JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the State Board
of Optometrists

FILED
BOARD OF OPTOMETRISTS
DEC - 3 2015
Renee P. Clark

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

IN THE MATTER OF THE LICENSE OF BURTON MARTINIQUE, O.D. LICENSE No. 270A00262100 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 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. Respondent, Burton Martinique, O.D., License No. 270A00262100, is an optometrist licensed in the State of New Jersey.

2. On September 15, 2014 a Consent Order was filed by the Board whereby the Respondent's license to practice optometry was suspended for one year from the date the Order was served. The suspension was stayed on the condition that the Respondent comply with the provisions of the Order. The Order required that Respondent

employ a monitor pre-approved by the Board for a minimum of one year, who shall be a NJ licensed optometrist. The Order further required that Respondent shall not practice until a Board approved monitor was in place.

3. On September 23, 2014 Respondent submitted the names of three licensed optometrists to the Board for review. They were, Lawrence A. Ragone, O.D., Mary Ellen Gallick, OD and Russell H. Hunt, O.D. who all agreed to serve as monitors. The curriculum vitae of one of the three proposed optometrists was received by the Board. On November 9, 2014 correspondence was received from Respondent to confirm that he was monitored by Shelby Baker, O.D. at South Jersey Eye Center where Respondent conducted an eye examination on D.E. Dr. Baker was not a pre-approved Board monitor.

4. November 14, 2014 correspondence from Respondent indicated that he was advised that Dr. Baker and Dr. Gallick would not agree to monitor him during his employ at South Jersey Eye Center and terminated him from that employ. Respondent requested that the Board permit him to self monitor.

5. On November 14, 2014 Respondent submitted patient examination records for the patients referred to by initials A.K., AA.K and J.K. referred to in the Consent Order filed on September 15, 2014. Respondent asserted that he made a mistake and presented his notes to the Board at the investigative inquiry and not the

original patient records. At an inquiry of the Board the Respondent testified that his notes constituted the patient records.

6. The Order also imposed a $12,000 civil penalty to be paid over 18 monthly installments. The first monthly installment of $666.61 was due and owing on October 15, 2014. No payments have been made to date.

7. Costs in the amount of $304.25 were also imposed and were owed thirty day from the filing date of the order. A payment in the amount of $304.25 was paid within the time frame specified in the order by money order.

8. On November 30, 2014 after agreeing to and signing the Consent Order in this matter, Respondent submitted a letter in an attempt to defend his previous conduct. He informed the Board that he has been practicing since 1957 and that he has made the necessary corrections and adjustments and requested that the Consent Order filed against him be "lifted" and that he be permitted to continue practicing without a monitor.

CONCLUSION OF LAW

The Respondent's failure to comply with a Board order by practicing with a self-appointed monitor in violation of the

September 16, 2014 Consent Order constitutes professional misconduct pursuant to N.J.S.A. 45:1-21(e) and N.J.A.C. 13:45C-1.4.

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 August 4, 2015 and a copy was served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. pm 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.

Although the record reflects that the Provisional Order was mailed to the Respondent by certified mail, return receipt requested at the address of record, 2901 Route 42, Sicklerville, NJ, 08081 and was received on August 12, 2015, the Respondent did not submit a letter or any documentation setting forth his rationale in mitigation or as a request for reconsideration in response to the POD. The Respondent instead submitted copies of letters received from several licensed optometrists dated August 18, 22 and 25, 2015

respectively from Drs. Shelby Baker, O.D., Charles Fitzpatrick, O.D., Robert D. Levy, O.D., and David J. Melish, O.D. indicating that they were unable to serve as a monitor in Dr. Martinique's practice. These letters while reviewed by the Board, were not considered to be a response in mitigation which would cause the Board to alter its determination. Accordingly, the Board considered the matter and determined that further proceedings were not necessary and the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 3 day of December, 2015, ORDERED THAT:

1. Respondent's license to practice optometry in the State of New Jersey is hereby suspended immediately until such time as Respondent's has obtained a Board approved monitor to supervise his practice pursuant to the terms of the September 14, 2014 Consent Order.

2. Upon approval of a NJ licensed Optometrist to serve as a monitor, Respondent's license to practice optometry shall be reinstated and the suspension imposed in the September 14, 2014 Order shall be imposed and stayed for one year from the date that Respondent's license is reinstated.

3. Any practice of optometry by Respondent in this State prior to appointment of a Board approved monitor shall constitute grounds

for revocation of his license to engage in optometry. Respondent is prohibited from appointing a NJ licensed optometrist as a monitor without Board approval. Once a monitor is approved by the Board Respondent shall work and be supervised only at his primary practice location and at any branch locations where he may practice.

NEW JERSEY STATE BOARD OF
OPTOMETRISTS

BY _____

Mitchell Fink, O.D.
Board President