

IN THE MATTER OF  
MARK L. FARBMAN, O.D.

Respondent

License Number: TA0646

\* BEFORE THE MARYLAND  
\* BOARD OF EXAMINERS  
\* IN OPTOMETRY  
\* Case Number: 2005-010

\*

\* \* \* \* \*

CONSENT ORDER

PROCEDURAL BACKGROUND

The Maryland Board of Examiners in Optometry (the "Board"), on May 25, 2005, voted to offer MARK L. FARBMAN, O.D. ("Respondent"), License Number TA0646, a pre-charge Consent Order in lieu of issuing charges for violations of the Maryland Optometry Act (the "Act"), Md. Health Occ. Code Ann. ("HO") §§ 11-101 et seq. (2000). The pertinent provisions of the Act provide:

§11-313 Subject to the hearing provisions of § 11-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

(23) Commits an act of unprofessional conduct in the practice of optometry[;].

§11-404.2(f) A therapeutically certified optometrist may remove superficial foreign bodies from the human eye only if:

- (1) The foreign body may be removed with a cotton-tipped applicator or blunt spatula; and
- (2) The foreign body has not penetrated beyond the Bowman's membrane of the cornea and is not within 2.5 millimeters of the visual axis.

On that same date, the Board voted to invite Respondent to attend a settlement meeting on June 28, 2005 wherein Respondent would be offered the opportunity to enter into this Consent Order in lieu of the Board issuing charges. As a result of that meeting, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and Order, with the terms and conditions set forth herein.

#### **FINDINGS OF FACT**

1. At all times relevant hereto, the Respondent was and is an optometrist licensed to practice optometry in Maryland.
2. Use of an Alger brush by an optometrist is beyond the scope of practice of optometry in Maryland and is not permitted under the Act.
3. On or about March 3, 2005, the Board received a complaint alleging that Respondent knowingly used an Alger brush to remove foreign bodies from the eyes of patients in his optometry practice and that Respondent had admitted to doing so to the Maryland legislature.
4. Attached to the complaint was a letter written by Respondent to State Senator Alexander Mooney, dated February 8, 2005, in which Respondent stated

that he had "removed literally hundreds of metallic foreign bodies from eyes with the Alger Brush, which the Maryland law says that only an ophthalmologist can use." Respondent further asserted in his letter that there "is no reason why [he] should have to act outside the law when [his] colleagues everywhere else in the country are doing the same procedures legally."

5. On or about March 4, 2005, the Board received a second complaint against Respondent, making the same allegations, which also had Respondent's letter to the Maryland legislator attached to it.

6. Respondent did use an Alger brush in his practice of optometry, in violation of the Act.

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board finds that Respondent's use of an Alger brush in his optometry practice is unprofessional conduct in the practice of optometry and constitutes violations of HO §§ 11-313(23) and 11-404.2(f).

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 27<sup>th</sup> day of July, 2005, by a majority of the Board members serving on the Board, hereby

ORDERED that the optometry license of Mark L. Farbman, O.D., license number TA0646, is SUSPENDED for sixty (60) days, with thirty (30) days stayed, to begin on August 1, 2005, with the following conditions; and it is further

ORDERED that there shall be no automatic institution of the stay at the end of the 30 days served. Respondent must petition the Board to grant the stay and reinstate his license. If Respondent fails to make any such petition, then Respondent's license shall remain suspended; and it is further

ORDERED that upon the Board's termination of or stay of the suspension and reinstatement of Respondent's license, Respondent shall be placed on PROBATION for one (1) year; and it is further

ORDERED that within ninety (90) days of the effective date of this Consent Order, which is the date it is signed by the Board, Respondent shall pay to the Board an administrative monetary penalty in the amount of Five Hundred Dollars (\$500.00); and it is further

ORDERED that within six (6) months of the effective date of this Consent Order, Respondent shall enroll in a Board-pre-approved, individual, graduate-level, ethics tutorial, which is a minimum of ten (10) hours in duration, with the following conditions:

1. Respondent shall notify the Board in writing that he has enrolled in this individual ethics tutorial, which will focus on ethics, honesty and integrity by healthcare providers;
2. Respondent shall ensure that the tutor be provided a copy of this Consent Order prior to beginning the tutorial;
3. Respondent shall ensure that the tutor submit to the Board an assessment at the completion of the tutorial, which includes a report of attendance, participation and completion of assignments, including a final essay written by Respondent; and
4. Respondent shall successfully complete the individual tutorial within the 1-year probationary period; and it is further

ORDERED that there shall be no early termination of probation; and it is further

ORDERED that there shall be no automatic termination of probation after one (1) year, and Respondent must petition the Board for termination of probation and full reinstatement of his license without restrictions or conditions; and it is further

ORDERED that if Respondent has satisfactorily complied with all conditions of probation, there are no outstanding complaints, investigations or disciplinary action pending against Respondent, and the Board-approved tutor's assessment is, in the opinion of the Board, favorable for Respondent, the Board shall terminate probation. If the Respondent fails to make any such petition, then the probationary status shall continue indefinitely; and it is further

ORDERED that this Consent Order shall be effective from the date it is signed by the Board; and it is further

ORDERED that Respondent's failure to cooperate fully with the terms and conditions of this Consent Order shall be deemed a Violation of Probation and of this Consent Order, and that the Board, after giving notification to Respondent and an opportunity for a Show Cause Hearing, may take immediate action and may impose any lawful disciplinary sanctions it deems appropriate, including but not limited to suspension or revocation of Respondent's license to practice optometry; and it is further

ORDERED that the burden of proof shall be on Respondent to demonstrate compliance with the Consent Order and the terms and conditions of probation; and it is further

ORDERED that Respondent shall abide by the laws and regulations regarding the practice of optometry, and failure to do so shall constitute a violation of this Consent Order; and it is further

ORDERED that any violation of this Consent Order shall constitute unprofessional conduct in the practice of optometry; and it is further

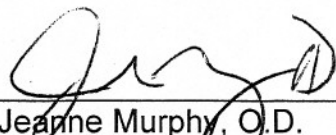
ORDERED that Respondent shall pay all costs associated with carrying out the provisions of this Consent Order; and it is further

ORDERED that this Consent Order is a FINAL ORDER of the Maryland Board of Examiners in Optometry and, as such, is a PUBLIC DOCUMENT and is reportable to any entity to which the Board is obligated by law to report, and is

disclosable under the Maryland Public Information Act, Md. State Gov't Code

Ann. §§ 10-611 *et seq.*

7/27/05  
Date

  
\_\_\_\_\_  
Jeanne Murphy, O.D.  
Secretary  
Maryland Board of Examiners in  
Optometry

## CONSENT

I, Mark L. Farbman, O.D., License Number TA0646, by signing this Consent admit to the Findings of Fact and Conclusions of Law and agree to be bound by the terms and conditions of the foregoing Consent Order. I acknowledge that I have read this Consent Order and that I have had the opportunity to consult with an attorney prior to my entering into it.

I further acknowledge that by signing this Consent Order, I submit to its terms and conditions as a resolution of the Board's case based on the findings set out herein and that the Board has entered into this Consent Order in lieu of proceeding with charges. By signing this Consent Order, I waive my right to contest the terms and findings herein and all challenges, legal or otherwise, to the proceedings before the Board.

I acknowledge the validity and enforceability of this Consent Order as if it were entered into after the issuance of formal charges and after an evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on own my behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections. I also recognize that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing and am also waiving any other legal remedies that I may have. I understand and agree that this Consent Order results from formal disciplinary action and is, therefore, a public document.



I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may suffer disciplinary action, which may include revocation of my license to practice optometry in the State of Maryland.

I sign this Consent Order voluntarily, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

7/7/05  
Date

Mark L. Farberman  
Mark L. Farberman, O.D.

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Frederick

I HEREBY CERTIFY that on this 7 day of July, 2005,  
before me, a Notary Public of the State and City/County aforesaid, personally  
appeared Mark L. Farbman, O.D. and declared and affirmed under the penalties  
of perjury that signing the foregoing Consent Order was his voluntary act and  
deed.

AS WITNESS my hand and Notarial Seal.

Nicole D Keller Commissioned

Notary Public as

Nicole D Abbott

NICOLE D. ABBOTT  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires February 6, 2008

My Commission expires: \_\_\_\_\_