



**CHRIS CHRISTIE**  
Governor

**KIM GUADAGNO**  
Lt. Governor

# New Jersey Office of the Attorney General

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



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## New Jersey State Board of Optometrists

### Regular Session Minutes

**December 21, 2011**

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A regular meeting of the New Jersey State Board of Optometrists was held at 124 Halsey Street, Newark on the 6<sup>th</sup> floor on Wednesday, December 21, 2011. **Mitchell Fink, O.D., President of the Board**, announced that pursuant to the Open Public Meetings Act notice of this meeting was prepared in the office of the Board and mailed out to the Secretary of State, the Attorney General, the Star Ledger, the Record, the Press of Atlantic City, the Asbury Park Press, and the Trenton Times. The meeting was called to order at 9:10 A.M. A roll call was taken and the following attendance was recorded and a quorum was present:

<b>DANIEL DESRIVIERES, O.D.</b>	<b>Present</b>
<b>GIGETTE COLLAZO HARFST, O.D.</b>	<b>Excused</b>
<b>MITCHELL FINK, O.D.</b>	<b>Present</b>
<b>JOHN FLORIO, O.D.</b>	<b>Present</b>
<b>MICHAEL SIEGEL, O.D.</b>	<b>Present</b>

Also present were: **CARMEN RODRIGUEZ, Deputy Attorney General; LISA AFFINITO, Executive Director**

**Members of the public:** Howard Cooper, Executive Director of the New Jersey Society of Optometric Physicians

- I. Public Comment**
- II. Approval of Regular Session Minutes**
  - A. October 19, 2011

A motion was made by Dr. Desrivieres and seconded by Dr. Siegel to approve the October 19, 2011 Public Session Minutes as presented. A vote was taken and the motion carried by a unanimous vote.

- III. New Business**
  - A. Inquiry from James Sinoway, O.D.  
RE: Independent Doctor of Optometry

Dr. Sinoway inquired whether a landlord can take a percentage of a professional service such as an eye exam.

A motion was made by Dr. Desrivieres and seconded by Dr. Siegel to advise Dr. Sinoway that he should review the Independent doctor of optometry regulation, specifically N.J.A.C. 13:38-2.13(a)2, "Take no instruction from a landlord with regard to any aspect of optometric practice and lease space on the basis of a written lease and only where rent is a fixed fee determined by the fair market value, is for a regular term and not for sporadic use of the space, is not contingent upon the number of patients, or the number or types of optometric services". A vote was taken and the motion carried by a unanimous vote.

- B. Letter from Kent L. Schwarz, Esq.  
RE: Independent Doctor of Optometry

Kent L. Schwarz, Esq. inquired whether a retail optical store could offer free eye exams to potential customers. Mr. Schwarz explained that the retail optical store would agree to pay for the eye exams as a promotion. The Independent Doctor of Optometry would invoice the optical store rather than the patient for the full cost of the patient visit. The Invoices would be paid by the optical store regardless of whether the patient made any purchase at the retail optical store. Mr. Schwarz also explained another scenario whereby the retail optical store would issue vouchers to consumers for a free eye exam that would be accepted by the Independent Doctor of Optometry and redeemed for payment by the retail store regardless of whether the patient presenting the voucher made any eyeglass purchase.

A motion was made by Dr. Desrivieres and seconded by Dr. Siegel to inform Mr. Schwarz that any arrangement that included the offer of a free eye exam to consumers must comply with N.J.S.A. 45:12-9.12 and N.J.A.C. 13:38-1.2(c)7. A vote was taken and the motion carried by a unanimous vote.

- C. Letter from Kristal Langner of Health & Safety Institute  
RE: Certification in CPR  
N.J.A.C. 13:38-4.3

Ms. Langner asked the Board to consider accepting the Health & Safety Institute's CPR training program as a CPR training program that would fulfill the requirement of N.J.A.C. 13:38-4.3(b)1ix. Ms. Langer provided the Board with detailed information concerning their CPR training program.

A motion was made by Dr. Siegel and seconded by Dr. Florio to inform Ms. Langer that the Board accepts the Health & Safety Institute's CPR training program. The Board will advise Ms. Langer that the CPR program must be six or more hours in order to satisfy N.J.A.C. 13:38-4.3(b)1ix. A vote was taken and the motion carried by a unanimous vote.

- D. Optometric license application - Tony Park, O.D.

Upon review of Dr. Park's application, the Board noted that he has been licensed to practice optometry in the State of California since 1991. The Board noted that although Dr. Park did not take Part III of the National Board of Examiners in Optometry, he did take and pass the California State Board's practical examination.

A motion was made by Dr. Siegel and seconded by Dr. Florio to accept the California's practical examination as it is equivalent to Part III. A vote was taken and the motion carried by a unanimous vote.

E. Optometric license application - James Han, O.D.

Dr. Han informed the Board that his name was changed from Jimmy C. Han to James C. Han in 1982. Dr. Han provided the Board with a copy of his social security card.

A motion was made by Dr. Desrivieres and seconded by Dr. Siegel to request that Dr. Han provide the Board with a notarized affidavit explaining his name change. A vote was taken and the motion carried by a unanimous vote.

F. Letter from Von Gordon  
RE: Pupillary Distance

Mr. Gordon inquired whether it was the discretion of the optometrist if he or she includes the "pupillary distance" on an eyeglass prescription.

A motion was made by Dr. Florio and seconded by Dr. Siegel to advise Mr. Gordon that in the past all spectacle lenses were made of the same index of refraction (density), same center, edge thickness and the same style. All of the patients facial anatomical measurements were taken with a millimeter ruler at the time of the eye examination. With the explosion of new frame designs, lens materials and technologies, the old measurement system is no longer remotely adequate. Proper placement of the appropriate aspect of the lens in front of the patients pupil is critically important for today's technologically more advanced spectacle lenses and frame materials. Special instrumentation and devices are required to insure the prescription lenses will function properly for the patient. The measurements must be made relative to the eyeglass frame selected. Therefore, the patient must be measured by the seller and/or the dispenser of the eyeglass frame. The doctor cannot assume any responsibility for the proper prescription being misplaced in front of the pupil due to the configuration of the frame, the lens style or material chosen by the patient.

Pupillary distance, "PD", refers to the measured distance between the patients pupils, and is taken for at least far and near viewing distances. Today's lenses require precise horizontal and vertical placement of the lens selected by the patient. These measurements are effected by the lens and frame shape, size and use (driving, computer or reading) of the prescription. Therefore, the patient must be measured by the seller and/or dispenser of the eyeglass frame.

Segment height of the, bifocal, trifocal or progressive lenses, refers to the height or placement of the near viewing (intermediate or reading portion) of the lens. Most lens manufacturers have a fitting guide to ensure the lens is positioned for maximum viewing efficiency with minimum of peripheral distortion. Therefore, the patient must be measured by the seller and the dispenser of the eyeglass frame.

A vote was taken and the motion was carried by a unanimous vote.

G. Inquiry from Lisa Fennel, Managing Director of the Association of Regulatory Boards of Optometry RE: Supervision/Delegation

Lisa Fennel, Managing Director of the Association of Regulatory Boards of Optometry (ARBO) informed the Board that ARBO is doing research on the different standards of supervision/delegation in relation to refractions.

Ms. Fennel inquired whether a New Jersey licensed optometrist is permitted to perform a refraction only or must he or she perform it only within an eye exam. Ms. Fennel also inquired whether a New Jersey licensed optometrist may delegate automated refractions, auto-phoropters, refracting software logic systems as preliminary tests reserving the double-checking, evaluation, consultation, visual error diagnosis, and signing a new eyeglass prescription only to the supervising optometrist.

A motion was made by Dr. Desrivieres and seconded by Dr. Siegel to advise Ms. Fennel that a New Jersey licensed optometrist must perform a minimum examination and cannot perform only a refraction. The Board will also advise Ms. Fennel that a New Jersey licensed optometrist can delegate the performance of an automated refraction but cannot delegate the evaluation, interpretation and subjective part of the refraction. A vote was taken and the motion carried by a unanimous vote.

H. January 18, 2012 New Jersey State Board of Optometrists meeting

A motion was made by Dr. Desrivieres and seconded by Dr. Siegel to adjourn the Board's January 18, 2012 meeting due to lack of a quorum. A vote was taken and the motion carried by a unanimous vote.

I. New Jersey State Board of Optometrists  
Frequently Asked Questions

The Board reviewed frequently asked questions that will soon be posted on the website of the New Jersey State Board of Optometrists.

**IV. Old Business**

A. Response from S. Moshe Roth, O.D.  
RE: Scope of Practice

Dr. Roth informed the Board that he is being asked by an insurance company for validation that destruction of lesion of lid margin (up to one centimeter) using topical treatments without surgery (blades, scalpels or incision) is within the scope of practice of a therapeutic licensed optometrist.

A motion was made by Dr. Siegel and seconded by Dr. Desrivieres to advise Dr. Roth that destruction of a lesion of the lid margin using topical treatments without surgery is within the scope of practice of a New Jersey licensed optometrist who also holds a therapeutic pharmaceutical agents certification. A vote was taken and the motion carried by a unanimous vote.

Upon a motion made by Dr. Desrivieres and seconded by Dr. Siegel, the Board voted to go into Executive Session to discuss the following matters involving investigations or violations of the Board's enabling act, the Uniform Enforcement Act and/or Board regulations. A vote was taken and the motion carried by a unanimous vote.

1. Eight matters filed with the board which require review and additional recommendations with regard to investigation and/or actions.
2. Three matters where additional information has been submitted to the Board concerning pending investigations.

**V. For Your Information**

- A. Resignation letter from Board Member, Claribel Azcona-Barber

A motion was made by Dr. Siegel and seconded by Dr. Florio to accept Ms. Azcona-Barber's resignation from the Board. A vote was taken and the motion carried by a unanimous vote.

**VI. Adjournment**

A motion was made Dr. Siegel and seconded by Dr. Florio to adjourn the Regular Session Meeting at 2:00 P.M. A vote was taken and the motion carried by a unanimous vote.

Respectfully submitted,

Lisa Affinito  
Executive Director