

(RLM)

STATE OF FLORIDA
BOARD OF OPTICIANRY

Final Order No. DOH-09-1049-^{DS} MOA
FILED DATE - 6-16-09
Department of Health
By: *Rachel Bl*
Deputy Agency Clerk

IN RE: PETITION FOR
DECLARATORY STATEMENT

CHARLES L. HARRUP

/

FINAL ORDER

This matter appeared before the Board of Opticianry pursuant to Sections 120.565 and 120.57(2), Florida Statutes, and Chapter 120-105, Florida Administrative Code, at a duly-noticed public telephonic meeting on June 1, 2009, for consideration of a Petition for Declaratory Statement, which is attached as Exhibit "A." The Notice of Petition for Declaratory Statement was published on March 13, 2009, in Vol. 35, No. 10, of the Florida Administrative Weekly. A Petition to Intervene was filed on May 11, 2009, by the National Association of Optometrists and Opticians.

The Petition, filed by **Charles L. Harrup**, inquired as follows:

An eye doctor examines a patient and issues a contact lens prescription which carries an expiration date of one year. The patient then tries to order contact lenses just prior to the expiration date and the number of contacts requested will last the patient longer than the prescription expiration date. The petition inquires "[k]nowing the patient's obvious intent, are we as Florida Licensed Opticians allowed to dispense contact lenses under such conditions or must we legally refuse?"

1. The Petitioner, Charles L. Harrup, is a Florida-licensed optician.
2. The Board of Opticianry has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

3. The Board of Opticianry declines to issue a declaratory statement in response to this petition because the petition is not in substantial compliance with Section 120.565, Florida Statutes.

4. Section 120.565, Florida Statutes, provides as follows:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

5. Specifically, the petition does not pertain solely to the petitioner's set of circumstances nor does it specify the statutory provision he believes may apply to the set of circumstances listed in the petition. Further, the Board believes that Section 484.012(2), Florida Statutes, is clear as written.

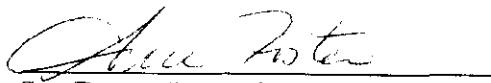
Based on the foregoing, the Board hereby **DENIES** the Petition for Declaratory Statement filed by Charles L. Harrup.

Accordingly, the Petition to Intervene filed by the National Association of Optometrists and Opticians is moot.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 16th day of June, 2009.

Board of Opticianry



Sue Foster, Executive Director
For Margaret Slattery, Chairperson,
Board of Opticianry

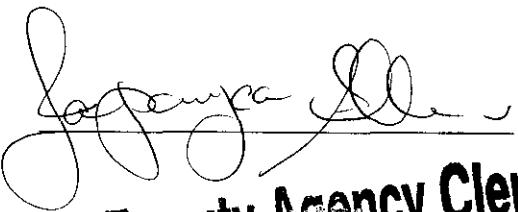
NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.569, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health, and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Charles L. Harrup**, 2320 Edmonton Court, Clermont, FL 34711; **Ronald A. Labasky, Esq.**, Young Van Assenderp, P.A., 225 South Adams Street, Suite 200, Tallahassee, FL 32301; and by interoffice mail to **Donna C. McNulty**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this

16 day of June, 2009.



Margaret Slattery
Deputy Agency Clerk

Charles L. Harrup
2320 Edmonton Ct
Clermont, FL 34711
352-242-2400
lesharrup@yahoo.com

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Rachel B.*
DATE *2-3-09*

1-19-2009

Florida State Board of Opticians
4052 Bald Cypress Way, Bin #C08
Tallahassee, FL 32399-3258

Re: Contact Lens Dispensing and Public Health

Dear Board Members,

Please review the following contact lens dispensing problem. I ask for an Official Board Ruling on this problem in the best interest and protection of the public's ocular health. In addition, please add your ruling to the Laws and Rules which govern our profession so we may all be legally held to the same standard.

The Problem: An eye doctor examines a patient and issues a contact lens Rx which carries an expiration date of **one year**. Knowing that he/she needs return to the doctor in one year, but not wanting to do so, the patient tries to order contact lenses just prior to the expiration date. The number of contacts that the patient requests, in most cases sold in six-packs, will last the patient much longer than the Rx expiration date. Therefore, the patient does not return for the annual contact lens exam on schedule. Having obtained an oversupply, the patient will not see their eye doctor until much later than instructed.

The Question: Knowing the patient's obvious intent, are we as Florida Licensed Opticians allowed to dispense contact lenses under such conditions or must we legally refuse?

This presents an ethical and perhaps even a legal dilemma to the dispenser.

I would add at this juncture that due diligence and professional ethics would not permit us to dispense an Rx under such circumstances. However, those whose only motivation is profit argue that the Rx has not expired, so the patient has the right to purchase as many contact lenses as desired (even another year's supply, if requested). If the patient's ocular health or corneal integrity is compromised, it's not their problem. In many cases the same patient returns several times prior to the expiration date just to order and receive an oversupply of contact lenses and members of our profession gladly oblige.

May I submit that in the event of "claimed injuries" by the patient, too numerous to list here, personal injury attorneys will not share the "it's not our problem" complacency and will most assuredly name as culpable defendants everyone remotely involved in the transaction. This includes, but may not be limited to, the manufacturer, prescribing doctor, dispenser, optical establishment license holder, etc.

More important than the inevitable litigation is the fact that the Licensed Optician dispensed contact lenses to the patient knowing the intent of post-expiration-date-wear and did nothing to prevent it. That's not protecting the public's best interest, now is it?

I believe we have a professional and ethical duty to safeguard public health, in fact, prudence demands that we do. Even a bartender has the responsibility to refuse alcohol to a patron when, in his/her professional judgment, public health is at risk. Do we as Licensed Opticians not have a far greater responsibility? I hope you agree we do!

Thank you for your consideration of this issue.

For Professional Opticianry,

Charles L. Harrup, FNAO, ABOC, NCLC
Florida Board-Certified Optician, DO #5464
Virginia Licensed Optician and CLC, #470

Exhibit A