FILED
BOARD OF OPTOMETRISTS
JAN 26 2004
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 THE SUSPENSION OR REVOCATION OF THE LICENSE OF HOWARD L. HERTZ, O.D. License No. 27OA 00376300 TO PRACTICE OPTOMETRY IN THE STATE OF NEW JERSEY	Administrative Action FINAL ORDER OF DISCIPLINE

This matter was opened to the New Jersey State Board of Optometrists ("the Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Respondent is an optometrist in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On the 30th day of June, 2003, the Board of Optometrists initiated a random audit of renewal applications for the 2003-2005 period, asking licensees to submit proof with regard to the satisfaction of continuing education requirements for the biennial renewal period, i.e., fifty (50) approved credit hours which included twenty-five (25) credits in general optometric education and twenty-five (25) credits in courses or programs classified as therapeutic pharmaceutical agents ("TPA").

3. Respondent failed to submit proof of having completed six (6) credit hours of continuing education, which is insufficient to satisfy the continuing education requirement because it falls

short of the requisite fifty (50) approved credit hours pursuant to NJ.S.A. 45: 12-9.3 and N.J.A.C. 13:38-7.3.

CONCLUSIONS OF LAW

1. Respondent has not satisfied the requirements of N.J.S.A. 45:12-9.3 with regard to completion of the appropriate number of approved continuing education credit hours within the statutory time frame.

2. Respondent is subject to sanctions pursuant to N.J.S.A. 45:1-21(h), failure to comply with the provision of an act or regulation administered by the Board, which constitutes grounds for suspension or revocation of any certificate, registration or license, and grounds for sanction pursuant to N.J.S.A. 45:1-25.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending respondent's license to practice Optometry in the State of New Jersey was entered on October 15, 2003 and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor. On November 6, 2003 the respondent submitted a written response for Board consideration.

Based upon the reviewed submissions, the Board determined that the respondent satisfied the six (6) credits which were short as explained in the Findings of Fact or Conclusions of Law set forth in the Provisional Order by October 20 and 22, 2003. Thus the Board determined that the

respondents's license would not be suspended or revoked. However, the Board recognized that respondent failed to comply with the statutory provision obligating the holder of an active license to complete the required continuing education credits during the period preceding the established renewal date pursuant to N.J.S.A. 45:12-9.3, which in this case was April 30, 2003. Although the respondent was able to produce documentation, the documentation demonstrated that he completed an additional six (6) credits. The proofs presented indicated that the additional courses were taken after the April 30, 2003 renewal date. Respondent's compliance with the total required credits occurred six (6) months after the statutory deadline.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. The Board was persuaded that the submitted materials satisfied the outstanding credits as received in the Findings of Fact or Conclusions of Law. Although respondent was able to satisfy the remaining outstanding credits, he did so six months after the allotted time period. The credits for continuing education must be obtained biennially by each holder of an active license during the period preceding the established license renewal date as required by N.J.S.A. 45:12-9.3. Thus, the respondent must have completed his 50 credits by April 30, 2003. The Board determined that the respondent failed to submit proof of additional credits on a timely basis as the proofs presented indicated that respondent did not satisfy the total amount of continuing education credits until October 20 and 22, 2003. Accordingly, respondent's satisfaction of the credits was untimely as it transpired long after the April 30, 2003 renewal date.

ACCORDINGLY, IT IS on this 26th day of January, 2004

ORDERED that:

1. Respondent's proofs of additional credits are accepted by the Board as proof of satisfaction of the fifty (50) credits required in continuing education for the 2003-2005 biennial

registration. The credits submitted as a result of the Provisional Order are **NOT** to be used to renew respondent's license for the 2005-2007 renewal period. However, the credits submitted were obtained after the April 30, 2003 date and are considered a late submission. Thus, the Board will not suspend or revoke the license of the respondent.

2. Respondent shall pay a civil penalty of five hundred dollars ($500.00) pursuant to N.J.S.A. 45:1-25 , for violation of N.J.S.A. 45:12-9.3, N.J.A.C. 13:38-4.5 and N.J.S.A. 45:1-21(h), by means of a check or money order, payable to the New Jersey Board of Optometrists. Such payment is to be sent to the Board at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102, no later than 30 days from the date of receipt of this order. The Board acknowledges receipt of the $500.00 penalty included with the correspondence submitted by the respondent on November 3, 2003 and recognizes that the penalty is paid in full.

NEW JERSEY STATE BOARD OF OPTOMETRISTS

By _____
Leonard Steiner, O.D.
Board President