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FILED
BOARD OF OPTOMETRISTS
February 4, 2014
Renee P. Clark
Executive Director

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

IN THE MATTER OF Michael Newman, O.D. License No. 270A000280500 LICENSED TO PRACTICE OPTOMETRY IN THE STATE Of NEW JERSEY	Administrative Action Consent Order

THIS MATTER was opened to the New Jersey State Board of Optometrists (hereafter "Board") upon the receipt of information received on December 3, 2012 from S.M. Ms. M alleged incompetence and malpractice by Dr. Newman because he did not use indirect ophthalmoscopy as part of his regular exams, and that had he done so, her retinal detachment might have been prevented. Instead, Ms. M. states that he only performed direct ophthalmoscopy, which

means that he could only visualize the central retina and not the peripheral retina. Ms. M. also alleged that she had mentioned to Respondent in her last two appointments that she kept seeing explosions of floaters. He did not perform any special exam to investigate her reports and said that it was a sign of aging eyes. Ms. M. also stated that Respondent's regular practice was to use only one dilating drop and have her wait approximately fifteen minutes for her eyes to dilate before the examination.

After her June 2009 exam with Respondent, Ms. M. sought an appointment with the Princeton Eye Group because Respondent was having difficulty finding a contact lens that was both comfortable for Ms. M. and addressed all of her vision concerns. Dr. Reynolds, an MD at the Princeton Eye Group, diagnosed her with right retinal detachment (RD) and the near-detachment of the left retina. After her diagnosis, Ms. M. was referred to the Retina Vitreous Center (RVC).

The Board held an investigative inquiry on June 19, 2013, attended by Michael Newman, O.D., Respondent, and his attorney, Pamela Mandel, Esquire, to discuss Respondent's practice of optometry and the optometric treatment of Ms. M.

Ms. M. was a patient of Respondent's from August 31, 1987 until June 6, 2009. In February 2010 at the age of forty-eight, the Princeton Eye Group diagnosed Ms. M. with bilateral lattice degeneration, a right retinal detachment (RD), and the near-detachment of the left retina.

Respondent testified that he never dilated Ms. M. In addition, he stated that specifically during the June 2009 exam (Ms. M.'s last eye exam with him), Ms. M. made no complaints regarding her vision, that he did not perform a dilated eye exam, and that Ms. M. never mentioned seeing floaters or flashes. Respondent testified that a patient complaint of floaters would have provided a basis to perform a dilated eye exam.

Respondent also explained that his general dilation policy in place from 1969 through 2013 is to dilate myopic, diabetic, and cataract patients, patients with unexplained complaints of vision issues, floaters, and mature patients.

The Board finds that Respondent's failure to dilate this patient's eyes over a 20 plus year treatment period constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e). The standard of care for dilation by an optometrist is to provide periodic dilated fundus examinations. The optometrist must establish a protocol to determine how to define what he means by periodic dilated

examinations in his practice. The professional judgment of the optometrist taking into consideration the patient's age, eye health, overall health, the reason for the examination and the results of previous examinations are factors used to determine the protocol. The Board finds that Respondent's current dilation policy is not in accord with the appropriate standards of practice.

A review of S.M's patient record demonstrated that Respondent put check marks next to information to report a "normal" reading regarding ophthalmoscopy and did not record the actual cup to disc ratio. Utilization of a check mark in the patient record instead of recording the cup to disc ratio does not give an accurate representation of the health of the eye. Respondent's record of S.M. did not support that a complete examination of the internal parts of the eye was conducted, which is a violation of N.J.A.C. 13:38-2.1(a)4.

Respondent testified that he updated his records in 2010 by introducing a computerized record system which captures the cup to disc ratio for both eyes in all eye examinations of patients.

Respondent being desirous of resolving this matter without resort to formal proceedings, Respondent having made no admissions; Respondent having waived any right to a

hearing; and the Board having determined that this Order is sufficiently protective of the public safety, health and welfare, and for good cause shown;

IT IS ON THIS 4 day of February 2014, ORDERED AND HEREBY ORDERED AND AGREED THAT:

1. Respondent, Michael Newman, O.D., shall pay a civil penalty in the amount of $2,500.00 for violation of N.J.S.A. 45:1-21(e) in never having dilated a patient in treatment with him for over twenty years, and violation of N.J.A.C. 38-2.1(a)4 for inadequately recording the condition of the interior parts of the eye at the time of the examination. Full payment shall be made by certified check or money order payable to the State of New Jersey no later than thirty days from the filing date of the order. Payment shall be made to the Board of Optometrists, attention Renee Clark, Executive Director, 124 Halsey Street, P.O. Box 45012, Newark, New Jersey 07101.

2. Respondent agrees to pay the costs of the investigation in the amount of $236.25 within thirty days of the filing date of this order. Payment shall be made by certified check or money order no later than thirty days from the filing date of this order. Payment shall be made

payable to the State Board of Optometry and sent to the attention of Renee Clark, Executive Director, at the address listed in paragraph two above.

3. Failure to remit payment as required by this Order will result in the filing of a Certificate of Debt including interest, as calculated pursuant to the Court Rules, and such other proceedings as permitted by law.

4. Respondent shall fully attend, complete and successfully pass a three-hour recordkeeping course and a six-hour course in posterior segments of the eye within six months of the filing date of this order. Both courses shall be pre-approved by the Board and may be COPE sponsored courses. Respondent shall submit written proof of his successful satisfaction of these courses within ten days of completion of each course. These courses cannot be used as credit for required continuing education for any biennial registration period as provided by N.J.A.C. 13:38-7.3(e).

NEW JERSEY STATE BOARD
OF OPTOMETRISTS

By: _____
Mitchell Fink, O.D.
Board President

I have read and I understand

this Consent Order and agree to be bound by its terms. I further hereby consent to the entry of this Consent Order.

Michael Newman, O.D.

This Order is agreed to as to form and entry.

Pamela Mandel, Esquire
Attorney for Michael Newman, O.D.

VIII FYI

a. Perry Toker, O.D. complied with Settlement Letter issued January 31, 2014.

The Board reviewed for informational purposes.

b. Michael Newman, O.D. complied with Consent Order filed February 4, 2014 which included proof of completion of a three-hour record keeping course and a six-hour course in posterior segments of the eye reviewed by Dr. Collazo Harfst.

The Board reviewed for informational purposes.

IV ADJOURNMENT

A motion was made by Dr. Siegel seconded by Dr. Florio to proceed to Executive Session, to hold an investigative inquiry, to consider and review advertisements, consumer complaints and other information received pursuant to the Board's investigative authority in order to determine whether violations of law, including Board's regulations, have occurred. The results of these deliberations will be made known when, and if, the Board determines to initiate disciplinary or other enforcement actions. If the Board chooses to issue a Uniform Penalty Letter, the action will be taken in Public Session immediately after the Executive Session.

A motion was made by Dr. Siegel, seconded by Dr. Desrivieres to adjourn the meeting at 2:40p.m. The motion carried by unanimous vote.

Respectfully submitted
BOARD OF OPTOMETRISTS

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Renee Pearson Clark