



JON S. CORZINE
Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
New Jersey State Board of Optometrists
124 Halsey Street, 6th Floor, Newark, NJ 07102



ANNE MILGRAM
Attorney General

DAVID SZUCHMAN
Director

January 5, 2010

By Certified and Regular Mail

Michael Newman, O.D.
860 Lower Ferry Road
Trenton, New Jersey 08628

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

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

Dear Dr. Newman:

This letter is to advise you that the New Jersey State Board of Optometrists (the "Board") has had an opportunity to review information related to the professional optometric services you provided to patient R.D. Specifically, the information reviewed included the patient record of R.D. and your testimony at an investigative inquiry of the Board held on September 16, 2009 at which you appeared without an attorney.

Your testimony confirmed that you saw R.D. for an eye examination to evaluate him for Lasik on April 18, 2008. During this eye examination, you performed an ophthalmoscopy which you indicated was normal because there was no pathology. You also indicated that you took retinal photographs of the patient's eyes with a Polaroid to determine if there was pathology. You testified that it was your office's standard practice to keep the retinal photographs that appeared normal for one year and then discard them for lack of storage space. You further testified that since this particular patient's retinal photographs appeared normal, the patient's photographs were discarded at sometime prior to the Board's request for the medical records involved in this case and therefore you were not able to produce a copy of the retinal photographs.

Upon further questioning, you also indicated that upon the initial fitting of both the monovision and bifocal contact lenses, you failed to record results from the contact lens evaluation, specifically the movement and the position of the contact lens on the patient's eyes. You also testified that for the monovision contact lenses fitting, you did not record the contact lens evaluation results because the monovision lenses were specifically to test the patient's candidacy for Lasik and not to specifically fit the patient for contact lenses. You testified that you did not record the contact lens evaluation results for the bifocal lenses because it was taking too much time at the patient visit and that it was an oversight on your part.

Furthermore, a review of the patient record demonstrated that it lacked several items required under the minimum examination regulation including but not limited to the following: a lack of findings of the external eye and internal parts of the eye as well as the anterior segment of the eye.

Upon review of all available information, the Board has preliminarily found that probable cause exists to support a finding that you violated N.J.A.C. 13:38-2.3(a) in that you discarded a part of the patient's record even though all patient records must be kept in their entirety for seven years. Your failure to record the contact lens evaluation constitutes a violation of N.J.A.C. 13:38-2.3(b)5 and your failure to properly record your findings of the eye examination also results in a violation of N.J.A.C. 13:38-2.1(a)3, 4, and 12.

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 in the future from failing to keep your patient records in their entirety for seven years as provided in N.J.A.C. 13:38-2.3(a);
2. Cease and desist in the future from failing to record contact lens evaluations as provided in N.J.A.C. 13:38-2.3(b)5;
3. Cease and desist in the future from failing to follow the proper procedures for recording eye examinations as provided in N.J.A.C. 13:38-2.1(a)3, 4 and 12;
4. The issuance of a formal reprimand for violations for violations of N.J.A.C. 13:38-2.3(a), N.J.A.C. 13:38-2.1(a) 3, 4, and 12, and N.J.A.C. 13:38-2.3(b)5;
5. Pay a penalty in the amount of \$1,500 for violations of N.J.A.C. 13:38-2.3(a), N.J.A.C. 13:38-2.1(a)3, 4, and 12, and N.J.A.C. 13:38-2.3(b)5 (to be paid immediately upon your signing of the acknowledgment at the bottom of this letter);
6. Pay costs incurred by the Board in the amount of \$289.00 as explained in the attached Certification of Costs of Lisa Affinito, Executive Director;
7. You shall successfully complete and pass a three (3) hour course in record keeping to be administered by an accredited college of optometry. The course shall be approved by the Board prior to your attending same and shall be completed within six months of the entry date of this settlement letter. This course will not be included in the continuing education credits which must be attained for renewal of licensure.

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

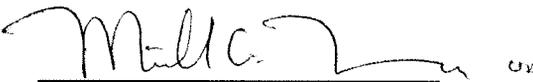
and/or requiring you to pay the additional costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General Rodriguez, who may be reached at (973) 648-3696.

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: 
Lisa Affinito
Executive Director

ACKNOWLEDGMENT: I, Michael Newman, 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 \$ 1,500.00 and costs in the amount of \$289.00(to be paid upon signing of this acknowledgment), and to comply with all other requirements set forth in the settlement letter.


Michael Newman, O.D.

Dated: 1/10/10

cc: Carmen A. Rodriguez, Deputy Attorney General