

ORIGINAL

Robert J. Campanelli
3/12/2010
FILED

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for State Board of Ophthalmic Dispensers and
Ophthalmic Technicians

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPHTHALMIC
DISPENSERS AND OPHTHALMIC
TECHNICIANS

IN THE MATTER OF THE SUSPENSION OR	:	
REVOCAION OF THE LICENSE OF	:	Administrative Action
	:	
VESTA KIM	:	PROVISIONAL ORDER
License No. 31TD00367900	:	OF DISCIPLINE
	:	
TO PRACTICE OPHTHALMIC DISPENSING	:	
IN THE STATE OF NEW JERSEY	:	

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

FINDINGS OF FACT

1. Vesta Kim ("Respondent") is a licensed ophthalmic dispenser in the State of New Jersey and has been a licensee since June 11, 2009. (See Certification of Robert Campanelli, Records Custodian of the Division of Consumer Affairs, annexed as Exhibit A and made a part hereof).

2. Respondent has been employed at Optical View, located at 14-22 Prospect Avenue, East Brunswick, New Jersey at all times relevant hereto. (See Exhibit A and License Information form listing her employer as Optical View, annexed as Exhibit B and made a part hereof).

3. On or about September 10, 2009 an investigator from the Enforcement Bureau of the Division of Consumer Affairs inspected Optical View, located at 14-22 Prospect Avenue, East Brunswick, New Jersey. (See Demand for Inspection of and Photographing of Professional Premises, annexed as Exhibit C and made a part hereof and Certification of Investigator Rudolph T. Cherney, Jr., annexed as Exhibit D and made a part hereof.)

4. On September 10, 2009 respondent was personally served with a Subpoena Duces Tecum requiring her by September 25, 2009 to provide four randomly selected patient records and other information. (See Exhibit E, Subpoena Duces Tecum, with affidavit of service.)

5. To date, respondent has not responded to the subpoena. (Exhibits A and D).

CONCLUSIONS OF LAW

Respondent's failure to respond to the Subpoena Duces Tecum constitutes a failure to cooperate with a Board's investigation pursuant to N.J.A.C. 13:45C-1.5(a)6, subjecting respondent to sanctions for violation of N.J.S.A. 45:1-21(e).

ACCORDINGLY, IT IS on this ____ day of _____, 2010,

ORDERED that:

1. Respondent's license to practice ophthalmic dispensing is provisionally suspended for her violation of N.J.S.A. 45:1-21(e). Respondent's license shall not be

reinstated until she has provided a complete response to the Subpoena Duces Tecum personally served on September 10, 2009.

2. Respondent is provisionally reprimanded for failing to provide the four patient records and other information in response to the Subpoena Duces Tecum, in violation of N.J.A.C. 13:45C-1.5(a)6.

3. Respondent is provisionally assessed a civil penalty pursuant to N.J.S.A. 45:1-25 in the amount of \$1,000.00 to be paid by certified check or money order payable to the State of New Jersey, delivered to Executive Director Dorcas O'Neal, State of Board of Ophthalmic Dispensers and Ophthalmic Technicians, P.O. Box 45011, Newark, New Jersey 07101. Payment shall be made no later than 15 days after the entry of any Final Order of Discipline in this matter. In the event respondent fails to make a timely payment, a certificate of debt shall be filed in accordance with N.J.S.A. 45:1-24 and the Board may bring such other proceedings as authorized by law.

4. The within order shall be subject to finalization by the Board at 5:00 p.m. on the 30th day following entry hereof unless respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

- a) Submitting a written request for modification or dismissal to Dorcas O'Neal, Executive Director, 124 Halsey Street, Sixth Floor, P.O. Box 45011, Newark, New Jersey 07101.
- b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.
- c) Submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor or offered in mitigation of penalty.

4. Any submissions will be reviewed by the Board and the Board will thereafter

determine whether further proceedings are necessary. If no material discrepancies are raised through a supplemental submission during the thirty-day period, or if the Board is not persuaded that the submitted materials merit further consideration, a Final Order of Discipline will be entered.

5. In the event that respondent's submissions establish a need for further proceedings, including, but not limited to an evidentiary hearing, respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein may serve as notice of the factual and legal allegations in such proceeding. Further, in the event a hearing is held and upon review of the record, the Board shall not be limited to the findings, conclusions and sanctions stated herein.

NEW JERSEY STATE BOARD OF OPHTHALMIC
DISPENSERS AND OPHTHALMIC TECHNICIANS

By:



Linda Cohen
President