

State of Connecticut
Department of Public Health
PRACTITIONER LICENSING AND INVESTIGATIONS SECTION

INVESTIGATIVE REPORT

September 3, 2014

Revised – May 7, 2015

Investigation of Petition # 2013-302

Respondent's Name:

Sears Optical
824 Hartford Tpke
Waterford, CT 06385-4202

Petitioner's Name:

Ohan Karagozian
62 Asylum Street
New Haven, CT 06519
203-747-9102

Credential No. OSP.001311
Expiration Date: 08/31/2015
First Issuance Date: 08/15/1984

Investigated by: Marcus Campbell, Special Investigator

Allegation(s):

- Sears Optical (Luxottica Retail) of Waterford is not adhering to the *Declaratory Ruling* dated May 1, 2002, issued by the Connecticut Board Of Examiners For Optometrists
- Optometrist, Dr. Stephen Fedus, is allowing Sears Optical (Luxottica Retail) to use his contact lens equipment in violation of the *Declaratory Ruling* dated May 1, 2002, issued by the Connecticut Board Of Examiners For Optometrists
- As a licensed Optician, the Petitioner was “imposed” to perform optometric assistant duties for Dr. Fedus.
- Sears Optical of Waterford is operating without a valid Optical Selling permit.
- Sears Optical of Waterford submitted a fraudulent Optical Selling Permit Application stating that the store had the contact lens equipment onsite, which they did not.

Introduction

On or about April 1, 2013, the Department received several complaints via mail and email from the Petitioner concerning Sears Optical (Luxottica Retail).

Investigation

A. Complaint Analysis (Exhibit A)

The Petitioner identified the following in his complaints to the Department:

1. He worked at Sears Optical in Waterford, CT from September 24, 2012 until February 2, 2013 as a licensed optician.

2. During his employment as an employee of Sears Optical/Luxottica Retail, he was "imposed" to perform optometric assistant duties for the Optometrist including the following:
 - a. Ringing up optometric fees for the doctor on the Sears' cash register
 - b. Answering incoming calls for appointments and insurance inquiries.
 - c. Receiving patients for optometric examination and collecting HIPAA information on behalf the doctor.
3. The Optometrist at Sears Optical of Waterford has no staff and relies on the licensed Opticians and/or store managers to fill in as his staff.
4. Access to the Optometrist's exam room/office is only accessible through the optical department.
5. Optometrist, Dr. Stephen Fedus, is allowing Sears Optical of Waterford to use his contact lens equipment in violation of the Declaratory Ruling dated May 1, 2002, issued by the Connecticut Board Of Examiners For Optometrists
6. Sears Optical of Waterford is operating without a valid Optical Selling permit.
7. Sears Optical of Waterford submitted a fraudulent Optical Selling Permit Application stating that the store had the contact lens equipment onsite, which they did not.

B. An unannounced site inspection was conducted on 9/03/2013 at Sears Optical, 824 Hartford Turnpike, Waterford, CT 06835.

1. Elda Y. Cone, identified by her CT. D.L. [REDACTED] was present and identified herself as the Licensed Optician of Record. Ms. Cone's DPH License #001503 was displayed and observed by this Investigator. An interview was conducted with Ms. Cone concerning her employees and duties performed by her and her staff. Ms. Cone identified the following during the interview:
 - a. Her start date as the Licensed Optician of Record with Sears Optical in Waterford began on July 1, 2013.
 - b. She completed the *Application for Optical Selling Permit* and was waiting for the new permit.
 - c. Her staff consisted of the following:
 - Optician Laura K Zotti (identified by her CT D.L. [REDACTED] and DPH License #001448)
 - Amanda Pezzello - clerical staff
 - Two apprentices - Adam Jordan and Jacqueline Nilsson
 - d. That Dr. Stephen Fedus, the Optometrist located at her store, has no independent dedicated staff. That she and her staff perform the following duties for Dr. Stephen Fedus:
 - Answer phone calls which include book eye exam appointments, collecting insurance information from patients and customers, and verify insurance benefits for the doctor's patients, as Dr. Fedus does not have a separate phone line for his patients.
 - Confirm eye exam appointments
 - Collect fees for exams
 - Order trial contact lenses for patients and maintain doctor's contact lens trial room.
 - Verify contact lens prescriptions.
 - Fax medical records and prescriptions to patients and from other eye care offices.
2. An interview was then conducted with Dr. Stephen Fedus. Dr. Fedus identified the following during the interview:
 - a. He has no personal staff and relies on the Sears Optical staff to assist him.
 - b. His only access to his patient files is when the store and mall are open. He has no access to the files if there was an emergency after hours. **Investigator Comment: Dr. Fedus' patient files were observed in file cabinets located in his office/examination room. The office/examination room is located to the rear right of the store and is separated by the rest of the Sears Optical store by a door. Dr. Fedus' office/examination room is only accessible by walking through the Sears Optical show room.**
 - c. He has a lease agreement with Luxottica.

- d. He does not collect his fees or handle money. The Luxottica staff does.
 - e. His lease agreement has an hourly requirement, which he must work 5 days a week.
 - f. He does not have a minimum set of patients required to be seen by him each day.
 - g. He sets his own exam fees.
 - h. All phone lines are through Sears Optical.
3. An examination of the contact lens trial room did not reveal the contact lens equipment indicated on the Sears Optical's *Application for Optical Selling Permit's* dated July 26, 2012 and August 13, 2013, respectively. The Keratometer and Silt Lamp indicated on the Sears Optical's *Application for Optical Selling Permits* were located in Dr. Fedus' office/examination room. When questioned by this Investigator, Dr. Fedus stated that neither he nor the store had a Burton Magnifier nor did he know what a Black Light was.

C. January 1, 2013 to December 31, 2013 Sublease Agreement between Dr. Stephen Fedus and Luxottica Retail (Exhibit B).

1. By signing the *Sublease Agreement* with Luxottica Retail on 10/5/2012, Dr. Fedus agreed to the following:
 - a. Luxottica Retail at their sole discretion in exchange for rent, may provide the Doctor, staff to assist in the performance of administrative tasks in the office. Staff are considered employees of Luxottica Retail.
 - b. Luxottica Retail employees shall not submit claims, reconciliation of accounts receivable, or preparation and/or drop off bank deposits for the Doctor.
 - c. Maintain sufficient optometric staffing to accommodate walk-ins and to offer appointments within two days of optometric coverage as described in schedule F to ninety percent of all patients contacting the office for service.
 - d. He must be physically present and available to see patients in the office on Tuesdays, Thursdays, and Fridays, 11:30am until 8:00pm and Wednesdays and Saturdays 10:00am until 5:00pm for a total of 39.5 hours per week.

E. Connecticut Board of Examiners for Optometrists Declaratory Ruling (Exhibit C)

1. In response to a request dated November 2, 1999, from Lawrence Lefland, O.D., asking the Board to determine the circumstances under which an optometrist would be considered to be practicing his profession "as an employee of any unlicensed person, firm or organization", the Connecticut Board Of Examiners for Optometrists concluded the following in a Declaratory Ruling dated May 1, 2002:

In every landlord-tenant or independent contractor relationship, the leasing or contracting optometrist shall:

- a. Retain ownership and control of optometric patient records and have 24-hour access to such records.
- b. Be afforded access to the premises, after business hours, for medical emergencies. Any contract or lease shall contain a reasonable protocol for the optometrist to gain access to the premises for such medical emergencies.
- c. Set his or her own fees for optometric services and products sold in the optometrist's office, provided that optometrists may refrain from the sale of ophthalmic products in the leased premises.
- d. Not be constrained in scheduling patients, the amount of time spent with a patient, or the number of patients to be seen in a particular time period. The optometrist may, however, contract to perform optometric services for a minimum number of hours per day.
- e. Not be limited in the treatments, products or services recommended for patient, nor shall

the commercial establishment compensate optometrists based on goods purchased by patients.

- f. Not enter into a lease for less than fair market value, except that the optometrist may pay rent based on a percentage of gross income.
- g. Not be limited in the managed care or insurance plans in which the optometrist chooses to participate.
- h. Be free to practice to the full scope of licensure permitted under law, as well as control the hiring, staffing, training, office and employment policies of the individuals employed to assist the optometrist in the management and administrative aspects of his practice and in patient care. The optometrist, however, may contract for the provision of clerical services.
- i. Be allowed to have a separate phone line and listing for his or her optometric office. The optometrist may own and control the telephone line and listing.
- j. Be free to advertise within the bounds of the law as the optometrist deems to be in the best interest of the practice.
- k. Control and determine to whom all patients are referred for medical, ophthalmologic and/or additional optometric services.
- l. Not permit signage or advertising that states, implies or suggests to a reasonable person that the optometrist is employed as an employee of an optical establishment. The burden rests with the optometrist to ensure that the optometry advertising is accurate and does not violate statutes and regulations.

F. Cease and Desist Consent Order entered between Wal-Mart Stores, Inc. and the Department (Exhibit D)

1. By signing the *Cease and Desist Consent Order* on February 06, 2006, the Respondent, Wal-Mart Stores, Inc., agreed to the following:
 - a. Shall not require or permit licensed opticians or registered apprentice opticians to act in the capacity of an "optometric assistant", within the meaning of Conn. General Stat. § 20-138a(b), to an independent optometrist who is leasing space in a store owned by respondent.
 - b. Ensure that it did not employ optometric assistants, registered apprentice opticians, optometric assistants, or opticians to assist the Optometrists who leased space at Wal-Mart's place of business.
 - c. That it understands that pursuant to Conn. General Stat. § 20-138a et seq., all trained optometric assistants or optometric technicians must be hired by an independent licensed optometrist, and they must be under the employ, supervision, control and responsibility of the licensed independent optometrist.

G. American Optometric Association Website (Exhibit E)

1. The American Optometric Association identifies the following on their website:
 - a. Paraoptometrics are optometric health personnel who assist doctors of optometry with front office procedures, chair side assisting, visual field testing, contact lens instruction, frame styling, and vision therapy, among other duties.
 - b. Their Paraoptometric Resource Center is the nation's largest organization serving the needs of optometric assistants and technicians.

H. Telephone Interview conducted with the Pamela Pietras, former Optician of Record at Luxottica/Sears Optical, Waterford on 7/16/2014

1. Ms. Pietras stated the following during the interview:
 - a. Her employment ended with Luxottica/Sears Optical in 2013 however she could not remember the exact date.

- b. She began working part-time for Luxottica/Sears Optical when she started working fulltime for another company.
- c. She remembers when the Petitioner was hired, as she was working part-time.
- d. The Petitioner took over as the Optician of Record for her.
- e. She performed the following duties for the Optometrist, Dr. Stephen Fedus, while employed at the Luxottica/Sears Optical Waterford location:
 - i. Answered phones.
 - ii. Booked exam appointments for patients.
 - iii. Confirmed eye appointments.
 - iv. Prepped patients for exams including copying I.D. cards and collecting patient history forms.
 - v. Ordered and verified contact lens prescriptions.
 - vi. Faxed medical records

I. Telephone Interviews with the Petitioner conducted on 8/26/2014 and 1/16/2015

1. The Petitioner stated the following during the interview:
 - a. He was hired as an Optician by Luxottica/Sears Optical on 9/7/2012.
 - b. He began working at the Luxottica/Sears Optical Waterford Location on 9/24/2012, as the Optician of Record.
 - c. During his time at the Luxottica/Sears Optical Waterford location, he never worked with Pamela Pietras, the previous Optician of Record at the Luxottica/Sears Optical Waterford location.
 - d. He performed the following duties of an optometric assistant for the Optometrist, Dr. Stephen Fedus, while employed at the Luxottica/Sears Optical Waterford location:
 - i. Answering phones.
 - ii. Booking exam appointments for patients.
 - iii. Collecting insurance information from patients.
 - iv. Confirming eye appointments.
 - v. Collecting fees which included ringing up the doctor's credit card transactions through the Luxottica cash register and providing hand written receipts to customers for cash payments. **Investigator Comment: Petitioner stated that cash payments were not run through the Luxottica cash register.**
 - vi. He was responsible for totaling the cash and credit card receipts at the end of the day and providing them to Dr. Fedus.
 - vii. Ordering and verifying contact lens prescriptions.
 - viii. Prepped patients for exams including copying I.D. cards and collecting patient history forms.
 - e. He did not perform any optometric assistant medical duties for Dr. Fedus.
 - f. Dr. Fedus trained him and other staff on how to handle Dr. Fedus' transactions and sales, appointments, and insurance questions and intake procedures.
 - g. His last day with Luxottica was in February 2012.

J. Search of State of Connecticut eLicense Enterprise

1. A search of the Connecticut eLicense Enterprise conducted on 8/28/2014 revealed the following:
 - a. On or about 9/1/2011, the Department received a renewal form from Luxottica Retail North America dated 7/29/2011, naming Susan Carbonneau and Pamela Pietras as the Opticians of Record for the Sears Optical Waterford location (**Exhibit F**).
 - b. On or about 12/08/2011, the Department received notification from Susan Carbonneau, disassociating herself as the Optician of Record for the Sears Optical Waterford, CT location (**Exhibit G**).

- c. On or about 8/07/2012, the Department received an *Application for Optical Selling Permit* for the Sears Optical Waterford Location indicating a "Change in Optician of Record". The permit signed on 7/26/2012, named Pamela Pietras as the Optician of Record (**Exhibit H**).
- d. On or about 2/19/2013, the Department received a letter from the Petitioner, disassociating himself as the Optician of Record for the Sears Optical Waterford, CT location. (**Exhibit I**)
Investigator Comment: Search of elicense shows no evidence of an *Application for Optical Selling Permit* being submitted to the Department, naming the Petitioner as the Optician of Record or notification from Ms. Pietras disassociating herself as the Optician of Record for the Sears Optical Waterford, CT location. Employment records show that Pamela Pietras last worked for Sears Optical during the pay period of 01/19/2013, which she worked 6.08 hours.
- e. On or about 09/10/2013, the Department received an *Application for Optical Selling Permit* for the Sears Optical Waterford Location indicating a "Change in Optician of Record". The permit signed on 8/13/2013 names Elda Cone as the Optician of Record (**Exhibit J**).

K. Statement of facts related to allegations:

1. Sears Optical of Waterford has a current valid Optical Selling permit since 08/15/1984.
2. The Petitioner, Ohan Karagozian, a licensed Optician with the Department, submitted several complaints to the Department regarding Sears Optical of Waterford (Luxottica Retail).
3. The Petitioner identified the following in his complaints to the Department:
 - a. During his employment as an Optician with Sears Optical of Waterford, he was imposed to perform optometric assistant duties for the Optometrist.
 - b. Optometrist Dr. Stephen Fedus is allowing Sears Optical of Waterford to use his contact lens equipment in violation of the Declaratory Ruling dated May 1, 2002, issued by the Connecticut Board Of Examiners For Optometrists.
 - c. Sears Optical of Waterford is operating without a valid Optical Selling permit.
 - d. Sears Optical of Waterford submitted a fraudulent Optical Selling Permit Application stating that the store had the contact lens equipment onsite, which they did not.
4. In a *Cease and Desist Consent Order* signed by Wal-Mart Stores, Inc., on February 6, 2006, Wal-Mart Stores Inc., agreed to the following stipulations:
 - a. The Respondent shall not require or permit licensed opticians or registered apprentice opticians to act in the capacity of an "optometric assistant", within the meaning of Conn. General Stat § 20-138a(b), to an independent optometrist who is leasing space in a store owned by respondent.
 - b. The Respondent shall ensure that it did not employ optometric assistants, registered apprentice opticians, optometric assistants, or opticians to assist the Optometrists who leased space at Wal-Mart's place of business.
 - c. Pursuant to Conn. General Stat. § 20-138a et seq., all trained optometric assistants or optometric technicians must be hired by an independent licensed optometrist, and they must be under the employ, supervision, control and responsibility of the licensed independent optometrist.
5. Interviews conducted with former and present staff of Sears Optical of Waterford, CT confirmed that Licensed Opticians are required to perform optometric assistant duties for the independent Optometrist, Dr. Steven Fedus.
6. During an interview conducted with Dr. Steven Fedus, Dr. Fedus admitted the following:
 - a. He has no personal staff and relies on the Sears Optical/Luxottica staff to assist him.
 - b. The Sears Optical/Luxottica staff collects his fees and handles the money.
 - c. His only access to his patient files is when the store and mall are open. He has no access to the files if an emergency occurred after hours.

7. Sears Optical/Luxottica and Dr. Steven Fedus are not adhering to the following conditions set forth in a Declaratory *Ruling* issued by the Board Of Examiners for Optometrists on May 1, 2001 regarding a landlord-tenant or independent contractor relationship, which states the leasing or contracting optometrist shall:
 - a. Retain ownership and control of optometric patient records and have 24-hour access to such records.
 - b. Be afforded access to the premises, after business hours, for medical emergencies. Any contract or lease shall contain a reasonable protocol for the optometrist to gain access to the premises for such medical emergencies.
8. A site inspection conducted on 9/03/2013 at Sears Optical, 824 Hartford Turnpike, Waterford, CT 06835 revealed that Sears Optical did not have the contact lens equipment onsite as indicated on the *Application for Optical Selling Permit's* dated July 26, 2012 and August 13, 2013, respectively, which were submitted to the Department.
9. From January 2013 through August 2013, Sears Optical of Waterford was operating without a valid Optical Selling permit, as they did not adhere to the Regulations of the Connecticut Department Of Public Health Code Section 20-141-18. Disassociation of licensed optician from establishment, which states, "Immediately upon disassociation or severance of the recorded licensed optician in charge from any establishment for which an optical license permit has been granted, the optical license permit is terminated. A new optical license permit shall be applied for."

Exhibit Legend:

- A. Complaint
- B. Sublease Agreement between Dr. Stephen Fedus and Luxottica Retail
- C. Connecticut Board of Examiners for Optometrists Declaratory Ruling
- D. Cease and Desist Consent Order entered between Wal-Mart Stores, Inc. and the Department
- E. American Optometric Association Website Printout
- F. Sears Optical Waterford Renewal Form
- G. Notification of dissociation from Susan Carbonneau
- H. *Application for Optical Selling Permit*
- I. Notification of dissociation from Petitioner
- J. *Application for Optical Selling Permit*

Communication Log:

Ohan Karagozian (Petitioner)
62 Asylum Street
New Haven, CT 06519

Elda Cone
[REDACTED]

Stephen F Fedus III, OD
[REDACTED]

Pamela A Pietras
[REDACTED]


CERTIFICATION

I, Marcus Campbell, Special Investigator, Practitioner Licensing and Investigations Section, Department of Public Health, being duly sworn, hereby attest that I have prepared and reviewed this report and it is a true, complete and accurate documentation of my investigation of Sears Optical, Optical Shop, professional license number: 001311.



Marcus Campbell, Special Investigator
Department of Public Health
Practitioner Licensing and Investigations Section

Subscribed and sworn to before me this 7th day of May 2015.



Notary Public
My Commission Expires 3/31/17

Ohan Karagozian
62 Asylum Street
New Haven, CT. 06519
(203) 747-9102

February 11, 2013

Connecticut Department of Public Health
Optician Licensure
410 Capitol Ave., MS#12 APP
P.O. Box 340308
Hartford, CT 06134

RE: OPTICIAN LICENSE 001678

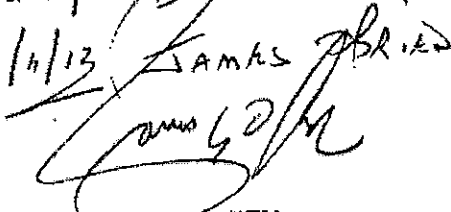
Dear Sir or Madam,

As per this writing, please be advised that my employment with Luxottica at Sears Optical, 824 Hartford Turnpike, Waterford, CT. 06385 has been terminated as of February 02, 2013 at 2:30 PM. I am not the Optician of Record for the Optical Selling Permit.

Please update your records in accordance with the foregoing as applicable.

Sincerely,


Ohan Karagozian

Signed to B. D. R. M.
2/11/13 JAMES O'BRIEN

JAMES O'BRIEN
NOTARY PUBLIC
MY COMMISSION EXPIRES 8/30/2016



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

RENEWAL NOTICE

June 9, 2014
SEARS OPTICAL 1728
824 HARTFORD TPKE
WATERFORD, CT 06385-4202

This is a notice regarding the renewal of your optical selling permit. Please provide the information requested below and return it to this office along with the required fee of \$315.00 in form of a check payable to "Treasurer, State of CT" to:

CT DPH
Optical Shop Renewals
410 Capitol Ave., MS# 12 MQA PO Box 340366
Hartford, CT 06134

Facility Information:

Name: SEARS OPTICAL
License Number: OSP.001311
Federal Employer Identification Number: 94-2222222
Phone: (860) 447-5379
Fax:
Email:
Expiration Date: 08/31/2014

Ownership Information:

Disclose the legal entity which owns the facility:
Luxottica Retail North America
4000 Luxottica Place
Mason, OH 45040

Licensed Optician(s) of Record (must sign):

Name: Etida Y Cone
Optician License Number: 1503
Signature: [Handwritten Signature]

Pursuant to state law, each optical selling permit holder must maintain worker's compensation insurance in this state. Please indicate the following with regard to your policy:

Insurance Carrier:
Policy Number:
Expiration Date:

[] Please check this box if you have no employees. If you have no employees, you are not required to maintain worker's compensation insurance.

Affidavit of Owner:

I attest that the information provided within this application is true and accurate and that any changes in the information submitted will be reported to the Department as required by law.

Printed Name: John Scott
Signature: [Handwritten Signature]
Title: Director
Date: 7/23/14

JOHN SCOTT
DIRECTOR

Questions regarding renewal may be emailed to opic.dph@ct.gov

07/16/2014 10:47AM (GMT-04:00)

Gawinski, Jolanta

From: Carragher, Stephen on behalf of OPLC
Sent: Wednesday, November 28, 2012 7:59 AM
To: Gawinski, Jolanta
Subject: FW: Complaint regarding Optical Selling Permit

Looks like it expired 8/31/2010. OSP.1697.

From: Ohan Karagozian [mailto:████████████████████]
Sent: Wednesday, November 28, 2012 7:31 AM
To: OPLC
Subject: Complaint regarding Optical Selling Permit

COMPLAINT

From: Ohan Karagozian, 62 Asylum Street, New Haven, CT. 06519, (203) 747-9102

To: Department of Health, Investigations

Date: 11-28-2012

Subject: No valid Optical Selling Permit

Nature of Complaint:

Sears Optical, located at 824 Hartford Turnpike, located inside Sears at the Crystal Mall, Waterford, CT. does not have a valid current Optical Selling Permit prominently displayed.

Further, I do not believe that Sears Optical of Waterford, CT. actually has applied for or been granted an Optical Selling Permit after the last Optical Selling Permit they had expired on 08/31/2012.

If I am mistaken in my belief that Sears Optical in Waterford, CT does not have a valid Optical Selling Permit, please accept my apologies.

P.S. Please try to keep this confidential as I fear retaliation from my employer

should my employer find out I complained to your organization.

Free Online Photosharing - Share your photos online with your friends and family!
Visit <http://www.inbox.com/photosharing> to find out more!

*Valid until 11/30/12 (90 days)
will become lapsed after that (grace period)*

Ohan Karagozian, LO
62 Asylum Street
New Haven, CT. 06519
(203) 747-9102



March 27, 2013

Matthew Blondin, OD
Chairman of the Connecticut
Board of Examiners for Optometrists
410 Capitol Avenue, MS #13PHO
P.O. Box 340308
Hartford, CT. 06134-0308

Dear Dr. Blondin,

I understand that your next scheduled meeting is on May 15th of this year and I wanted to take an opportunity to present a matter of concern to the Board for their advisement and consideration on that day.

Specifically, and succinctly, I believe that the declaratory ruling of your Board of 2001 (regarding the independent status of Optometrists) has been breached in spirit if not letter at Sears Optical in Waterford, CT. I worked at Sears Optical from September 24, 2012 until February 2, 2013 as a licensed optician and was imposed on to perform duties for the optometrist ranging from ringing up optometric fees for the doctor on the Sears cash register, answering incoming calls for appointments and insurance inquiries as well as receiving patients for optometric examination and collecting HIPA information on behalf of the doctor all the whilst being an employee of Luxottica. The doctor at Sears Optical in Waterford has no staff and relies on the licensed optician(s) and/or store manager(s) to fill in as his staff instead.

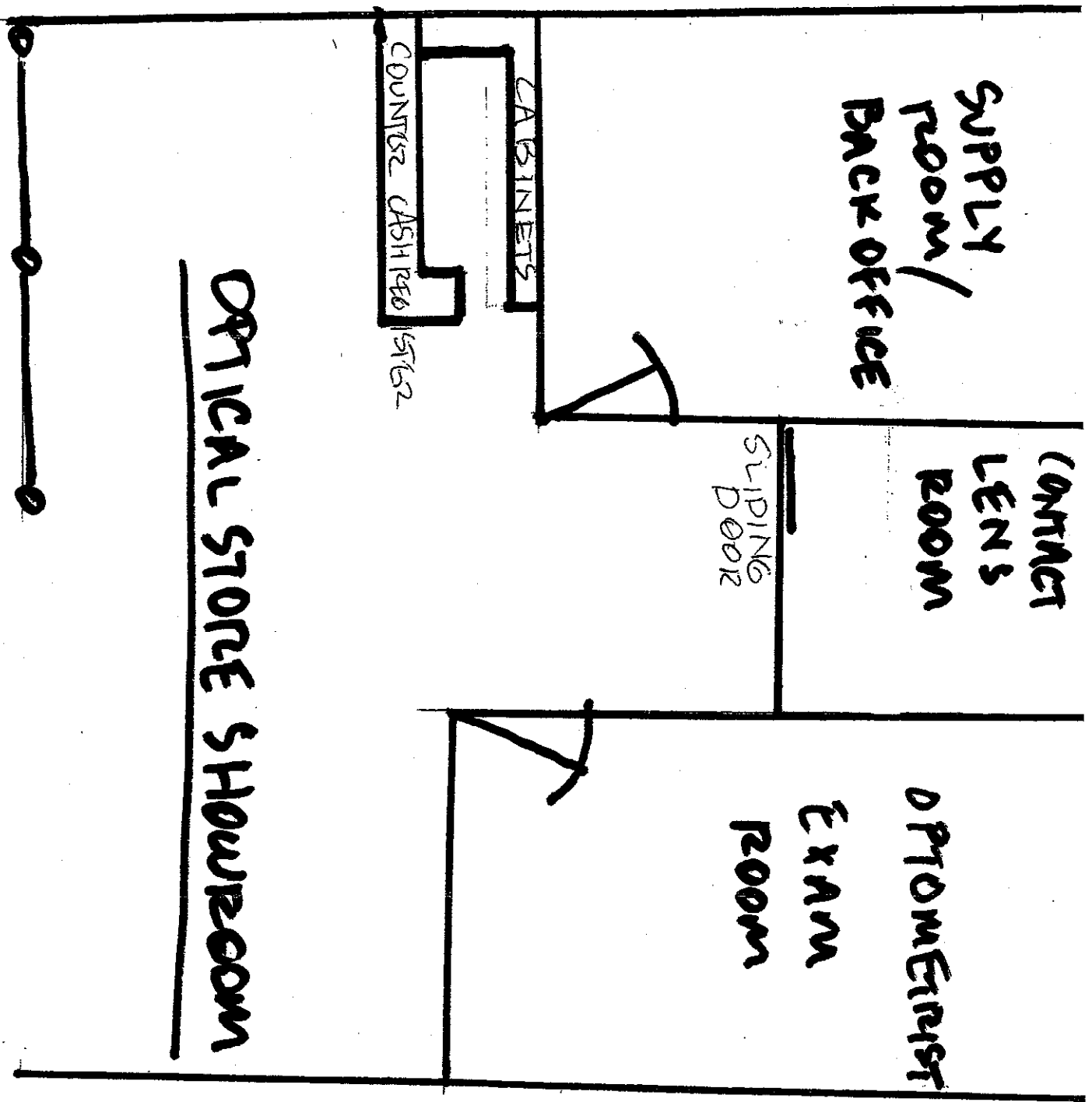
Further, the access to the Optometrist place of business (exam room/office) is a door located within the optical department and can not be accessed in any other manner other than traversing through the optical department. See attached sketch. Unfortunately, this type of floor-plan arrangement is not solely confined to Sears at Waterford, CT. but is also the same at Sears in Meriden as well as Sears Optical in West farms Mall as well where there is no separation between the Doctor's Office and the Optical Store.

Feel free to call on me at any time should you have any inquiries, concerns or otherwise regarding the foregoing matters presented for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Griffin". The signature is fluid and cursive.

cc: Gary Griffin, Investigations Supervisor, DPH



SEAR'S OPTICAL LAYOUT @ WATERFORD CT.

Oman K...
 OMAN KATHA GOZIAN

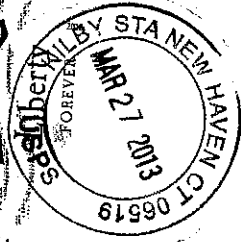
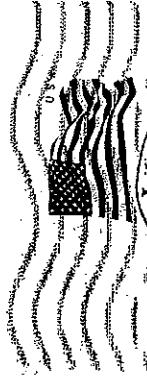
3-27-13

OHAN KARAGOZIAN
62 ASYLUM ST.
NEW HAVEN, CT.

06519

SOUTHERN CT DEPT

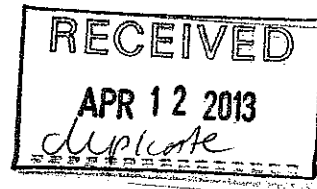
NEW HAVEN, CT 06519



TO: GARY BRITPIN
INVESTIGATIONS SUPERVISOR, DPH
410 CAPITOL AVE., MS 12H SR
P.O. BOX 340308

061340430800
HANEY FOR [unclear] 061340430800

Ohan Karagozian
62 Asylum Street
New Haven, CT 06519
(203) 747-9102



April 10, 2013

Kathleen Boulware
Department of Health
P.O. Box 340308,
410 Capitol Avenue, MS #12 FLIS
Hartford, CT. 06134

Dear Ms. Boulware,

I have been advised to provide you with information regarding my concerns and complaint I have regarding Optometric practices at Sears Optical located at 824 Hartford Turnpike, Waterford, CT. 06385.

Accordingly, please find attached a letter I received from Jeffrey Kardis and accompanying material showing that the optometrist (at the aforementioned location) is providing his **Contact Lens Equipment** for use by the Optical Store in violation of the standing order of the Board of Examiners for Optometrists of 2001 not allowing co-mingling and maintenance of independence between optical store and optometric practice. See attached Optical Store Permit Application.

Further, whilst I was employed by Sears Optical (at the aforementioned address) as a licensed optician, I was imposed upon to perform optometric assistant duties for the optometric doctor, Dr. Fedus, which included ringing up his sales, greeting the doctor's patients, acquiring HIPA information from new patients for use by the doctor, answering calls for the doctor and providing insurance coverage information the doctor was extending to his patients as well potential patients.

This intermingling of duties impacted my ability to provide services as required to my hiring company, Luxottica, and caused me concern and distress at times as I was hopping around from one task to another. I was not compensated for the services I provided to Dr. Fedus other than the hourly compensation I received from Luxottica.

Feel free to call on me should you have any questions whatsoever.

Sincerely,


Ohan Karagozian

1728-1537206021

12change1728

Application for Optical Selling Permit **FEE \$315.00**

This application is for (please check one):

New Shop Change of Location Change in Optician of Record Reinstatement. Shop License No.: _____

Optical Shop Information:

Name of Establishment (d/b/a): Sears Optical 1728
Address: 824 Hartford Turnpike
City/State/Zip: Waterford, CT 06385
Phone Number: (860) 447-9347

Ownership Information:

Legal form of Organization: Individual/Sole Proprietor Limited Liability Corporation
 Limited Partnership Profit Corporation
 Other: _____

Name of Owner: Luxottica Retail
North America CT Optician License No.: 1311
Address: 4000 Luxottica Place
City/State/Zip: Mason, OH 45040

Federal Employer Identification Number: [REDACTED]
Phone Number: (513) 765-6000 Email: _____

Signature of Owner: [Signature]
Partner or Corporate Officer: Jim Neitzke CT Optician License No.: _____
Print Name

Partner or Corporate Officer: _____
Signature

Optician of Record Information:

Licensed Optician of Record: Pam Pietras CT Optician License No.: 1426
Print Name

Signature of Optician of Record: [Signature] CT Optician License No.: 1426
Signature

Other Optician in charge of Optical Dept. (please print) _____ CT Optician License No.: _____
Print Name

Other Optician in charge of Optical Dept. Signature: _____

1715

#1904571721

Optical services performed (please check all that apply):

- Producing or reproducing ophthalmic lenses.
- Mounting ophthalmic lenses to supporting material.
- Fitting (adjust) optical glasses to the eyes.
- Repairing optical frames and mountings and supplying repair parts.

CONTACT LENSES: Check equipment on premises

- Keratometer
- Slit Lamp
- Burton Magnifier
- Black Light
- Thickness Gauge
- Reticule Measuring Device
- Radiuscope
- Other (Specify) _____

Staff:

Please list below the names, other than the licensed optician designated as owner or manager of each licensed optician or apprentice, together with their respective certificate numbers, employed by this establishment:

Name	Type of License	License or Certificate Number
Melissa Blouin	Apprentice	
Richard Moriarty	Optician	
James Noble		

Requested date for inspection: N/A

Notarization:

State of Ohio County of Warren

On this 26 day of July 20 12 Jim Neitzke
Owner's Name.

personally appeared before me, who being duly sworn says that she/he is the person referred to in the foregoing application and that the statements, made herein are true and correct in every respect, to the best of his/her knowledge and belief.


Signature of Applicant
Jim Neitzke

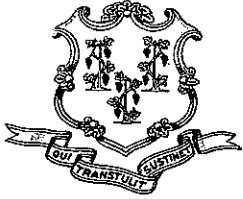
Sworn to before me this 26 day of July 20 12


Signature of Notary Public

My Commission expires _____
Amy E. Lumpkin
Notary Public
State of Ohio
My Commission Expires 11/7/14

Please return this application along with a certified bank check or money order in the amount of \$315.00 to:

Connecticut Department of Public Health
Remittance Unit
410 Capitol Ave., MS # 12 MQA
P.O. Box 340308
Hartford, CT 06134



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

CONNECTICUT BOARD OF EXAMINERS FOR OPTOMETRISTS

April 2, 2013

Ohan Karagozian
62 Asylum Street
New Haven, CT 06519

RE: Sears Optical

Dear Mr. Karagozian,

This office is in receipt of your March 27, 2013 letter regarding the above-referenced Optical Shops.

Please be advised that your letter has been forwarded to the Practitioner Investigations Unit of the Connecticut Department of Public Health for review.

If the Department determines that it has jurisdiction over the issues you have identified, an investigation will be initiated and you will be notified of the outcome upon its completion.

Thank you for bringing this matter to the Department's attention.

Sincerely,

Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Public Health Hearing Section

c: Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations
Kathleen Boulware, RN, Practitioner Investigation Unit, DPH

Phone: **860-509-7566** FAX **860-509-7553**



Telephone Device for the Deaf: (860) 509-7191

410 Capitol Avenue - MS # **13 PHO**

P.O. Box 340308 Hartford, CT 06134

Affirmative Action / An Equal Opportunity Employer

OHAN KARAGOZIAN
62 ASYLUM ST,
NEW HAVEN, CT,
06519

SOUTHERN CT 064
10 APR 2013 PM 4 1



TO: KATHLEEN BOEWANZE
DEPARTMENT OF HEALTH
P.O. BOX 340308
410 CAPITOL AVE, MS # 12 FLIS
HARTFORD, CT, 06134

06134043808



2013-392
1



Please fill out and return to:

State of Connecticut
Department of Public Health
Practitioner Investigations Unit
410 Capitol Avenue, MS#12HSR
P.O. Box 340308
Hartford, CT 06134-0308

Petitioner/Complainant	
Name: OHAN KARAGOZIAN	DOB: [REDACTED]
Address: 62 ASYLUM ST., NEW HAVEN, CT, 06519	
Telephone Numbers: Home 203-747-4102	Work
Relationship to patient complained about: <input checked="" type="radio"/> self parent spouse son/daughter	
Other* (please explain)	
*If Legal Guardian please provide court documents	

Patient information (complete this section if Patient is not the same as Petitioner)	
Name:	
Address:	
Telephone Numbers:	DOB:

Respondent/Healthcare Provider (subject of the complaint)	
Name: SEARS OPTICAL	
Practice Address: 824 HARTFORD TURNPIKE, WATERFORD, CT.	
Profession/specialty (i.e. physician/cardiology, dentist/general) OPTICAL STORE	
Telephone Number: 1-860-447-5300	

PLEASE INDICATE NATURE OF YOUR COMPLAINT

- Quality of care
- Substance abuse
- Sexual contact with patient
- Unlicensed practice
- Failure to release patient records
- Insurance fraud
- Unsanitary conditions
- Other

HAVE YOU COMPLAINED ABOUT THIS TO ANY OTHER ENTITY?
Yes No

Department of Public Health
Petition Form

Describe your concerns below. Include as many specific details as possible (who, what, when, where, why).

Representatives for Sears Optical, 824 Hartford Turnpike, Waterford, CT 06385 (A Luxottica Company) submitted an application for Optical Selling Permit to the Department of Health for the issuance of an Optical Selling Permit. As such, within the application, claims were made that Optical Store/Optical Shop had present on premises Contact Lens equipment such as Keratometer, Slit Lamp, Burton Magnifier and Black Light.

During my employment tenure at Sears Optical, 824 Hartford Turnpike, Waterford, CT 06385 (A Luxottica Company) as a Licensed Optician (Lic. # 1678) and Luxottica employee (from September 24, 2012 to February 2, 2013), I claim and affirm that there was no Contact Lens equipment on Optical Store/Optical Shop premises as indicated in the Application for Optical Selling Permit submitted to the Department of Health for issuance of an Optical Selling Permit. For time prior to my engagement at Sears Optical, 824 Hartford Turnpike, Waterford, CT. 06385, Marvin Key, a Luxottica employee, worked at aforesaid location as a Licensed Optician (Lic. # 1342) and he said to me that during his tenure at Sears Optical, 824 Hartford Turnpike, Waterford, CT. 06385 there existed no Contact Lens equipment on the Optical Store/Optical Shop premises either.

As the submission of the Application for Optical Selling Permit was defective and misleading at the time of filing, I request that the issuance of such Optical Selling Permit for Sears Optical, 824 Hartford Turnpike, Waterford, CT 06385 (A Luxottica Company) be invalidated from date of issuance.

Names of any prior and/or subsequent treating practitioners:

Name: Telephone:

Address:

Name: Telephone:

Address:

Name: Telephone:

Address:

Witnesses:

Full Name: MARVIN KEY Telephone: [REDACTED]

Address: [REDACTED]

Full Name: Telephone:

Address:

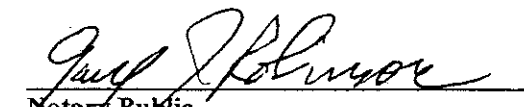
Attach copies of any supporting documents, such as photographs, records, correspondence etc.
Fill out the attached Consent for Release of Medical Records.
Sign and date below. **Signature must be notarized.**


Petitioner's Signature

Dated this 26th day of April 2013

Signed and sworn before me this 26th day of April 2013 .

GARY J ROBINSON
Notary Public
Connecticut


Notary Public
~~Commissioner of Superior Court~~

My commission expires August 31, 2016

Optical services performed (please check all that apply):

- Producing or reproducing ophthalmic lenses.
- Mounting ophthalmic lenses to supporting material.
- Fitting (adjust) optical glasses to the eyes.
- Repairing optical frames and mountings and supplying repair parts.

CONTACT LENSES: Check equipment on premises

- Keratometer
- Slit Lamp
- Bion Magnifier
- Black Light
- Thickness Gauge
- Reticule Measuring Device
- Radioscope
- Other (Specify) _____

Staff:

Please list below the names, other than the licensed optician designated as owner or manager of each licensed optician or apprentice, together with their respective certificate numbers, employed by this establishment:

Name	Type of License	License or Certificate Number
Melissa Blain	Apprentice	
Richard Moriarty	Optician	
James Noble		

Requested date for inspection: N/A

Notarization:

State of Ohio County of Warren

On this 20 day of July 20 12 Jim Neitzke
Owner's Name.

personally appeared before me, who being duly sworn says that she/he is the person referred to in the foregoing application and that the statements, made herein are true and correct in every respect, to the best of his/her knowledge and belief.


Signature of Applicant
Jim Neitzke

Sworn to before me this 20 day of July 20 12


Signature of Notary Public

My Commission expires Amy E. Lumpkin
Notary Public
State of Ohio
My Commission Expires 11/1/14

Please return this application along with a certified bank check or money order in the amount of \$315.00 to:

Connecticut Department of Public Health
Remittance Unit
410 Capitol Ave., MS # 12 MQA
P.O. Box 340308
Hartford, CT 06134

1728-1537206021
12change1728

Application for Optical Selling Permit **FEB \$315.00**

This application is for (please check one):

New Shop Change of Location Change in Optician of Record Reinstatement Shop License No.:

Optical Shop Information:

Name of Establishment (d/b/a): Sears Optical 1728
Address: 824 Hartford Turnpike
City/State/Zip: Waterford, CT 06385
Phone Number: (860) 447-9347

Ownership Information:

Legal form of Organization: Individual/Sole Proprietor Limited Liability Corporation,
 Limited Partnership Profit Corporation
 Other: _____

Name of Owner: Luxottica Retail
North America CT Optician License No.: 1311
Address: 4000 Luxottica Place
City/State/Zip: Mason, OH 45040

Federal Employer Identification Number: [REDACTED]
Phone Number: (513) 765-6000 Email: _____

Signature of Owner: [Signature]
Partner or Corporate Officer: Jim Neitzke CT Optician License No.: _____
Print Name

Partner or Corporate Officer: _____
Signature

Optician of Record Information:

Licensed Optician of Record: Pam Pietras CT Optician License No.: 1426
Print Name
Signature of Optician of Record: [Signature] CT Optician License No.: 1426
Signature

Other Optician in charge of Optical Dept. (please print) _____ CT Optician License No.: _____
Print Name

Other Optician in charge of Optical Dept. Signature: _____

#1904571721

5121



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

April 29, 2013

OHAN KARAGOZIAN
62 ASYLUM STREET
NEW HAVEN, CT 06519

Dear OHAN KARAGOZIAN:

Your letter concerning care and services provided by **SEARS OPTICAL** has been received by the Department of Public Health and will be reviewed.

The Department of Public Health is responsible for investigating complaints regarding care and services provided by healthcare providers, which we regulate pursuant to the Connecticut General Statutes, the Public Health Code of the State of Connecticut and/or the Code of Federal Regulations.

If the Department pursues an investigation, you will be contacted by the Investigator assigned to your petition. To review additional information regarding the investigation process, you may wish to visit the Consumer Guide located at http://www.ct.gov/dph/lib/dph/facility_licensing_and_investigations/pdf/consumer_guide.pdf.

Thank you for bringing these issues to the attention of the Department.

Respectfully,

Kathleen W. Boulware

Kathleen W. Boulware, R.N.
Public Health Services Manager
Practitioner Investigations Unit
Practitioner Licensing and Investigations Section

KWB:ca



Phone: (860) 509-7552
Telephone Device for the Deaf (860) 509-7191
410 Capitol Avenue - MS # 12HSR
P.O. Box 340308 Hartford, CT 06134
An Equal Opportunity Employer

ATT MARCUS CAMPBELL

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

FAX (860) 509-7535

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner



Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Certified Mail Receipt Requested 917199 8991733 05982858

September 18, 2013

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PRACTITIONER LICENSING AND INVESTIGATIONS



MARCUS CAMPBELL
SPECIAL INVESTIGATOR

410 CAPITOL AVENUE, MS#12HSR (860) 509-7515
P.O. BOX 340308 FAX No. (860) 509-7535
HARTFORD, CT 06134-0308 E-Mail: marcus.campbell@ct.gov

Stephen F. Fedus III, OD

Re: Petition No. 2013-302

Dear Dr. Fedus:

As discussed during the Department's inspection of Sears Optical on 9/3/2013, please provide the Department with the following:

1. Copies of any and all agreements entered between you and Luxottica for the years of 2012 and 2013, including but limited to all lease arrangements and/or an arrangements for other fee and clerical services.

Please submit the requested documents to my attention at the following address no later than September 30, 2013. Please note that no extensions in time will be provided.

Department of Public Health
410 Capitol Avenue, MS # 12 HSR
P.O. Box 340308
Hartford, CT 06134-0308

If you have any questions, do not hesitate to contact me at (860) 509-7552.

Respectfully,

M. Campbell
Special Investigator
Practitioner Investigations Unit

IN checked contract as requested consisting of 14 pages.

- Please send a FAX TO (860) 437-0361 TO show confirmation of receipt of this FAX
S Fedus OD



Phone: (860) 509-7552 • Fax: (860) 509-7535 • VP: (860) 899-1611
410 Capitol Avenue, P.O. Box 340308
Hartford, Connecticut 06134-0308 www.ct.gov/dph
Affirmative Action/Equal Opportunity Employer

DATE sent 10/4/13 2:27pm

Dear Dr. Fedus,

We are pleased to announce that Luxottica Retail has made improvements and modifications to its standard Sublease Agreement. We believe that the changes will help both you and the Sears brand achieve success, as many of these changes are being made in an effort to address concerns expressed by you and in an effort to simplify the agreements.

The following is a brief overview of the significant revisions to the former standard sublease agreement. Minor changes or modifications are not discussed below. These changes will apply to all future sublease renewals and new subleases.

1. Sales Reporting requirement has been removed
2. **60 day, no cause out provision by either party (most agreement currently have a 30 day out)**
3. **Post-termination non-compete: 1 year, 3 miles**
4. **1 year term that automatically renews each year, unless otherwise terminated by either party with 60 days notice.**

Attached is the Sublease Agreement for the Waterford, CT location.

Please:

- Initial page 2 (Staff Support),
- Sign and complete pages 9 and 14 (Direct Payment Form)
- Provide copy of voided check
- Provide copy of driver's license
- Provide copy of Certificate of Insurance showing Luxottica Group, S.P.A. as an additional insured

Although every effort is made to ensure the Agreement comports with valid state laws and board regulations, we advise you to carefully review the attached documents and determine to your satisfaction that no conflict exists between the Agreement and state laws and regulations. In that regard, if you decide to have an attorney review the Agreement, we caution you to remind your attorney that these are standard agreements that are not subject to modification absent significant justification. Your attorney should limit a review to compliance with state laws and regulations, or to advise you of your rights, duties and obligations under the Agreement.

Once you have signed the agreement, please fax or e-mail the ~~signed~~ Agreement to me at 513-492-6375 or ddavolio@luxotticaretail.com by close of business October 10, 2012. Changes to or incomplete Agreements will result in you not being able to see patients in the office. After signature by our corporate representative, we will return an executed Agreement to you for your records.

Please call me at 513-765-6375 if you have any questions.

Sincerely,

Dom Davolio
Sublease Paralegal/Coordinator
Luxottica Retail
4000 Luxottica Place
Mason OH. 45040-7129
513-765-6375 phone
513-492-6375 fax
ddavolio@luxotticaretail.com

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT is between Luxottica Retail North America Inc., an Ohio corporation, whose principal place of business is 4000 Luxottica Place, Mason, Ohio 45040-8114 (hereinafter called "Sublessor"), and the optometrist identified on the attached Schedule F (hereinafter called the "Doctor").

1. DEFINITIONS

A. The "Base Lease Agreement" or "License Agreement" means each agreement identified in the attached Schedule F, which is incorporated into this Sublease Agreement, between the entity listed as "Landlord" and Sublessor.

B. The "Sublessor" means Sublicensor where applicable.

C. The "Premises" means the space leased to Sublessor under the Base Lease or License Agreement.

D. The "Equipment" means that equipment, furniture, and fixtures located in the Office as listed in attached Schedule A, which is incorporated into this Sublease Agreement.

E. The "Office" means that portion of the Premises, as described by the square footage listed in the attached Schedule B, subleased to Doctor by Sublessor.

2. GRANT AND TERM

A. Grant

- (1) Sublessor subleases the Office to Doctor for the term of this Sublease Agreement as set forth in the attached Schedule F. Doctor agrees to sublease the Office in accordance with and subject to the terms, conditions, and covenants contained in this Sublease Agreement and the Base Lease or License Agreement.
- (2) Sublessor leases the Equipment and all or any additional Equipment added at a later date to Doctor pursuant to the terms of this Sublease Agreement.

B. Term

- (1) The term of this Sublease Agreement is listed in the attached Schedule F.
- (2) This Sublease Agreement may be terminated by either party by giving the other party sixty (60) days written notice in the manner provided in Section 24.
- (3) This Sublease shall not extend beyond the term of the Base Lease or License Agreement. If the Base Lease Agreement(s) or License Agreement(s) terminates for any reason or Sublessor ceases to operate at any Premises, this Sublease Agreement automatically terminates on the date selected by Sublessor in its sole discretion, but Sublessor agrees that the date shall not be more than 30 calendar days before the termination date of the Base Lease or License Agreement.

C. Renewal

- (1) Upon expiration, this Agreement shall automatically be renewed from year to year, unless sooner terminated by either party by giving the other party sixty (60) days written notice in the manner provided in Section 24.

3. USE

Doctor agrees to use the Office only for the practice of optometry including conducting eye examinations, using pharmaceuticals as permitted by law and Doctor's specific certification.

Doctor shall not use the Office for any purposes other than described above. Doctor shall not use the Office: (i) to sell, dispense or fit eyeglass frames, eyeglass lenses, eyeglass accessories or sunglasses; (ii) to sell contact lenses, solutions and contact lens related accessories; (iii) in any way that could adversely affect Sublessor's use of the Premises as an eye care/eye wear center; or (iv) in any way which would increase the existing rate of insurance upon the Office or the Premises or cause cancellation of such insurance.

4. HOURS OF OPERATION

Doctor agrees that an optometrist shall be physically present in the Office for the hours described in the attached Schedule F. In the event that Doctor is subleasing multiple Offices, Doctor agrees to provide to the appropriate Sublessor's field operation supervisor the name of a managing optometrist or office manager for each Office. Doctor agrees that Sublessor may communicate directly with such managing optometrist or office manager on operational issues related to the Office.

5. RIGHT OF FIRST REFUSAL

From time to time during the term of this Agreement, Doctor shall have the right of first refusal to provide additional hours of optometric coverage at the Office as may be desired by Sublessor. In such event, Sublessor shall provide Doctor with written notice of the number of additional hours of coverage so desired by Sublessor and, provided that Doctor is not in default under the terms of this Agreement, Doctor shall have such right of first refusal, exercisable by providing written notice to Sublessor within fifteen (15) days following Doctor's receipt of such notice from Sublessor, to provide such additional hours of coverage on the terms and conditions contained in this Agreement. If Doctor chooses not to provide such additional hours of coverage or fails to provide Sublessor with written notice exercising such right of first refusal within the fifteen (15) day period, Sublessor shall have the right to grant a sublicense to another doctor of optometry. Doctor expressly consents to any such grant by Sublessor to another doctor of optometry to utilize the Subleased Premises as an office, to utilize the Equipment, on the same terms and conditions as are contained in this Agreement during any hours other than those hours during which Doctor is then providing optometric coverage at the Office. Doctor hereby agrees to execute and deliver such additional documents, instruments and consents as Sublessor may request in order to fully effectuate the terms of this Section 5.

6. RENT, STAFF SUPPORT

A. Agreement to pay Rent

- (1) Doctor agrees to pay to Sublessor Monthly Rent as described in the attached Schedule F, in advance, during the term of this Sublease Agreement.
- (2) The Rent is Doctor's contribution to Sublessor's payment to its Landlord under the Base Lease or License Agreement for the space used for the Office including (but not limited to) base rent, extras, maintenance, the doctor's contribution to any applicable sales and use tax, furniture, fixtures, equipment, and training and development, staff support, practice management consultation, office systems including, but not limited to a patient recall program, marketing, and leasehold improvements and utilities excluding local and long distance telephone service.

B. Rent Payment

- (1) The Monthly Rent for the first year of this Agreement for each Office is listed in the attached Schedule F.
- (2) The payment start date of Doctor's Monthly Rent obligation is as set forth in the attached Schedule F.
- (3) Doctor shall pay Rent to Sublessor via electronic funds transfer or any place Sublessor may designate to Doctor in writing.
- (4) Doctor agrees to execute the Direct Payment Authorization & Agreement, Schedule D, authorizing Sublessor to debit a designated checking account for payments due under the Sublease Agreement.
- (5) Doctor agrees to comply with the Terms & Conditions for Withdrawals, Schedule E.
- (6) Doctor agrees that the Direct Payment Authorization & Agreement will remain in full force and effect until all amounts payable under the Sublease Agreement are paid in full.
- (7) Doctor shall be charged a late fee of Fifty dollars (\$50) per location for the first late payment of Monthly Rent to cover Sublessor's costs associated with the late payment, One hundred dollars (\$100) for the second late payment, and Two hundred dollars (\$200) for the third late payment during any twelve month period.
- (8) Doctor shall pay Rent without any deduction or set-off whatsoever.
- (9) Sublessor may apply payments received from Doctor for Rent or otherwise to any obligations of Doctor then accrued, without regard to such obligations as may be designated by Doctor. Unless otherwise designated by Sublessor, any and all payments received from Doctor including, but not limited to, Rent will be applied, first, to any outstanding debts, obligations or past due amounts; second, to any late payment or submission assessments; and finally, to Rent.

C. Staff Support

- (1) Sublessor may, in Sublessor's sole discretion, provide support to Doctor to assist Doctor in the performance of the Administrative tasks in the Office ("Staff Support"). Such Staff Support shall at all times be considered employees of Sublessor. During any time in which Sublessor's employees are providing Staff Support for the Doctor, they shall be trained and supervised by the Doctor. Employees of the Sublessor may, in Sublessor's sole discretion, perform the following administrative tasks under the doctor's training and supervision: answering telephone calls for the doctor, booking appointments for the doctor, greeting patients and starting intake paperwork, file maintenance for the doctor, verify insurance information/authorizations, process payments from patients, data entry for closed files, pulling patient files for exams, calling patients to confirm appointments, assist with administration of patient recall program. Employees of the Sublessor will not perform the following tasks for the Doctor: submission of claims, reconciliation of accounts receivable, or preparation and/or drop off of bank deposits.
- (2) Doctor expressly acknowledges and agrees that Staff Support may not be provided at all, and that the optional provision of Staff Support does not serve in any way as consideration for this Sublease Agreement, but is just an optional service that may be provided at Sublessor's sole discretion. However, Doctor agrees that if such Staff Support is provided, the amount, duration, and scope of Staff Support provided will be determined in the sole discretion of Sublessor and that Doctor will use such Staff Support within the parameters set forth in Section (1) above. [Doctor Initials]

7. ADVERTISING/MARKETING/SIGNS

A. Doctor acknowledges that Sublessor includes from time to time in its advertising, reference to the types of services and products that may be provided at doctors' offices next to Sublessor. Doctor agrees to cooperate fully with Sublessor in the design, layout and content of such advertising as permitted by state law. Since advertising is arranged or ordered several months in advance of distribution or publication, Doctor acknowledges that Doctor's name may appear in advertising after the termination of this Agreement. Doctor agrees that any advertisement that is ordered before the effective date of the termination of this Agreement will not be the basis of any claim or cause of action against Sublessor and cannot and will not be the cause of any damages to Doctor.

B. This Agreement imposes no restrictions on Doctor's ability to, and Doctor may, at Doctor's own expense, advertise the optometric services furnished at the Office. Doctor agrees, however, not to advertise any other business or practice from or in conjunction with the Office. This restriction does not preclude the advertisement of the products (including brand names) and services offered at the Office. Doctor shall not use Sublessor's or its affiliates' trademarks or the trade name of Sublessor or its affiliates for any promotion, advertising, publicity or any other use without obtaining Sublessor's prior written consent. It is understood and agreed that Doctor's use of such trademarks or trade names, if consent is given, shall not confer any rights in such trademarks or trade names to Doctor and, upon revocation of consent or termination of this Agreement, Doctor shall make no further use of such trademarks or trade names for any purpose whatsoever. Furthermore, the parties agree that all advertising done by either of them shall be in strict compliance with all applicable laws, rules and regulations.

C. For the purpose of clearly demonstrating to the public that the Doctor's practice of optometry is separate and independent from the business of Sublessor, the Doctor shall post and maintain a sign or signs on the Subleased Premises containing Doctor's name and identifying the same as the location of Doctor's optometric office and examining room, identifying Doctor as an independent doctor of optometry and setting forth Doctor's credentials and hours. Said signs shall be in full compliance with all applicable laws, statutes, ordinances, rules and regulations, and all rules and regulations of the entity identified as Landlord on the attached Schedule F.

8. UTILITIES

A. Sublessor shall provide power, heat, air conditioning, water, sewage facilities and telephone lines ("Utilities"). Sublessor shall not be liable for any damages resulting from the interruption of such Utilities or services.

B. If there is a telephone system, line(s), and numbers for the Office, Doctor will pay for all costs for local and long distance services.

C. Doctor agrees that upon termination of this Agreement, such telephone lines, systems, and numbers will remain at the Premises.

D. Doctor agrees to cooperate with Sublessor and execute all documents required by the telephone carrier.

E. Doctor agrees to the terms and conditions described in the attached Schedule H, COMPUTER SECURITY POLICY.

9. OPERATIONS OF DOCTOR

Doctor agrees to continuously operate the Office as follows:

A. Doctor shall comply with all applicable federal, state and local statutes, regulations and ordinances.

B. Doctor shall staff the Office with fully licensed, accredited and professionally competent optometrists or other professionals qualified under law to perform eye examinations.

C. Doctor shall provide Sublessor a copy of Doctor's license to practice optometry and any new or renewal licenses promptly upon receipt by Doctor. Doctor hereby represents and warrants that only licensed optometrists or other licensed professionals will practice at the Office and agrees that it shall be Doctor's affirmative responsibility to ensure that such optometrists or other professionals have such licenses and are in good standing.

D. Doctor agrees to maintain sufficient optometric staffing to accommodate "walk-ins" and to offer appointments within two days of optometric coverage as described in the attached Schedule F to ninety percent of all patients contacting the Office for service.

E. Doctor, and all persons employed by or associated with Doctor's optometric practice, shall maintain a high level of professional ethics, conduct, and expertise. Doctor shall not take any action, or fail to take any action, which tends to injure the reputation of Sublessor.

F. Doctor and all employees, consultants, associates and agents of Doctor shall present a professional image to the public and shall wear professional clothing that presents such a professional image.

G. In the event that Doctor establishes a professional corporation or other legal entity to operate the Office, Doctor agrees to immediately execute the Personal Guarantee attached as Schedule C. Any professional corporation or legal entity that operates the optometric practice in the Office shall be at least majority owned and actively directed and managed by Doctor. Doctor agrees to cause any minority owners to execute the Personal Guarantee.

H. Doctor agrees to fully cooperate with any reasonable security measures which Sublessor might adopt, provided that these measures are applied equally to both parties' employees.

I. While on the Premises or at Sublessor sponsored events, Doctor, and all persons employed by or associated with Doctor's optometric practice, shall not possess, use or carry weapons of any kind (including collectors items or antique memorabilia).

10. FREEDOM OF DOCTOR'S PROFESSIONAL JUDGMENT

Sublessor shall not interfere with or attempt to control the professional judgment of Doctor or any optometrists or other licensed professionals employed by or associated with Doctor. Sublessor will not dictate or attempt to control Doctor's fees for services provided or product sold at the Office. Doctor acknowledges that Doctor maintains and is in full control of all aspects of and exercises unfettered independent professional judgment regarding the practice of optometry at the Office.

11. LEASEHOLD ALTERATIONS

A. Doctor shall not make leasehold alterations, modifications, or improvements to the Office or to any furniture, fixtures or equipment in the Office provided as a part of this Agreement without the prior written approval of Sublessor. Any approved alterations shall be at Doctor's own expense. Any fixture added to the Office shall become the property of Sublessor.

B. Sublessor has the right to, during the term of this Sublease Agreement, modify, refurbish or remodel the Office, including without limitation, the office exterior, interior, existing signs, configuration, size and any other improvements or alterations it may determine to be reasonably necessary to maintain the Office in an attractive condition, comply with the requests of the Landlord or maintain compliance with all applicable laws and ordinances. In the event such refurbishment or remodeling includes a modification of the size of the Office, it shall be without any modification to the rent paid by Doctor during the term in which the modification was made. Sublessor shall use its best efforts to perform such refurbishment or remodeling at reasonable times with the least amount of disruption to Doctor's business as possible; provided, however, that Sublessor has the right to relocate the Office during such refurbishment or remodeling.

12. OFFICE AND EQUIPMENT MAINTENANCE AND REPAIR

A. Sublessor shall:

- (1) Maintain the Office in good repair under the Base Lease or License Agreement obligations including:
 - a. Providing routine repairs to maintain a clean and sightly appearance including, but not limited to, repair or replacement of floor coverings, paint, wall coverings and ceiling tiles for interior walls and ceiling, and interior (surface of) windows, doors, and plate glass of the Office;
 - b. Maintaining the Utilities in the Office;
 - c. Using reasonable efforts to ensure that the Landlord fulfills its obligations under the Base Lease Agreement to keep in good condition and make necessary structural repairs to the foundation, exterior walls, roof, downspouts, gutters, floor, heating, ventilation and air conditioning systems and utility systems of the Office;
 - d. Providing any repairs to the Office interior that are necessary as a result of damage caused by burglary, vandalism, robbery or any other attempt to gain access to the Office;
 - e. Promptly notifying the Landlord after receiving Doctor's written notice that repairs are necessary for which Landlord may be responsible.
- (2) Perform periodic maintenance to the Equipment including lubrication and calibration and, except as provided in Section 12B(3) and (4), repair the equipment.

B. Doctor shall:

- (1) Use the Equipment only at the Office and at no other location, and cooperate fully with Sublessor in the scheduling and performance of Equipment maintenance and repair.
- (2) Provide reasonable routine Equipment maintenance and usual day-to-day housekeeping tasks for the Office as are customarily provided by commercial janitorial services. Reasonable routine Equipment maintenance includes, but is not limited to, regular daily cleaning, providing and changing light bulbs and lamps, and other routine obligations suggested by the manufacturer or good industry practice.
- (3) Provide and pay for any repairs or replacements to the Equipment, Office and the Premises necessitated by any failure to properly maintain the Equipment or Office according to Section 12B(2).
- (4) Provide and pay for repairs or replacements to the Office interior or Equipment which become necessary as a result of damage caused by Doctor or Doctor's employees.

- (5) Comply with all state, federal, and local laws or requirements affecting the Equipment or Office. This includes, but is not limited to, maintaining the Office in a clean, sanitary and safe condition in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, other agencies having jurisdiction, and the Base Lease Agreement.
- (6) Promptly advise Sublessor in writing of any necessary repairs that are Sublessor's or Landlord's responsibility.
- (7) Surrender the Equipment and Office in good condition, reasonable wear and tear excepted, upon termination of this Sublease Agreement.

13. INSURANCE

A. During the term and any period Doctor is in possession of the Office, Doctor shall maintain at Doctor's own expense:

- (1) "all-risk" or "special causes of loss" property insurance with extended coverage and sewer back-up coverage covering all present and future Doctor's improvements and all Doctor owned property in the Office, and in amounts adequate to fully protect entity listed as Landlord on the attached Schedule F.

The above policy shall include a waiver by Doctor's insurer of any right of subrogation against Luxottica Group, S.p.A., its subsidiaries and divisions, including but not limited to Luxottica Retail North America Inc. by reason of any payment pursuant to such coverage. Sublessor shall provide doctor with a waiver of subrogation on behalf of its insurer for losses covered by its "special causes of loss" property insurance with extended coverage.

- (2) An occurrence form policy or policies of Commercial General Liability and excess umbrella liability insurance including blanket contractual liability (including in its coverage Doctor's indemnity under this Sublease Agreement) and personal injury, products and fire-legal liability coverages, in respect of the Office and the conduct and operation of Doctor's business. The combined single limit of such insurance policy or combined primary and excess umbrella liability policies shall be an amount which is from time to time acceptable to a prudent tenant in the community in which the Premises are located but not less than \$1,000,000 per occurrence with an annual aggregate of \$3,000,000. If Doctor has two or more offices then annual aggregate is increased to \$4,000,000.

- (3) An occurrence form policy of Optometric Professional Liability insurance in respect to the operation of Doctor's professional practice in the Office. The limit on such policy shall be at least \$2,000,000 per occurrence with an annual aggregate of \$4,000,000.

If Doctor is unable to purchase professional liability coverage on an occurrence form policy, Doctor is permitted to purchase claims-made professional liability insurance. If Doctor maintains at any time a claims-made policy and such policy is terminated for any reason, Doctor shall purchase and maintain tail or extended reporting coverage for such policy for a minimum of five years. Doctor also agrees to replace such terminated policy with another professional liability policy with the same limits as set forth herein prior to the effective date of the termination of the existing policy.

The coverages required under Sections 13A(2) and (3) above can, as an alternative, be provided under one Commercial General Liability insurance policy as long as all coverages specified in these sections are included along with a waiver of subrogation.

The limits on such policy or combined primary and excess umbrella liability policies shall be at least as specified above.

- (4) Worker's Compensation coverage as required by law, including Employer's Liability coverage, with a limit of not less than One Hundred Thousand Dollars (\$100,000) and waiver by Doctor's insurer of any right of subrogation against Luxottica Group, S.p.A., its subsidiaries and divisions including but not limited to Luxottica Retail North America Inc. by reason of any payment pursuant to such coverage, if Doctor has employees and is required to provide said coverage.
- (5) All statutorily required insurance coverages.
- (6) Any other insurances required under the terms of the Base Lease Agreement.
- (7) Any other form of insurance as Landlord or Sublessor, acting reasonably requires from time to time, in form, amounts and for insurance risks against which a prudent tenant would insure.

B. All policies of insurance required of Doctor herein shall be issued by insurance companies with general policyholder's rating of not less than A- and a financial size rating of not less than Category VII, as rated in the most current available "Best's Key Rating Guide" and which are qualified to do business in the state in which the Office is located. All such policies, including the professional liability coverage but excluding the Worker's Compensation coverage, shall name Luxottica Group, S.p.A., its subsidiaries and divisions including but not limited to Luxottica Retail North America Inc. and such other parties Sublessor directs as an additional insured.

C. Executed copies of the policies of insurance or certificates thereof along with a copy of the "Additional Insured" endorsement shall be delivered to Sublessor ("Attention: Sublease Administration") prior to Doctor, its agents or employees entering the Office for any purpose. Thereafter, executed copies of renewal policies or certificates thereof shall be delivered to Sublessor within 30 days prior to the expiration of the term of each policy. All policies of insurance delivered to Sublessor must contain an endorsement requiring that the company writing the policy will give to Sublessor 30 days prior written notice of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All policies required of Doctor herein shall be endorsed to read that such policies are primary policies and any insurance carried by Sublessor shall be noncontributing with such policies. Each policy shall contain a severability of interest/cross liability endorsement. No policy required to be maintained by Doctor shall have a deductible greater than Five Thousand Dollars (\$5,000) unless approved in writing by Sublessor.

D. Neither Sublessor nor any of Sublessor's agents make any representation that the types of insurance and limits specified to be carried by Doctor under this Sublease Agreement are adequate to protect Doctor. If Doctor believes that any such insurance coverage is insufficient, Doctor shall provide, at its own expense, such additional insurance as Doctor deems adequate. Nothing contained herein shall limit Doctor's liability under this Sublease Agreement.

14. INDEMNIFICATION

A. The term Sublessor in this paragraph shall refer to Sublessor, and its parent, subsidiaries, affiliates, employees, officers, directors, agents, assigns and successors in interest.

B. Doctor shall indemnify, defend and hold Sublessor harmless from any and all claims (including claims against Sublessor based on apparent agency or ostensible agency, or vicarious liability), demands, causes of action, suits, losses, obligations, judgments, costs of settlement, liabilities, debts, damages and expenses (including reasonable attorneys' fees and costs) for injuries, illnesses or death to any persons or for loss of or damage to property of a person other than Sublessor arising, in whole or in part, from any act, omission, negligence, or fault of the Doctor, his officers, agents, employees or invitees, or arising, in whole or in part, out of or in connection with the possession, ownership, or operation of the optometric practice at the Office, or the use of the leased premises, regardless of any negligence on the part of Sublessor.

Sublessor shall indemnify, defend and hold Doctor harmless from any claims, demands, causes of action, suits, losses, obligations, judgments, costs of settlement, liabilities, damages and expenses (including reasonable attorneys' fees and costs) for injuries, illnesses or death to persons other than Doctor or for loss of or damage to property of a person other than Doctor caused by the sole negligence or willful misconduct of Sublessor, its employees or agents.

C. In the event that any such claim, demand, suit or action is made or filed, Doctor shall give Sublessor notice in writing within three (3) business days of receipt of such claim, demand, suit or action. Such notice should be provided in writing by overnight, certified or registered mail, return receipt requested, to:

Luxottica Retail North America Inc.
4000 Luxottica Place
Mason, OH 45040-8114

D. Sublessor expressly reserves the right to defend its interests against any such claim, demand, suit, or action and to recover from Doctor any expenses (including reasonable attorneys' fees and costs) so incurred under this indemnity agreement. This right shall include, but not be limited to, the right to appoint its own counsel and appear on its own behalf in any action.

E. Sublessor's right to indemnify under this Sublease Agreement shall arise notwithstanding that joint, vicarious or concurrent liability may be imposed on it by statute, ordinance, regulation, judgment or other law.

15. SUBJECT TO BASE LEASE OR LICENSE AGREEMENT: This Agreement is subject to all of the terms and conditions of the Base Lease and/or License Agreement for the Premises. The Doctor and his/her employees, agents, or assigns or anyone providing services on behalf of the doctor, shall be subject to all rules and regulations adopted by Landlord applicable to Landlord's employees and the operation of the Premises and automatically shall terminate upon termination of such License Agreement or Base Lease.

16. MANAGEMENT OF BUSINESS; NON-COMPETITION; CONFIDENTIAL PROPRIETARY INFORMATION

A. Business During Term:

Doctor covenants and agrees that, because managing an optometric practice is inherently demanding, during the term of this Sublease Agreement:

- (1) Doctor will be actively involved in the day to day management and operation of each Office and accessible to Sublessor's field and store management to discuss issues related to the operations of the Office.

- (2) Doctor shall not directly or indirectly practice optometry, sell prescription eyewear including eyeglasses and contact lenses, or manage, operate, own, control, act as consultant to or otherwise be connected with, or be employed by an optometric practice or dispensing optical store with the exception of the practice(s) listed in the attached Schedule F. With the prior written consent of Sublessor, which shall not be unreasonably withheld or delayed, Doctor may provide occasional vacation or illness coverage in other optometry practices that provide similar coverage to Doctor.

B. Non-competition Following Termination

- (1) For one (1) year after the termination of this Agreement, Doctor shall not directly or indirectly practice optometry, sell prescription eyewear including eyeglasses and contact lenses, or manage, operate, own, control, act as consultant to or otherwise be connected with, or be employed by an optometric practice or dispensing optical store within a radius of three (3) miles from the Premises with the exception of the practice(s) listed in the attached Schedule F.

**C. Confidentiality:
Confidential Information:**

- (1) Doctor may be entrusted with or may obtain access to confidential and proprietary information about Sublessor its management, business plans, practices and policies including Sublessor's Sublease Agreement, trade secrets, customers, and other information considered confidential and proprietary by Sublessor. Doctor will receive various training and "best practices" materials from Sublessor from time to time. Doctor acknowledges the value and unique nature of these materials in aiding in the development of Doctor's practice. Doctor agrees that the secrecy of this information and these materials is of value to Sublessor's business. Furthermore, Doctor agrees to return all such materials and copies, whether authorized or not, by termination of this Agreement.
- (2) Non-disclosure of Confidential Information:
- a. During or after the term of this Sublease Agreement, Doctor and any member of Doctor's staff, whether an employee, associate or consultant, shall not for any reason whatsoever, either directly or indirectly, communicate or divulge to any other person or entity or use for the benefit of Doctor or any other person or entity, any of Sublessor's trade secrets, confidential information, or other proprietary information, including but not limited to the items described in Section 16C(1) or information of any kind or nature pertaining to the business, practices, or policies of Sublessor's business, without the express written consent of Sublessor.
 - b. Doctor shall maintain the confidentiality of this Sublease Agreement and shall not, without Sublessor's written consent, provide a copy of nor discuss or reveal its terms or conditions to any third party excluding Doctor's and Sublessor's attorneys, outside auditors or accountants or pursuant to a lawful subpoena or demand by a governmental agency. Doctor agrees to provide Sublessor with notice of receipt of a subpoena or demand immediately upon service and to use best efforts to provide Sublessor with an opportunity to quash the subpoena. Sublessor agrees to maintain the confidentiality of this Sublease Agreement with Doctor and shall not discuss or reveal its terms or conditions to any third party, excluding Doctor's and Sublessor's attorneys, outside auditors or accountants or pursuant to a lawful subpoena or demand by a government agency.
- (3) Business Associate Agreement:
The parties agree to the terms and conditions in the attached Schedule G, HIPAA Privacy Business Associate Agreement.

D. Doctor agrees that it is reasonable and necessary for the protection of the goodwill and business of Sublessor that Doctor make the covenants contained in this Section 16 about Doctor's conduct during and after the term of this Sublease Agreement and that Sublessor will suffer irreparable injury if Doctor engages in the prohibited conduct. Doctor has thoroughly reviewed the terms of these covenants, including the time periods, and Doctor's experience and/or abilities are such that observing such covenants shall not cause Doctor undue hardship nor shall it unreasonably interfere with Doctor's ability to earn a livelihood. The covenants are each separate obligations independent of any other provisions of this Sublease Agreement, and the existence of any claim or cause of action of Doctor against Sublessor is not a defense to the enforcement by Sublessor of any such covenants.

E. The parties agree that the actual damages which flow from a breach by Doctor of the Non-Competition provisions stated in Section 16(B) of this Sublease Agreement will be difficult to ascertain and prove. In order to avoid cost and uncertainty of arbitration to attempt to determine the amount of such actual damages, the parties agree upon the sum of \$80,000.00 per Office as liquidated damages. The parties further agree that such amount is not intended to be a penalty, but rather is intended to, and does, bear a reasonable relationship to the actual damages which may be anticipated to flow from a breach by Doctor of Section 16C of this Sublease Agreement. Both parties understand and agree to accept the risk that the agreed-upon amount of liquidated damages may be higher or lower than the actual damages which might have been determined through arbitration.

F. The restrictions contained in this Section 16 shall apply only for such time period, and to such capacities, functions, operations, areas, services, and products as are reasonably necessary for the protection of Sublessor and shall be construed as divisible and enforceable on that basis.

17. ASSIGNMENT OR SUBLEASE

Doctor may not assign, sublease, transfer, mortgage or otherwise encumber Doctor's interest, rights or obligations in this Sublease Agreement.

Sears-2011

Stephen Fedus, O.D. [Store #C0681]

18. NO AGENCY

Neither Doctor nor Sublessor is the agent, employee or legal representative of the other, for any purpose whatsoever. Neither party has any right or authority to assume or to create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other or to bind the other in any manner or thing whatsoever, except as expressly stated in this Sublease Agreement. This Sublease Agreement does not create a joint venture, partnership or agency relationship between Doctor and Sublessor, and none shall be inferred.

19. TERMINATION

A. The occurrence of any one or more of the following events shall constitute grounds for immediate termination.

- (1) Doctor fails to pay Rent to Sublessor when due and payable and fails to cure the non-payment within 10 days after Sublessor provides written notice to Doctor;
- (2) Doctor fails to pay any other indebtedness, principal or interest, of Doctor to Sublessor when due and payable and fails to cure the non-payment within 10 days after Sublessor provides written notice to Doctor;
- (3) Doctor dies or becomes disabled, mentally or physically, so that he or she is unable to actively engage in or manage the conduct of the business of Doctor and to fulfill the terms of this Sublease Agreement.
- (4) Doctor's professional license is lost, revoked or suspended in any state in which Doctor is operating an Office;
- (5) Doctor abandons the Office by failing to open and provide services at the Office for a period of three or more consecutive days of optometric coverage as described in the attached Schedule F, unless Sublessor's retail store located adjacent to Doctor is closed;
- (6) Doctor defaults in the performance of any term or condition of the Base Lease or License Agreement which calls for automatic termination upon default;
- (7) Criminal proceedings involving a crime of moral turpitude or any felony are instituted against Doctor;
- (8) Doctor fails to keep or observe any other covenant, representation, or warranty of this Sublease Agreement not specifically stated in this Section 19A, the Base Lease or License Agreement, or any other written Agreement between the parties, including any parent, subsidiary or affiliated corporations, and fails to cure or diligently commence to cure such omission within 10 days after Doctor receives written notice of the default.

B. If any of the above Grounds for Termination occurs, Sublessor shall have the rights and remedies hereinafter set forth to the extent permitted by law, which shall be distinct, separate and cumulative with and in addition to any other right or remedy allowed under any law, in equity or other provisions of this Sublease Agreement:

- (1) Immediately terminate this Agreement.
- (2) Re-enter the Office, and possess it, including all improvements, fixtures and appurtenances, as if this Sublease Agreement had not been made, and, at Sublessor election, store any property therein in a public warehouse or elsewhere at the cost of, and for the account of, Doctor, all without service of any notice of intention to re-enter and with or without resort to legal process (which Doctor hereby expressly waives) and without Sublessor being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby;
- (3) Terminate all obligations on the part of Sublessor under this Sublease Agreement;
- (4) Pursue any other rights or remedies at law or in equity.

C. Doctor expressly acknowledges that any breach or violation of any of the covenants made by Doctor in Section 16 shall cause immediate and irreparable injury to Sublessor. In the event of a breach or threatened or intended breach of this Sublease Agreement by Doctor, Sublessor in addition to all other legal and equitable remedies available to it, shall upon the order of a court of competent jurisdiction be entitled to injunctions, both preliminary and temporary, and restraining orders, enjoining and restraining such breach or threatened or intended breach.

20. HOLDING OVER

In the event Doctor remains in possession of the Office or fails to remove Doctor's property from the Office after an expiration or termination of this Sublease Agreement and without the execution of a new Sublease Agreement, Doctor shall be a tenant at sufferance or a trespasser and shall not be entitled to any notice to quit or vacate. During any such holding over, however, Doctor shall pay Sublessor an amount equal to what Doctor would owe were Doctor deemed to be occupying the Office as a tenant from month to month, at twice the Rent provided in Section 6 hereof, subject to all the other conditions, provisions and obligations of this Sublease Agreement insofar as the same are applicable to a month-to-month tenancy. Nothing set forth in this Section 20 shall be deemed to be a consent by Sublessor to any holding over.

21. SEVERABILITY

If any one or more of the provisions of this Sublease Agreement, or any agreement incorporated into this Sublease Agreement, is for any reason held invalid, illegal, or unenforceable by the highest court of the jurisdiction in which the Office is located, the remaining provisions of this or the incorporated agreements with respect to such jurisdiction shall continue unimpaired. The invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision pertaining to such jurisdiction that shall be in writing and signed by each party.

22. WAIVER

The failure to enforce any provision of this Sublease Agreement is not a waiver of any such provision and shall not prevent a party from later enforcing such provision or any other provisions of this Sublease Agreement. The rights granted the parties are cumulative, and the election of one remedy is not a waiver of the party's right to assert all other legal and equitable remedies available under the circumstances.

23. ENFORCEABILITY/ATTORNEY FEES

If Sublessor or Doctor find it necessary to enforce any part of this Sublease Agreement through arbitration or legal proceeding, resulting in final judgment by an arbitrator or a court of competent jurisdiction, Doctor and Sublessor agree that each party shall pay all of their own costs and attorneys' fees incurred for such purpose. The foregoing notwithstanding, Sublessor and Doctor agree that Sublessor shall be entitled to its costs and reasonable attorneys' fees, as determined by a Judge or arbitrator: (1) if Sublessor elects to enforce its rights under Section 16 of this Agreement, (2) if Sublessor elects to bring an arbitration or legal proceeding to recover any assets listed on Schedule A, or (3) if Sublessor elects to bring an arbitration, legal proceeding or collection activities to collect any past due monies, including but not limited to Rent.

24. NOTICES

All notices, requests and demands under this Sublease Agreement shall be in writing. Notices shall be deemed to have been given upon delivery if delivered in person or mailed by an express delivery service, including, but not limited to second-day delivery (A notice so delivered shall be deemed given on the first date indicated on the receipt of the carrier that delivery has been made or unsuccessfully attempted to the address listed in the attached Schedule F), or via e-mail or facsimile transmission to the doctor at the locations listed in the attached Schedule F.

25. ENTIRE AGREEMENT AND SURVIVAL

This Sublease Agreement, including any agreements incorporated in it by reference, supersedes all prior written or oral agreements and this agreement represents the entire understanding of Sublessor and Doctor and there are no other terms or conditions concerning the Offices. Any provision of this Sublease Agreement which imposes an obligation on either party after termination or expiration of this Sublease Agreement shall survive such termination and expiration. This Sublease Agreement may be modified only upon written consent of both parties. Sublessor consent requires the signature of a Vice-President except for changes to Section 4 or Section 6 which may be modified by field operations supervisors for no longer than three (3) months' duration.

26. IMPOSSIBILITY

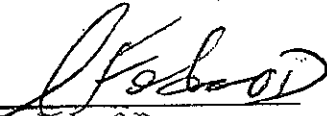
A. If any of the following events occur, Sublessor or Doctor is excused from any obligations that are rendered impossible or reasonably impracticable for so long as such event continues: strikes; lockouts; labor disputes; acts of God; non-appealable government restrictions, regulations or control; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform.

B. The events stated in sub-paragraph 26A do not excuse Doctor's obligations to pay Rent any other sums of money owed under this Sublease Agreement or excuse any obligations the Agreement otherwise imposes on Doctor to obey, remedy or avoid such event, provided the Rent or other obligations due Landlord under the Base Lease Agreement have not been suspended.

27. MISCELLANEOUS

Time is of the essence in this Sublease Agreement.
The captions in this Sublease Agreement are for convenience only and do not define or limit any of the terms.
This Sublease Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Ohio.
The signers of this Sublease Agreement are authorized to bind the parties and the terms of this Sublease Agreement shall be binding on the parties hereto, their permitted assigns, successors, heirs, executors and administrators.
This Agreement may be executed in any number of counterparts and by facsimile transmission, each of which so executed shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

SUBLESSOR:
LUXOTTICA RETAIL NORTH AMERICA INC.

DOCTOR:

Stephen Fedus, O.D.

By: _____
Vice President, Luxottica Retail North America Inc.

SCHEDULE A
FURNITURE, FIXTURES, AND EQUIPMENT IN OPTOMETRIST AREA

Crystal Mall
 Waterford, CT

STORE	INV. DATE	LANE	DESCRIPTION	MANUFACTURER	MODEL	OTHER MAKE/MODEL	SERIAL #
C0681	6/08	Exam Rm 1	APPL TONOMETER	Woodlyn	Other	Woodlyn	5058021021
C0681	6/08	Exam Rm 1	BIO	Mentor	All Mentor models	N/A	4C114C
C0681	6/08	Exam Rm 1	EXAM CHAIR	Reliance	600 series	Other	12689
C0681	6/08	Exam Rm 1	EXAM STAND	Reliance	Other	Other	Other
C0681	6/08	Exam Rm 1	KERATOMETER	Marco	All Marco models	Other	15728
C0681	6/08	Exam Rm 1	LENSOMETER	Marco	101	Other	20775
C0681	6/08	Exam Rm 1	PHOROPTOR	Reichert, Leica, AO or B&L	11625	Other	18745-3
C0681	6/08	Exam Rm 1	PROJECTOR	AO or B&L	11082	Other	BD56336
C0681	6/08	Exam Rm 1	SLIT LAMP	Marco	Marco II B or 2B	N/A	253341
C0681	6/08	Pretest Rm 1	LENSOMETER	Marco	101	Other	20776
C0681	6/08	Pretest Rm 1	NCT	Topcon	CT-80	Other	150913
C0681	6/08	Pretest Rm 1	NCT	Topcon	CT-80	Other	150913

SCHEDULE A, CONTINUED
FURNITURE, FIXTURES, AND EQUIPMENT IN OPTOMETRIST AREA
 At Each Office

Asset
Amsler Grid
Applanation Tonometer
BIO
Color Vision Test
Contact Lens Diameter Gauge
Contact Lens Magnifier
Contact Lens Radius Gauge (State of WA only)
Diagnostic BIO Lens
Exam Chair & Stand
Keratometer or Ophthalmometer
Lensometer- Manual or Auto
Near Point Reading Card
Occluders
OD Stool w/backrest
Ophthalmoscope & Rechargeable Handle
Phoropter w/reading rod & card
Projector- Manual or Auto
Projector Screen
Projector Slides- Adult & Child
Projector Wall or Floor Mount
Refracting Mirror Set (if required)
Retinoscope & Rechargeable Handle
Slit Lamp
Snellen Chart
Stereo Fly Test
Tangent Screen w/accessories
Trial Lens Set & Trial Frame
Auto Refractor/Keratometer (optional)
Instruments Table(s)
Lensometer- Manual or Auto
NCT
Vision Acuity Screener (optional)
Visual Fields Tester (optional)
Lensometer- Manual or Auto
PD Meter(s) (Pupilometer)
Computer hardware (CPU, keyboard, monitor)

SCHEDULE B

Crystal Mall
Waterford, CT

SQUARE FOOTAGE; Unknown

**SCHEDULE C
PERSONAL GUARANTEE**

Doctor wishes to establish a professional corporation or other legal entity ("the Debtor") to operate Doctor's optometric practices in the Office subleased from Luxottica Retail North America Inc. ("LRNA").

In consideration of LRNA's separate written agreement for Doctor to establish the Debtor to operate the Office, Doctor agrees as follows:

Doctor unconditionally guarantees the prompt payment at maturity of any and all indebtedness now due LRNA or which may hereafter be incurred by the Debtor to LRNA together with reasonable collection charges and reasonable attorneys' fees.

Doctor acknowledges that the maturity of all indebtedness now due LRNA or which may hereafter be incurred by Debtor to LRNA may at the option of LRNA be accelerated and may become immediately due and payable by Doctor or Doctor's estate, or devisees, heirs, beneficiaries or personal representatives, upon the occurrence of any event of default as defined in any note, security agreement, or other document signed by Debtor concerning or evidencing Debtor's obligations to LRNA.

This Personal Guarantee will extend to and cover renewals of and guaranteed indebtedness or extensions of time for payment and will not be affected by any surrender, exchange, acceptance or release by LRNA of any other security held by it for any indebtedness hereby guaranteed, now existing or later arising.

Doctor agrees that this Personal Guarantee will bind Doctor's heirs, executors, administrators, successors and assigns, but in no event will the Doctor's obligations be transferred or assigned without the prior express written consent of LRNA.

Dated OCT, this 5 day of OCT, 2012

Stephen Fedus
Stephen Fedus, O.D.

ATTEST/WITNESS
[Signature]

STATE OF _____
COUNTY OF _____

Before me, a Notary Public in and for said State, personally appeared _____ who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed.

In Testimony Whereof, I have hereunto affixed my name and official seal at _____, this _____ day of _____, 20 _____.

My commission expires: _____

ATT MARCUS Campbell
FX
(860) 509-7535

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

10:37/10/9/13

ATTACHED schedules
Included

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner



Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Via Fax

October 7, 2013

Stephen F. Fedus III, OD
24 Fedus Rd
Colchester, CT 06415

Re: Petition No. 2013-302

Dear Dr. Fedus:

Please be advised that I did not receive the entire agreement as requested, as schedules D, E, and F are missing. Please forward copies of the missing schedules to the Department, no later than **October 9, 2013**. Please note that no extensions in time will be provided.

Please submit the requested documents to my attention at the following address:

Department of Public Health
410 Capitol Avenue, MS # 12 HSR
P.O. Box 340308
Hartford, CT 06134-0308

You may also fax the requested documents to 860-509-7535. If you have any questions, do not hesitate to contact me at (860) 509-7552.

Respectfully,

Marcus Campbell
Special Investigator
Practitioner Investigations Unit



Phone: (860) 509-7552 • Fax: (860) 509-7535 • VP: (860) 899-1611
410 Capitol Avenue, P.O. Box 340308
Hartford, Connecticut 06134-0308 www.ct.gov/dph
Affirmative Action/Equal Opportunity Employer

SCHEDULED

DIRECT PAYMENT AUTHORIZATION & AGREEMENT: RENT

I/We Stephen Fedus authorize Luxottica Retail North America Inc. to initiate debit entries to the checking account at the financial institution listed below for Rent, and any Late Fees due under the Sublease Agreement, and, if necessary to initiate credit entries and adjustments for any entries made in error, via electronic funds transfer.

Debits for Rent are processed on the 10th of each month, as indicated in your Sublease Agreement.



ABA Routing Number Checking Account Number Check Number

Depository Institution: _____

9-digit Bank Routing # _____

Account Name: _____

Account Number: _____

Dollar Amount to be d_____

I/We will give sixty (60) days advance notice in writing to Sublessor of any changes in the depository institution or other payment instructions. Sublessor will provide notice of the effective date of any proposed change.

In the event that a payment is returned for Non-sufficient funds more than 2 times, Sublessor reserves the right to require payment in the form of certified funds.

I/We agree that this Authorization will remain in full force and effect until all amounts payable under the Sublease Agreement are paid in full.

I/We acknowledge receipt of and agree to comply with the *Terms & Conditions for ACH Withdrawals* appearing on the reverse side of this Authorization.

Please attach a voided check.

Stephen Fedus
(Signature of Authorized Representative)

Stephen Fedus
(Printed Name)

OD
(Title)

10/10/12
(Date)

SCHEDULE E
TERMS AND CONDITIONS FOR DIRECT PAYMENT PROGRAM WITHDRAWALS

1. By completing and signing the Direct Payment Authorization on the reverse side of this application, I/We authorize Sublessor to initiate debit entries from the designated depository institution for Promissory Note payments, Rent, and/or Late Fees due under the Sublease Agreements, and, if necessary to initiate credit entries and adjustments for any entries made in error, via electronic funds transfer
2. I/We understand that the designated bank account will be debited for the monthly payment on the due date.
3. I/We understand if corrections in the debit amount are necessary, it may involve an adjustment (credit or debit) to my (our) account. Sublessor has the right to make credit or debit adjustments. Adjustments will be made as soon as possible, but not later than ten (10) business days after determination of the error.
4. You must attach a voided check for the checking account you wish to debit. It is used to verify the bank account and Electronic Funds Transfer (EFT) numbers only.
5. If the selected account is in a name other than yours, or is a joint account, you must include the name of the other party and his/her signature.
6. I /We understand that I/We will receive confirmation of the date of our first deduction. Until then, we agree to make your payments by check.
7. I/We understand that if my electronic payment is rejected for any reason, Sublessor has the right to charge a return item fee, and/or charge late fees (where applicable).
8. I/We agree to give sixty (60) days advance notice in writing to Sublessor of any changes in the depository institution or other payment instructions. Sublessor will provide notice of the effective date of any proposed change.
9. I/We acknowledge that there can be no lapse in Direct Payments. In the event that I/We submit a request for changes in accounts and/or depository institutions, I/We agree to maintain sufficient funds in the account listed on the Direct Payment Authorization, until such time that Sublessor provides notification of the effective date of the requested change(s).
10. I/We understand that if a payment is returned for Non-sufficient funds more than 2 times, Sublessor has the right to require payment in the form of certified funds.
11. I/We acknowledge and agree that verification or reverification of any information may be made at any time by Luxottica Retail North America Inc., its agents, successors, or assigns either directly or through a credit reporting agency.
12. I/We authorize incremental adjustments to the debit amount based upon annual rent adjustments. Sublessor will provide thirty (30) days notice of the annual rent adjustment and the subsequent change in the debit amount.
13. I/We agree that this Authorization will remain in full force and effect until all amounts payable under the Sublease Agreement are paid in full.

Source: Direct Deposit and Direct Payment, www.directdeposit.org and www.directpayment.org, www.nasha.org

SCHEDULE F
DECLARATIONS

"Doctor" is defined as Stephen Fedus, O.D., whose current address is 24 Fedus Avenue, Colchester, CT 06415.

Section 1 (A)	<u>Landlord</u> SEARS	<u>Location /Address</u> Crystal Mall 824 Hartford Trapke Waterford, CT 6385
---------------	--------------------------	---

Section 2 (B)(1)
GRANT TERM AND RENEWALS

The term of this Sublease Agreement begins on January 1, 2013 and extends until close of business December 31, 2013.

Section 4,
HOURS OF OPERATION

After negotiation(s) and discussion(s), Doctor has informed Sublessor and Sublessor agrees that an optometrist shall be physically present and available to see patients in the Office on: Tuesday, Thursday, and Friday 11:30 a.m. until 8:00 p.m.; Wednesday and Saturday 10:00 a.m. until 5:00 p.m., for a total of 39.5 hours per week.

Section 6 (B) (1) and (2)
RENT; STAFF SUPPORT

(B)(1) The Monthly Rent for the first year of this Agreement for each Office is:

<u>Location</u>	<u>Amount</u>
Crystal Mall Waterford, CT	[REDACTED]

(B)(2) Doctor's Monthly Rent obligation begins January 1, 2013 with the first payment of each due by January 10, 2013 and thereafter, by the tenth calendar day of each month during the term of this Sublease Agreement. For any partial month of operation Doctor shall pay pro-rata Rent.

Section 24.
NOTICES

If to Doctor:	Stephen Fedus, O.D. 24 Fedus Avenue Colchester, CT 06415 E-mail: N/A
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Or At Doctor's Office:	Crystal Mall 824 Hartford Trapke Waterford, CT 6385
---------------------------	---

**SCHEDULE C
PERSONAL GUARANTEE**

Doctor wishes to establish a professional corporation or other legal entity ("the Debtor") to operate Doctor's optometric practices in the Office subleased from Luxottica Retail North America Inc. ("LRNA").

In consideration of LRNA's separate written agreement for Doctor to establish the Debtor to operate the Office, Doctor agrees as follows:

Doctor unconditionally guarantees the prompt payment at maturity of any and all indebtedness now due LRNA or which may hereafter be incurred by the Debtor to LRNA together with reasonable collection charges and reasonable attorneys' fees.

Doctor acknowledges that the maturity of all indebtedness now due LRNA or which may hereafter be incurred by Debtor to LRNA may at the option of LRNA be accelerated and may become immediately due and payable by Doctor or Doctor's estate, or devisees, heirs, beneficiaries or personal representatives, upon the occurrence of any event of default as defined in any note, security agreement, or other document signed by Debtor concerning or evidencing Debtor's obligations to LRNA.

This Personal Guarantee will extend to and cover renewals of and guaranteed indebtedness or extensions of time for payment and will not be affected by any surrender, exchange, acceptance or release by LRNA of any other security held by it for any indebtedness hereby guaranteed, now existing or later arising.

Doctor agrees that this Personal Guarantee will bind Doctor's heirs, executors, administrators, successors and assigns, but in no event will the Doctor's obligations be transferred or assigned without the prior express written consent of LRNA.

Dated OCT, this 5 day of OCT, 20 12

Stephen Fedus
Stephen Fedus, O.D.

ATTEST/WITNESS
Lisa Garrey

STATE OF _____
COUNTY OF _____

Before me, a Notary Public in and for said State, personally appeared _____ who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed.

In Testimony Whereof, I have hereunto affixed my name and official seal at _____, this _____ day of _____, 20 ____.

My commission expires: _____

Optical services performed (please check all that apply):

- Producing or reproducing ophthalmic lenses.
- Mounting ophthalmic lenses to supporting material.
- Fitting (adjust) optical glasses to the eyes.
- Repairing optical frames and mountings and supplying repair parts.

CONTACT LENSES: Check equipment on premises

- Keratometer
- Slit Lamp
- Burton Magnifier
- Black Light
- Thickness Gauge
- Reticule Measuring Device
- Radiuscope
- Other (Specify) _____

Staff:

Please list below the names, other than the licensed optician designated as owner or manager of each licensed optician or apprentice, together with their respective certificate numbers, employed by this establishment:

Name	Type of License	License or Certificate Number
Elda Carne	Licensed Optician	1503
Laura Zotti	License Optician	1448
Jacqueline Nilsson	Licensed Optician-Vt	Vt 30-000028

Requested date for inspection: N/A

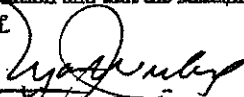
Notarization:

State of Ohio County of Warren

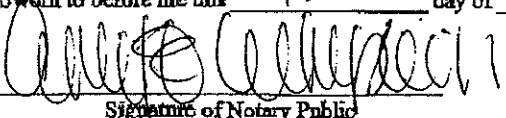
On this 13 day of August 20 13

Owner's Name: _____

personally appeared before me, who being duly sworn says that she/he is the person referred to in the foregoing application and that the statements, made herein are true and correct in every respect, to the best of his/her knowledge and belief.


Signature of Applicant

Sworn to before me this 13 day of August 20 13


Signature of Notary Public

My Commission expires _____
Amy E. Lumpkin
Notary Public
State of Ohio
My Commission Expires 11/1/14

Please return this application along with a certified bank check or money order in the amount of \$315.00 to:

Connecticut Department of Public Health
Remittance Unit
410 Capitol Ave., MS # 12 MQA
P.O. Box 340308
Hartford, CT 06134

Aug. 8. 2013 4:13PM
Application for Optical Selling Permit

FEE \$315.00

1728-1537206021

No. 2311 r. 2

V-116683

This application is for (please check one):

New Shop Change of Location Change in Optician of Record Reinstatement Shop License No.: _____

Optical Shop Information:

Name of Establishment (d/b/a): Sears Optical 1728
Address: 824 Hartford Turnpike
City/State/Zip: Waterford, CT 06385
Phone Number: (860) 447-9347

13CH31728-

8/8/13
submitted

Ownership Information:

Legal form of Organization: Individual/Sole Proprietor Limited Liability Corporation
 Limited Partnership Profit Corporation
 Other: _____

Name of Owner: Luxottica Retail
North America CT Optician License No.: 1311
Address: 4000 Luxottica Place
City/State/Zip: Mason, OH 45040
Federal Employer Identification Number: [REDACTED]
Phone Number: (513) 765-6000 Email: _____

Signature of Owner: _____

Partner or Corporate Officer: Mark Weikel CT Optician License No.: _____
Print Name

Partner or Corporate Officer: [Signature]
Signature

Optician of Record Information:

Licensed Optician of Record: Elda Cone CT Optician License No.: 1503
Print Name

Signature of Optician of Record: Elda Cone CT Optician License No.: 1503
Signature

Other Optician in charge of Optical Dept. (please print) _____ CT Optician License No.: _____
Print Name

Other Optician in charge of Optical Dept. Signature: _____

CONNECTICUT BOARD OF EXAMINERS FOR OPTOMETRISTS

IN RE: PETITION OF LAWRENCE LEFLAND, O.D., ON BEHALF OF OF THE
CONNECTICUT ASSOCIATION OF OPTOMETRISTS

HEARING DATES: June 28, 2000 and September 12, 2001

BOARD ATTORNEYS: Marianne Horn, Esq.
Patricia Gerner, Esq.

CONNECTICUT BOARD OF EXAMINERS

FOR OPTOMETRISTS MEMBERS: Edward F. Pinn, O.D.
Patricia H. Simmons
Leora A. Berns, O.D.
Eugene A. Winakor, O.D.
John N. Sienko, O.D.
Henry W. Siegrist

DECLARATORY RULING

FACTS AND NATURE OF THE PROCEEDINGS

On November 17, 1999, the Connecticut Board of Examiners for Optometrists (“the Board”) received a request dated November 2, 1999, from Lawrence Lefland, O.D., to determine the circumstances under which an optometrist would be considered to be practicing his profession “as an employee of any unlicensed person, firm or organization.”

On February 9, 2000, the Board agreed to conduct a declaratory ruling proceeding in accordance with Connecticut General Statutes §4-176.

As part of this question, the Board determined that it would consider the definition of the term, “independent contractor.” The Board also considered whether any of the following characteristics, *inter alia*, would determine employee status if the optometrist is practicing in a situation where the unlicensed person, firm or organization:

- a. has ownership of the patient records;

- b. does not allow the optometrist access to patient records after hours and/or does not allow the optometrist to render after-hour care;
- c. receives payment for the optometrist's services and then pays the optometrist;
- d. determines the optometrist's hours of practice and professional fees;
- e. offers money or other remuneration to the optometrist in exchange for charging the patient a reduced fee for a professional service;
- f. offers a lease arrangement (or an arrangement for other fee services) for less than fair market value,
- g. offers the optometrist a "percentage" lease agreement; or,
- h. advertises that a free optometric service is going to be offered in exchange for purchasing other goods or services, and the optometrist is unable to prevent the offer.

A notice of hearing was published in the March 7, 2000, in the Connecticut Law Journal, scheduling a hearing for June 28, 2000.

Dr. Lefland agreed to waive the time frame of 180 days set forth in Conn. Gen. Stat. §4-176 (i) directing the issuance of a declaratory ruling.

Prior to the June 28, 2000 hearing, intervenor status with expanded rights of cross-examination and the right to inspect and copy all documents was given to the National Association of Optometrist and Opticians ("NAOO"), the Connecticut Association of Optometrists ("CAO"), and the Connecticut Opticians Association.

Intervenor status was given to the following individuals and organizations: the Board of Examiners for Opticians for the State of Connecticut; Cole Vision, the Harvey & Lewis Co., Joshua Orland, O.D., Kennedy and Perkins Guild Opticians, Connecticut Society of Eye Physicians, Eye and Eye Vision Center, Maria Diaz O.D., Dana L. Shepard, O.D., and Dennis Iadorola, O.D. These intervenors provided pre-filed testimony, which they adopted under oath during the hearing, and the witnesses were available for questioning and cross-examination. Additionally, the Board considered letters from Robert L. Ross, O. D. and Jeanette Jezick, O. D. as interested parties.

Robert F. Frankel, Esq., and Dr. Lefland, immediate past president of the CAO, appeared on behalf of the CAO; Edward Spinella, Esq., appeared on behalf of the NAOO; Rene "Skip"

Rivard, L.O., executive Director of the Connecticut Opticians Association, appeared on behalf of the Connecticut Opticians Association; and, Raymond Dennis, L.O., appeared on behalf of the Board of Examiners for Opticians for the State of Connecticut.

On June 28, 2000, the NAOO filed a Motion to Recuse Board Members and a Motion to Terminate Proceedings on the grounds that the Board failed to properly authorize the declaratory ruling proceeding. During the hearing on June 28, 2000, the Board formally voted to proceed with the declaratory ruling, rendering the Motion to Terminate the Proceedings moot. Tr., 6/28/00, p. 41. The Board hearing was continued September 12, 2000. On August 26, 2000, the Board denied the Motion to Recuse.

DISCUSSION AND LAW

By law, a declaratory ruling constitutes a statement of agency law which is binding upon those who participate in the hearing and may also be utilized by the Board, on a case by case basis, in future proceedings before it concerning licensed optometrists. This ruling is intended to provide guidance to individual licensed optometrists and others regarding (1) the circumstances in which an optometrist would be considered to be in violation of the applicable statutes for practicing his profession "as an employee of any unlicensed person, firm or organization" as the phrase is used in Connecticut General Statutes §20-133a, and (2) the definition of an independent contractor. If a licensed optometrist follows the guidance provided by this ruling, the Board will presume the optometrist acted appropriately and in accordance with professional standards in any contested case concerning an issue addressed in this declaratory ruling. In situations where an optometrist has departed from the guidance provided by this ruling, the Board will consider the facts of the specific case and determine whether there has been a violation of Connecticut General Statute §20-133a.

During the hearing, the Board received the following exhibits: a two page document entitled "Proposed Declaratory Ruling Proceeding" (Exhibit 1); a four page document entitled "Statement of the Connecticut State Board of Examiners for Opticians Before the Connecticut State Board of Examiners for Optometry" (Exhibit 2); an eight page document entitled "Declaratory Ruling Proceeding Position Statement of Intervenor Cole Vision Corporation"

(Exhibit 3); a three page letter from Dr. Dana L. Shepard dated June 20, 2000 (Exhibit 4); a three page document entitled "Testimony for Declaratory Ruling Proceeding Pursuant to C.G.S. §20-133a," signed by Maria Diaz, O.D. (Exhibit 5); a twenty five page document entitled "Testimony of Lawrence Lefland before the Connecticut Board of Examiners for Optometrists" with attachments (Exhibit 6); a two page letter from Rene R. Rivard, L.O., (Exhibit 8); four pages of testimony from Raymond P. Dennis, L.O., (Exhibit 9); a one page letter from Robert L. Ross, O.D. (Exhibit 10); a five page letter from Jeanette Jezick, O.D. (Exhibit 11); and, a one page letter from Mark D. Yorgensen, O.D. (Exhibit 12).

On September 12, 2001, Lawrence Lefland, O.D. testified as past president of the COA in support of adopting a Proposed Declaratory Ruling ("Proposed Ruling") submitted by the COA and NAOO (Exh. 1).

The COA, through its counsel Attorney Robert Frankel, also supported the adoption of the Proposed Ruling and further argued that it is within the Board's purview to address the issues. The COA's position is that the Board, in issuing the Proposed Ruling would not be dictating the business practice of optometrists and establishments where such optometrists practice. To the contrary, the Proposed Ruling grants the freedom typical of an independent contractor and at the same time affords the protection that the public needs.

Maria Diaz, O.D., Robert L. Ross, O.D., Jeanette Jezick, O.D., Dana L. Shepard, O.D., and Dennis P. Iadarola, O.D., also testified and adopted under oath their pre-filed statements in support of the Board's adoption of the Proposed Ruling which would clarify the difference between an independent contractor and an employee while at the same time, protect the public and practicing optometrists.

The NAOO objected to Dr. Iadarola's testimony and pre-filed documents on the basis that the NAOO did not received such documents before the day of the hearing on September 12, 2001. As a consequence, they were unprepared to defend their position, cross examine Dr. Iadarola, and were therefore prejudiced. Dr. Iadarola's testimony and pre-filed documents were stricken by the Board. Tr. 9/12/01, pp. 139-140.

Rene "Skip" Rivard, L.O., Executive Director of the Connecticut Opticians Association, adopted the Association's pre-filed statement opposing the promulgation of any Declaratory

Ruling on these issues. The Connecticut Opticians Association argued that the Board, pursuant to Conn. Gen. Stat. § 19a-19, cannot issue a Declaratory Ruling since to do so would constitute the regulation of business practices.

Raymond Dennis, L.O., the Chairman of the Board of Examiners for Opticians, adopted its pre-filed statement opposing the promulgation of any ruling by the Board on these issues.

Alan Winek, L.O., a member of the Board of Examiners for Opticians, testified that the Board should protect the safety and well-being of the public.

Cole Vision, through its counsel Edward J. Heath, adopted its pre-filed statement opposing the promulgation of any ruling from the Board on these issues.

Conn.Gen. Stat. § 20-133a mentions but does not define the word, "employee." The statute requires that practicing optometrists and unlicensed establishments ("establishments") leasing to optometrists, make their own determination of whether someone is practicing as an independent contractor or whether they are practicing as employees of establishments. As demonstrated by the testimony, these distinctions are often difficult to define. Conn. Gen. Stat. § 20-133a provides, in pertinent part, that:

No licensed optometrist shall practice his profession as an employee of any unlicensed person, firm or corporation, provided that said prohibition shall not apply to health services organizations, hospitals, other optometrists or ophthalmologists. Nothing herein contained shall prohibit any registered optometrist or optometrists from continuing his employment in the mercantile establishment in which he or they were employed on June 28, 1963. No rule of the board shall prohibit the practice of optometry on a lessee or sublessee basis in or on the premises of a retail, commercial or mercantile establishment.

Although the term "employee" is not defined for purposes of Conn. Gen. Stat. § 20-133(a), under Connecticut common law, the primary determinant in establishing whether an employer-employee relationship exists, is whether the employer has the right of general control of the work.

Hunte v. Blumenthal, 238 Conn. 146, 153-54 (1996).

It is also instructive to look at the definition of "employee" for purposes of the Unemployment Compensation Act at Conn. Gen. Stat. § 31-222(a)(1)(B)(ii) which defines "employee", in pertinent part that as follows:

(I) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and (II) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and (III) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

The Board agrees that it is characteristic of independent contractors to exert control over their work, schedule, tools, collecting of fees, and advertisement. While practicing as independent contractors, either as solo practitioners or in group practices, optometrists must maintain such control. Most importantly, optometrists are responsible and shall be in control of their patients' records. This conclusion is supported elsewhere in Connecticut law. Conn. Gen. Stat. § 20-7c provides, in pertinent part, that:

- (a) (1) A provider . . . shall supply to a patient upon request complete and current information possessed by that provider concerning any diagnosis, treatment and prognosis of the patient . . .
- (b) Upon a written request of a patient, his attorney or authorized representative, or pursuant to a written authorization, a provider . . . shall furnish to the person making such request a copy of the patient's health record

Additionally, section 19a-14-41 of the Regulations of Connecticut State Agencies ("the Regulations") provides, in pertinent part, that:

Each person licensed or certified pursuant to the following chapters and Acts shall maintain appropriate medical records of the assessment, diagnosis, and course of treatment provided each patient, and such medical records shall be kept for the period prescribed

Section 19a-14-42 of the Regulations provides, in pertinent part, that:

Unless specified otherwise herein, all parts of a medical record shall be retained for a period of seven (7) years from the date of treatment, or, upon the death of the patient, for three (3) years

Medical records belong and shall be under the control of the optometrists who create them. When an optometrist leaves an establishment, the optometrist has an obligation to retain possession of patients' records. A third party who leases the establishment to the optometrist cannot control such records unless they possess a separate, duplicate record that they created in the process of selling durable medical equipment to patients, such as eye glasses. As independent contractors, optometrists must have access to their patients' medical records at all times.

Optometrists should also maintain control of the fees that they charge to patients for their services, including the setting of the amount of the fees and the collection thereof. As testified by Dana L. Shepard, O.D., under her contract with Vision Corner, from 1993 to 1996, her professional fees were set at \$29.00 per exam. The Vision Corner staff collected the payments and then issued her weekly checks. In November and December of each year, a holiday promotion was imposed on the optometrists. For example, in 1993, the exam fee was reduced to \$19.00, and in 1994, the fee was reduced to \$14.00. Vision Corner subsidized the professional fee, but only if the patient had purchased a new pair of glasses. Exh. 4. Additionally, under Dr. Shepard's contract, third party payors paid directly to Vision Corner, and Dr. Shepard occasionally would not receive payment. When Dr. Shepard tried to hire her own clerk and collect her own fees, Vision Corner refused such arrangements. Tr., 9/12/01, pp. 91-92. These types of practices in which optometrists are not in control of setting of fees and of collection of fees, by either delegating or contracting with another entity, are indicative of an employer-employee relationship. Moreover, the Board regards any guaranteed minimum fee as an unacceptable employment situation, since optometrists lack control over patient care.

Dr. Shepard also testified that during her contract with Vision Corner, the establishment dictated her schedule of three exams per hour, and she was pressured to adhere to this schedule, regardless of the individual needs of her patients. Exh. 4; Tr., 9/12/01, pp. 89, 93-94.

Maria Diaz, O.D. also testified in support of the Proposed Ruling and gave a personal account of her experiences when she was working as an independent contractor for an unlicensed entity. Dr. Diaz testified that her relationship with the establishment was similar to that of employee-employer in that she was obligated to work with support staff who discouraged her patients from having their eyes dilated so that they could purchase glasses during the same visit. She also had no discretion in the hiring or supervision of such staff and was obligated to work with individuals who were not qualified to provide ophthalmic care to her patients. Exh. 5; Tr., 9/12/00, pp. 73-80.

Also under Dr. Diaz' lease agreement, her fees for eye examinations were contingent upon whether she persuaded the patient to buy the company's merchandise. If the patient bought a pair of glasses, she received \$29.00 for the eye exam as opposed to \$15.00 if the patient bought nothing. Exh. 5. The Board finds that such agreements are indicative of an employer-employee relationship and jeopardize patients' health and safety.

Several intervenors argued that the Board should not issue a declaratory ruling in which the Board reaches a general legal conclusion as to which relationships under §20-133a are employer-employee relationships and which are independent contractor relationships, and that any such conclusion shall be reached on a case-by-case basis. The Board's position is that this declaratory ruling will provide guidance to practitioners and the public, and when determining specific cases before it, the Board will consider the facts of the specific case, and determine whether there has been a violation of Connecticut General Statute §20-133a.

Accordingly, the Board has sufficient evidence to issue a Declaratory Ruling that clarifies the difference between independent contractors and employees.

CONCLUSION AND RULING

The Board adopts the Proposed Ruling submitted by the CAO and the NAOO with modifications, as follows:

In every landlord-tenant or independent contractor relationship, the leasing or contracting optometrist shall:

- a. Retain ownership and control of optometric patient records and have 24-hour access to such records.
- b. Be afforded access to the premises, after business hours, for medical emergencies. Any contract or lease shall contain a reasonable protocol for the optometrist to gain access to the premises for such medical emergencies.
- c. Set his or her own fees for optometric services and products sold in the optometrist's office, provided that optometrists may refrain from the sale of ophthalmic products in the leased premises.
- d. Not be constrained in scheduling patients, the amount of time spent with a patient, or the number of patients to be seen in a particular time period. The optometrist may, however, contract to perform optometric services for a minimum number of hours per day.
- e. Not be limited in the treatments, products or services recommended for patient, nor shall the commercial establishment compensate optometrists based on goods purchased by patients.
- f. Not enter into a lease for less than fair market value, except that the optometrist may pay rent based on a percentage of gross income.
- g. Not be limited in the managed care or insurance plans in which the optometrist chooses to participate.
- h. Be free to practice to the full scope of licensure permitted under law, as well as control the hiring, staffing, training, office and employment policies of the individuals employed to assist the optometrist in the management and administrative aspects of his practice and in patient care. The optometrist, however, may contract for the provision of clerical services.
- i. Be allowed to have a separate phone line and listing for his or her optometric office. The optometrist may own and control the telephone line and listing.
- j. Be free to advertise within the bounds of the law as the optometrist deems to be in the best interest of the practice.
- k. Control and determine to whom all patients are referred for medical, ophthalmologic and/or additional optometric services.

- I. Not permit signage or advertising that states, implies or suggests to a reasonable person that the optometrist is employed as an employee of an optical establishment. The burden rests with the optometrist to ensure that the optometry advertising is accurate and does not violate statutes and regulations.

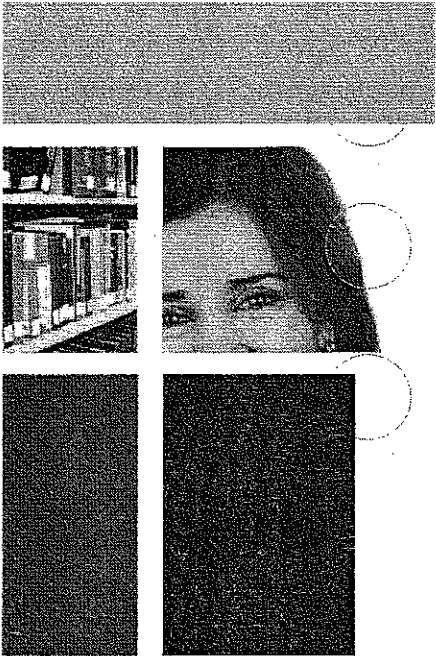
5/1/2002
Date

Edward F. Pinn, O.D., Chairperson,
Connecticut Board of Examiners for
Optometrists

PARAOPTOMETRIC RESOURCE CENTER

AOA offers paraoptometric education,
recognition, and involvement.

Paraoptometrics are optometric health personnel who assist doctors of optometry with front office procedures, chairside assisting, visual field testing, contact lens instruction, frame styling, and vision therapy, among other duties. The AOA Paraoptometric Resource Center is the nation's largest organization serving the needs of optometric assistants and technicians. The PRC offers education, recognition, and involvement to its members while promoting the health team concept in the delivery of optometric care. Any ancillary/allied health personnel sponsored by an AOA-member optometrist is eligible for benefits.



Paraoptometric
professionals play a
valuable role
in providing quality
eye care and improve
the efficiency and
productivity of an
optometric practice.

AOA PARAOPTOMETRIC RESOURCE CENTER BENEFITS

A paraoptometric's occupation is more than just a job. Together with the optometrist, paraoptometrics play a valuable role in providing quality eye care to each and every patient who enters the office or clinic.

The AOA Paraoptometric Resource Center offers recognition, education, involvement, networking and volunteer opportunities for members. Membership in the Paraoptometric Resource Center opens the door to personal growth and professional development for all paraoptometrics. The benefits offered prepare paraoptometrics for tomorrow's career challenges:

- FREE access to six hours of online Continuing Education opportunities annually
- Reduced registration fees at Optometry's Meeting*. The Paraoptometric Resource Center offers continuing education courses, designed specifically for optometric staff, at Optometry's Meeting*