

**FILED**

**BOARD OF OPTOMETRISTS**  
**DEC 18 2002**

*Susan Gartland*  
**Susan Gartland**  
**Executive Director**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF OPTOMETRISTS

IN THE MATTER OF A DISCIPLINARY  
ACTION AGAINST THE LICENSE OF

NILESH PATEL, O.D.  
License No.5351

TO PRACTICE OPTOMETRY  
IN THE STATE OF NEW JERSEY

: Administrative Action  
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**FINAL DECISION AND ORDER  
AFTER UPL EXPLANATION**

This matter was opened to the New Jersey Board of Optometry (hereinafter the "Board") on a review of an advertisement that ran in the April 12, 2002 issue of the Jersey Journal (City Edition). The Board noted that the advertisement failed to include the name of the optometrist practicing at the advertised establishment and also failed to include the cost of the eye exam separate from the contact lens package, failed to name the brand of contact lens being offered and failed to provide that a contact lens care kit was included.

The Board's review revealed probable violations of N.J.A.C. 13:38-1.4(d) which requires that all advertisements for optometric services and materials list the name and license number of at least one licensee and N.J.A.C. 13:38-1.2(c)6 which requires that an advertisement for contact lens include the fee for minimum eye examination, the fee for the type and brand of lens being offered and fee for the contact lens care kit.

On August 5, 2002, a Uniform Penalty Letter (hereinafter "U.P.L.") was sent to Respondent setting forth the initial findings of the Board and offering Respondent the opportunity to settle this matter by acknowledging the violations and paying an aggregate civil penalty in the amount of

\$250.00 reflecting the following:

1. A civil penalty of \$125.00 for the failure to provide the name and license number of at least one licensee responsible for optometric practice at the particular location in violation of N.J.A.C. 13:38-1.4.
2. A civil penalty of \$125.00 for the failure to include the cost of a separate eye examination from the contact lens package, failure to include the brand of the contact lens being offered, and failed to state in the advertisement that a contact lens care kit is provided in violation of N.J.A.C. 13:381.2(c)6.

Alternatively, Respondent was given the option of either requesting a hearing before the Board or submitting a written explanation and waiving respondent's right to a hearing.

Waiving his right to a hearing, Respondent elected to submit a written explanation in which Respondent maintained that he was unaware of the contents of the advertisement in question. He has discussed the matter with the manager of Sterling Optical and the advertising agency that is responsible for the marketing of Sterling Optical franchises in this area. Dr. Patel also explained that the oversight was not intentional.

At its meeting on November 20, 2002 the Board considered the respondent's response to the U.P.L. and does not find that the submission raised issues which would require further proceedings nor does the Board find respondent's explanation persuasive. As the licensee responsible for the optometric practice his is accountable for the content of the advertisement. However, with respect to charges outlined herein, the Board did note that he has taken steps to insure that future advertisements comply with the advertising regulations of the Board. Accordingly, the Board finds that Respondent failed to conform with statutory and/or regulatory obligations as set forth in the U.P.L. and thus it concludes that the violations of N.J.A.C. 13:38-1.2(c) 6 and 13:38-1.4 occurred.

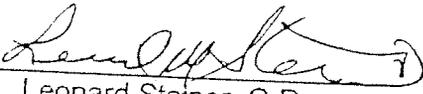
Based on the foregoing:

IT IS on this 18th day of December, 2002,

ORDERED that:

1. Respondent shall pay to the Board of Optometrists a civil penalty in the total amount of \$ 250.00 for the violations as set forth in the U.P.L. and found as detailed above. Said payment shall be made by certified check or money order payable to the State Board of Optometrists and shall be delivered within ten (10) days of service of this order to the Executive Director at the Board of Optometrists, P. O. Box 45012, Newark, New Jersey 07101. Failure to remit the payment required by this Order will result in the filing of a certificate of debt.
2. Respondent shall cease and desist from engaging in any of the conduct found herein to be unlawful.

NEW JERSEY STATE  
BOARD OF OPTOMETRISTS

BY: 

Leonard Steiner, O.D.  
President