

IN THE MATTER OF
MARTIN TOMKO, O.D.
Respondent

* BEFORE THE
* MARYLAND BOARD OF
* EXAMINERS IN OPTOMETRY
* Case Number: 2008-018

License Number: TA 1094

CONSENT ORDER

On September 25, 2008, the State Board of Examiners in Optometry (the "Board") notified **Martin Tomko, O.D. (the "Respondent") (D.O.B. 04/05/1964) License Number TA 1094**, of its intent to revoke his license to practice optometry under the Maryland Optometry Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 11-101 *et seq.* (2009 Repl. Vol.) and charged the Respondent with violating certain provisions of the Act.

The pertinent provisions of the Act provide:

§ 11-313. Denials, reprimands, probations, suspensions, and revocations – Grounds.

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[.]

As a result of the negotiations that occurred prior to a hearing, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. The Respondent was originally licensed to practice optometry in the State of Maryland on July 11, 1990, having been issued license number TA 1094.

2. On or about April 30, 2007, the Respondent submitted an application for inactive status licensure to the Board. In a letter to the Board, the Respondent explained that he had accumulated only twenty-five (25) hours of the fifty (50) hours of continuing education required for licensure renewal. In addition, the Respondent self-reported that he had been prescribed medication to treat his anxiety. According to the Respondent, the anxiety disorder had led to a lapse in judgment resulting in a drinking and driving incident that had occurred on August 25, 2006. The Respondent also disclosed that he suffered a complete psychological breakdown and traveled to New Zealand. The Respondent's family brought him back to Baltimore, where he was admitted to Sheppard Pratt Health System and diagnosed with bipolar disorder and panic disorder.

3. The Respondent further disclosed that he was charged with twenty-one (21) separate offenses in the District Court for Harford County arising out of the August 25, 2006 incident, including driving his vehicle at a speed of 110 miles per hour, attempting to elude police, and failing to return to and remain at the scene of an accident. He was sentenced on March 22, 2007 to sixty (60) days for the Driving Under the Influence offense, and served thirty-seven (37) days at the Harford County Detention Center. The Respondent further stated that he had

regained his driver's license with a two (2) year no alcohol restriction, and a six (6) month alcohol breath analyzed ignition interlock device.

4. By letter dated October 10, 2007, the Board notified the Respondent that it had granted his request to be placed on inactive status.

5. On or about November 6, 2007, the Respondent submitted medical documentation supporting his request for waiver of continuing education requirements for his 2007 licensure renewal application. The Board granted this request.

6. On or about February 13, 2008, the Board received a petition for reinstatement from the Respondent with supporting documentation regarding his fulfillment of continuing education requirements.

7. On or about July 15, 2008, the Respondent self-reported to the Board restrictions placed on his license to practice optometry in the District of Columbia. The Respondent provided the Board with a copy of a non-public Administrative Consent Order ("D.C. Consent Order") signed by the Respondent on July 7, 2008. The terms of the D.C. Consent Order require the Respondent to cause quarterly reports by his therapist(s) to be submitted to the D.C. Board certifying that he is compliant with his therapy for a minimum of five (5) years from the date of signing the D.C. Consent Order. The D.C. Consent Order further provides in part that the Respondent's therapists are required to immediately notify the D.C. Board if the Respondent ceases to be compliant with treatment, fails to take his medications, misses appointments, terminates the therapeutic relationship, or

otherwise poses a risk to his patients, in the professional opinion of the therapist(s).

8. By letter dated July 24, 2008, the Board provided the Respondent with an opportunity to appear before an informal conference of the Board on August 21, 2008, to discuss his possible reinstatement to the practice of optometry.

9. Prior to the informal conference, verification of information provided by the Respondent relative to his prior traffic convictions revealed pending criminal charges that he had not reported to the Board. Specifically, on or about August 3, 2008, the District Court for Harford County, the Respondent was criminally charged with disorderly conduct and disturbing the peace for an incident that occurred on August 2, 2008. On October 20, 2008, the charges were placed on the stet docket.

10. On or about December 2, 2008, the Respondent provided the Board with a copy of a letter from his treating psychiatrist stating that the Respondent was fit to return to practice.

11. On or about January 14, 2009, the Respondent and the Board entered into the 2009 Consent Order reinstating the Respondent's license to practice optometry in the State of Maryland and placing the Respondent on probation, subject to myriad conditions, for a period of three (3) years.

12. The 2009 Consent Order stated:

...

2. The Respondent shall enter into a urine monitoring contract with a Board-approved treatment provider within thirty (30) business days of the effective date of this Consent Order and fully comply with all the terms and conditions of the treatment and urine monitoring contracts. The Respondent

shall maintain and abide by all terms and conditions of the treatment and urine monitoring contracts. The Respondent shall maintain and abide by all the terms of the urine monitoring contracts for two (2) years from the effective date of this Consent Order. The Respondent shall be required to submit to random monitored urinalysis/toxicology screens as recommended by the Board-approved treatment provider. The Respondent shall undergo his random monitored urine tests at a facility or laboratory approved by the Board:

...

- b. A positive result on a urinalysis or toxicology screen shall constitute a violation of Probation and this Consent Order unless the result is positive for a lawfully prescribed medication.

...

- 4. The Respondent shall completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse, including narcotic analgesics and alcoholic beverages, in any form except under the following conditions:
 - a. The Respondent is a bona fide patient of a licensed health care practitioner who is aware of the Respondent's treatment contract and urine monitoring contract and the terms of this Order;
 - b. Such medications were lawfully prescribed by the Respondent's treating practitioner or such medications approved by the substance abuse treatment facility and other treatment providers.

13. The 2009 Consent Order further notified the Respondent that his failure to "fully cooperate with and successfully complete the terms of the treatment and urine monitoring contracts . . . shall be deemed a violation of Probation and of this Consent Order[.]"

14. By signing the 2009 Consent Order, the Respondent "acknowledge[d] that by failing to abide by conditions set forth in this Consent Order, [he] may be

subject to disciplinary actions, which may include revocation of [his] registration to practice optometry.”

15. On September 14, 2009, the Respondent provided a urine specimen for a random urinalysis pursuant to the 2009 Consent Order (specimen # 5155175). The Respondent’s specimen tested positive for clonazepam, EtG and EtS.¹

16. The Respondent denied alcohol use, and stated that he took over-the-counter flu medication and uses mouthwash that contains alcohol. He did not provide any other adequate explanation for the positive specimen.

17. Levels of EtG up to 1500 ng/ml may be due to incidental exposure to alcohol from mouthwash, for example. However, the Respondent’s EtG level was 114, 000 ng/ml and his EtS level was 46,200 ng/ml, which cannot be explained or caused by incidental or unknowing exposure to alcohol-containing hygiene, food or over-the-counter medicine products.

18. The Respondent tested positive for EtG (2530 ng/ml) and EtS (2240 ng/ml) on May 21, 2009.

19. The Respondent tested positive for EtG (3650 ng/ml) and EtS (4670 ng/ml) on August 31, 2009.

20. Testing positive for EtG and EtS while under a consent order with the Board is unprofessional conduct under the act in violation of H.O. § 11-313(23)-commits an act of unprofessional conduct in the practice of optometry.

¹ The Respondent provided a valid prescription for the clonazepam, which is a benzodiazepine and is used in the treatment of seizure disorders and panic disorders.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds by a preponderance of evidence and concludes that by testing positive for EtG and EtS, the Respondent violated his probation, violated the 2009 Consent Order and committed a prohibited act under the Maryland Optometry Act (the "Act"), Md. Health Occ. Code Ann. § 11-313(23)-commits an act of unprofessional conduct in the practice of optometry.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 26th day of MAY, 2010, by a majority of the Board considering this case:

ORDERED that the Respondent's license to practice optometry in the State of Maryland is **SUSPENDED** for a period of **ONE (1) YEAR** from the effective date of this Consent Order; and be it further

ORDERED that during the suspension period, the Respondent shall satisfy the following conditions:

1. The Respondent shall continue to submit to random urine screenings in continuation of his contract with First Lab pursuant to his January 14, 2009 Consent Order with the Board;
2. The Respondent shall not have any positive urinalysis/toxicology reports during the suspension period;
3. The Respondent shall continue weekly participation in NA, AA, or a similar 12-step substance abuse rehabilitation support group, and provide the Board with documentation of attendance at every meeting;
4. The Respondent shall not offer or render services as an optometrist or otherwise engage in the practice of optometry, or work in any

optometry setting or environment during the active period of suspension;

5. The Respondent shall satisfy his continuing education requirements during the suspension period; and be it further

ORDERED that no earlier than one (1) year from the effective date of this Consent Order, the Respondent shall petition the Board to lift the suspension or it will continue indefinitely ; and be it further

ORDERED that if the Respondent has fully complied with all conditions during the suspension period, is not in violation of any Maryland criminal or civil law, and the Respondent's treating psychiatrist recommends that the suspension be lifted, then the suspension shall be lifted; and be it further

ORDERED that upon the Board lifting the Respondent's suspension, the Respondent's license to practice optometry in the State of Maryland shall be reinstated and placed on **PROBATION** for a **PERIOD OF THREE (3) YEARS**, to commence from the date that his license is reinstated, subject to the terms and conditions of the January 14, 2009 Consent Order, which are incorporated herein, as well as the following terms and conditions:

1. The Respondent shall comply with any treatment recommendations of his treating psychiatrist including but not limited to recommendations for substance abuse treatment and psychiatric or psychological treatment. Should the Respondent's treating psychiatrist recommend ongoing treatment, the Respondent shall commence within five (5) days of the date of the report, treatment with a Board-approved substance abuse program and with any other Board-approved treatment provider/program recommended by his treating psychiatrist. The Respondent shall arrange for the substance abuse treatment provider and any other treatment providers to submit written reports to the Board on a quarterly basis regarding the Respondent's attendance and treatment progress during the probationary period.

2. The Respondent shall notify the Board within five (5) business days of returning to work and shall provide the Board with the name, address and telephone number of his employer and immediate supervisor.
3. The Respondent shall enter into a urine monitoring contract with a Board-approved treatment provider within thirty (30) business days of the beginning of the probationary period and fully comply with all the terms and conditions of the treatment and urine monitoring contracts. The Respondent shall maintain and abide by all terms and conditions of the treatment and urine monitoring contracts. The Respondent shall maintain and abide by all the terms of the urine monitoring contracts for the three (3) year probationary period. The Respondent shall be required to submit to random monitored urinalysis/toxicology screens as recommended by the Board-approved treatment provider. The Respondent shall undergo his random monitored urine tests at a facility or laboratory approved by the Board:
 - a. The Respondent shall submit, when requested, to additional monitored, unannounced and observed urinalysis/toxicology screens by the Board-approved treatment provider for the detection of substances prohibited under this Consent Order, within the time frame requested by the Board-approved treatment provider. The Respondent shall inform the Board-approved treatment provider sufficiently in advance of any vacations, conferences, or work related trips that would effect submission of urinalysis/toxicology screens with the time frame requested by the Board-approved treatment provider. The Board-approved treatment provider shall make arrangements to accommodate the Respondent's travel requests of reasonable duration.
 - b. A positive result on a urinalysis or toxicology screen shall constitute a violation of Probation and this Consent Order unless the result is positive for a lawfully prescribed medication.
4. If substance abuse treatment is recommended by the Respondent's treating psychiatrist in accordance with Paragraph Number 1 above, the Respondent shall attend and actively participate in any support group programs recommended by the substance abuse treatment program at the frequency recommended by the support group provider. The Respondent shall provide written verification of attendance from the substance abuse and other treatment

providers to the Board on at least a quarterly basis or as otherwise directed.

5. The Respondent shall completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse, including narcotic analgesics and alcoholic beverages, in any form except under the following conditions:
 - a. The Respondent is a *bona fide* patient of a licensed health care practitioner who is aware of the Respondent's treatment contract and urine monitoring contract and the terms of this Order;
 - b. Such medications were lawfully prescribed by the Respondent's treating practitioner or such medications approved by the substance abuse treatment facility and other treatment providers.
6. Following reinstatement of the Respondent's license to practice optometry, the Respondent shall submit to random review of his practice, including but not limited to on-site reviews and review of patient and billing records; and be it further

ORDERED that the Respondent's execution of this Consent Order shall constitute a release of any and all medical health reports, substance abuse treatment records, and psychological/psychiatric records pertaining to the Respondent both to the Board and to the substance abuse treatment program; and be it further

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with treatment providers, and their agents and employees, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order, including the Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Board and/or the treatment providers or any of their agents or employees; and be it further

ORDERED that the Respondent's failure to fully cooperate with and successfully complete the terms of the treatment and urine monitoring contracts and any other treatment contracts or agreements shall be deemed a violation of Probation; and be it further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case, including probationary terms and conditions, a reprimand, suspension, revocation and/or a monetary penalty; and be it further

ORDERED after the conclusion of the entire **THREE (3) YEAR** period of **PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, provided the Respondent has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation and/or suspension, and provided there are no pending complaints regarding the Respondent before the Board. The determination to terminate probation is entirely within the Board's discretion. However, the Board will not unreasonably withhold termination of probation as long as the Respondent has complied with all terms and conditions of probation and/or suspension, the Respondent's treating psychiatrist recommends termination of the Respondent's probationary status, all quarterly reports from the Respondent's treating psychiatrist are favorable, peer reviewed records meet the standard of care within the profession, the Respondent is not in violation of any Maryland criminal or

civil law, and provided there are no pending complaints regarding the Respondent before the Board; and be it further

ORDERED that upon completion of the conditions of probation and the conclusion of the probationary period, the Respondent must petition the Board to terminate his probation or the probation will continue indefinitely; and be it further

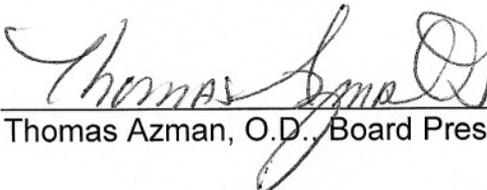
ORDERED that the terms and conditions of the Consent Order dated January 14, 2009 **remain in full force and effect**; and be it further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and be it further

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't Code Ann. §§ 10-617(h), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order.

5-26-2010

Date


Thomas Azman, O.D., Board President

CONSENT OF MARTIN TOMKO, O.D.

I, Martin Tomko, by affixing my signature hereto, acknowledge that:

1. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. §§ 11-313 *et seq.* and Md. St. Gov't Code Ann. §§ 10-201 *et seq.*

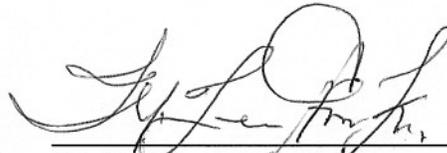
2. I acknowledge the validity and enforceability of this Consent Order as if entered after a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.

3. I voluntarily enter into the foregoing Findings of Fact, Conclusions of Law and Order and agree to abide by the terms and conditions set-forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

4. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my registration to practice optometry.

5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

5/13/10
Date



Martin Tomko, O.D.

STATE OF MARYLAND

CITY/COUNTY OF Harford _____:

I HEREBY CERTIFY that on this 13 day of May, 2010, before me, Martin Tomko, a Notary Public of the foregoing State and (City/County),
(Print Name)

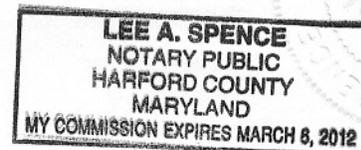
personally appeared Martin Tomko, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



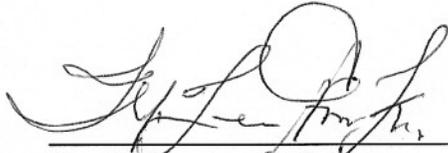
Notary Public

My Commission Expires: 0306/12



5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

5/13/10
Date



Martin Tomko, O.D.

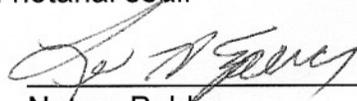
STATE OF MARYLAND

CITY/COUNTY OF Harford _____:

I HEREBY CERTIFY that on this 13 day of May 2010, before me, Martin Tomko, a Notary Public of the foregoing State and (City/County),
(Print Name)

personally appeared Martin Tomko, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission Expires: 0306/12

