

EFFECTIVE AS A FINAL ORDER

DATE: 2/1/19

FILED **BV**

JAN 11 2019

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

In the Matter of)
) KSBHA Docket No. 19-HA 000 51
Essilor Group Canada, Inc.)
Kansas Registration No. 75-00017)
_____)

SUMMARY ORDER

NOW ON THIS 11th day of January, 2019 this matter comes before Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A 77-537. Pursuant to K.S.A 77-537, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within fifteen (15) days of service.

Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Essilor Group Canada, Inc., formerly known as Coastal Contacts, Inc., ("Registrant") was originally issued registration number 75-00017 to distribute contact lenses in the state of Kansas on or about November 5, 2014. Registrant's current registration designation is Cancelled for Failure to Renew, and such registration expired on or about November 4, 2015.
2. Registrant's last known mailing address to the Board is: 1499 Odell Street, Blaine, Washington 98230.
3. On or about March 7, 2018, the Board received a complaint from an optometrist in Colby, Kansas, stating a patient of the Complainant ordered contacts from Registrant. Complainant became aware Registrant did not currently hold an Active registration to dispense contact lenses

in Kansas and denied the prescription verification by fax. The Complainant further alleged Registrant sent the patient contact lenses, despite the prescription denial sent.

4. On or about June 13, 2018, the Board received a second complaint from Grene Vision Group in Wichita, Kansas. The complaint stated an employee from Registrant's business called to verify a prescription for a patient of Grene Vision Group. The Complainant advised the employee calling she could not verify the prescription because the company did not have an Active registration to dispense contact lenses in Kansas.

5. On or about June 18, 2018, the Board received a third complaint regarding Registrant, also from Grene Vision Group, indicating a second prescription verification request had been sent to them by Registrant. Grene Vision Group denied the request, after verifying via the Board's website that Registrant did not hold an Active registration in the state of Kansas to distribute contact lenses.

6. On or about July 18, 2018, the CEO of Clearly, a larger organization of which Registrant's facility is part of, responded to the Board's request for the number of patients the company has distributed contact lenses to in Kansas. The CEO stated the company was not registered to dispense contact lenses in Kansas.

7. On or about July 25, 2018, the CEO of Clearly sent a letter informing the Board of the number of contact lenses distributed in Kansas. Since 2016, Registrant has shipped 2,722 contact lens orders to Kansas. Currently, Registrant has 493 active customers that have ordered contacts within the last eighteen (18) months.

8. On or about August 3, 2018, Registrant submitted an application for reinstatement of Active registration to dispense contact lenses by mail in Kansas.

Applicable Law

9. K.S.A. 65-4967(a) of the Kansas Contact Lens-Dispensing Act defines an entity dispensing contact lenses as:

...a person or entity not licensed under K.S.A. 65-1505, and amendments thereto, or license to practice medicine and surgery in Kansas who mails or delivers, using commercial courier or overnight or other delivery services, contact lenses to patients in Kansas pursuant to a contact lens prescription which such person or entity did not determine.

10. K.S.A. 65-4967(b) of the Kansas Contact Lens-Dispensing Act further states:

No person dispensing contact lenses as defined under subsection (a) may dispense contact lenses to Kansas residents unless they meet the requirements of this section, is registered under this section and pays the annual registration fee set by the state board of healing arts.

11. K.S.A. 65-4968(b)(1) states:

Upon a finding of any violation of the patient's contact lens prescription release act, in lieu of or in addition to any other action, ... the state board of healing arts for persons subject to the provisions of K.S.A. 65-4967, and amendments thereto, registered under K.S.A. 65-4967, and amendments thereto, or licensed by the state board of healing arts to practice medicine and surgery may assess a civil fine not in excess of \$10,000 against such person dispensing contact lenses under this act.

Conclusions of Law

12. The Board has jurisdiction over Registrant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

13. The Board finds that Registrant is subject to the provisions of K.S.A. 65-4937(a) in that they are an entity dispensing contact lenses.

14. The Board finds Registrant violated K.S.A. 65-4967(b) in that Registrant dispensed contact lenses to Kansas residents without meeting the requirements of the section in that Registrant has not been registered under the Kansas Contact Lens-Dispensing Act and did not pay the annual

registration fee set by the state board since 2015, but has dispensed approximately 2,722 contact lens orders to Kansas.

15. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons or entities other than Registrant, Essilor Group Canada, Inc.

IT IS, THEREFORE, ORDERED that Registrant is assessed a **CIVIL FINE** in the amount of **ten-thousand dollars (\$10,000.00)** for Registrant's violations of the Kansas Contact Lens Dispensing Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before **March 15, 2019**. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

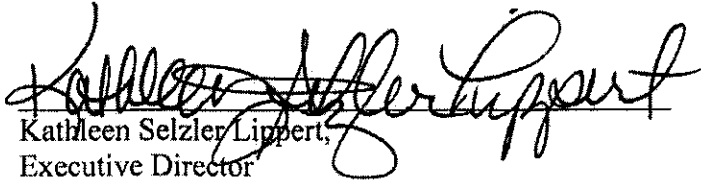
Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

IT IS FURTHER ORDERED that Registrant shall be granted an Active registration immediately upon the date this order becomes effective as a Final Order.

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 11th day of January, 2019.

KANSAS STATE BOARD OF HEALING ARTS



Kathleen Selzler Lippert,
Executive Director

FINAL ORDER NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 1st day of Feb, 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Essilor Group Canada, Inc
Registrant
1499 Odell Street
Blaine, WA 98230

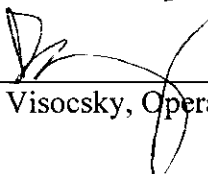
And a copy was hand-delivered to:

M. Katie Baylie, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.



Beth Visocsky, Operations Manager