilicon A with a water content of 55%(45%polymer) and has FDA indication for extended wear. Cooper Clear is manufactured in the U.S. using a modified lathing process and is packaged in glass vials, is made from the polymer tetrafilicon A and results in a water content of 43%(57% polymer) and has FDA indication for daily wear only. Thus, the representation from CooperVision concluded that "these substantial differences demonstrate that they are clearly different products with different indication."

Based on this information the Board has determined that your decision to interchange one contact lens prescription with another prescription without being aware that the two brands were radically different and thus not interchangeable constituted the use of dishonesty, deception, misrepresentation or false pretense in violation of N.J.S.A. 45:1-21(b).

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of formal disciplinary proceedings, should you consent to:

1. cease and desist from prescribing Cooper Clear contact lens for Clear Comfort contact lenses;
2. the issuance of a formal reprimand;
3. pay a penalty in the amount of \$ 2000 (to be paid immediately upon your signing of the acknowledgment at the bottom of this letter);
4. reimburse the sum of \$74.00 to Trudy Maroccia representing all fees paid by the patient. (check payable to Trudy Maroccia is to be sent to the Board office to the attention of Susan Gartland, Executive Director).

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of appropriate enforcement action. In such event, you will be afforded an opportunity to defend against the alleged violations.

If an evidentiary hearing is deemed warranted, the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than those herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order requiring you to reimburse certain monies and/or requiring you to pay the additional costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General Carmen A. Rodriguez, who may be reached at (973) 648-3696.

If you elect to settle this matter now you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate enforcement proceedings.

NEW JERSEY STATE BOARD  
OF OPTOMETRISTS

By: *Susan H. Gartland*  
Susan Gartland  
Executive Director

ACKNOWLEDGMENT: I, Paul Speesler, O.D., hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of \$2000 plus restitution of \$74.00 to the patient, Trudy Maroccia (to be paid upon signing of this acknowledgment), and to comply with all other requirements set forth in the settlement letter.

*Paul Speesler, O.D.*  
Paul Speesler, O.D.

Dated: *2/1/02*

cc: Carmen A. Rodriguez, Deputy Attorney General