

IN THE MATTER OF
PHILIP BERRY, O. D.

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BEFORE THE STATE
BOARD OF EXAMINERS
IN OPTOMETRY
CASE NUMBER: 2005-012

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CONSENT ORDER

The Maryland Board of Examiners Optometry ("the Board") charged **Philip Berry, O.D.** ("the Respondent"), **license number TA0980**, with violating certain provisions of the Maryland Optometry Act ("the Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 11-101, *et seq.* (2000 Repl. Vol. and 2004 Supp.). The Board charged the Respondent with violating the following:

H.O. § 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:

- (4) Abandons a Patient;
- (23) Commits an act of unprofessional conduct in the practice of optometry.

FINDINGS OF FACT

The Board finds that:

1. At all times relevant herein, the Respondent was licensed to practice optometry in the State of Maryland. The Respondent was initially issued a license to practice optometry on August 3, 1988.
2. At all times relevant herein, the Respondent owned and operated an optometry practice located in Frederick, Maryland ("Frederick office").
3. On or about April 20, 2005, the Board received a complaint from one of the Respondent's patients (hereinafter "Patient A").¹
4. A subsequent investigation by the Board revealed the following:
 5. In the spring of 2003, Patient A went to the Respondent's Frederick office for a routine eye examination and new eyeglasses.
 6. The Respondent recommended that Patient A get continuous focal length lenses.
 7. In addition to purchasing the lenses recommended by the Respondent, Patient A also purchased eyeglass frames.
 8. In or around May 2003, Patient A arranged a follow-up appointment with the Respondent. Patient A had been experiencing problems with the new eyeglasses that he had previously purchased from the Respondent.
 9. During his follow-up visit with Patient A, Patient A told the Respondent that he had been unable to see clearly with the eyeglasses that he had purchased from the Respondent months earlier.

¹ To ensure confidentiality, the identity of Patient A is not disclosed in this Consent Order. The identity of Patient A is known by the Respondent.

10. The Respondent examined Patient A's eyes, adjusted the lens on Patient A's eyeglasses, and instructed Patient A to contact him if he had further problems with his eyeglasses.

11. Sometime after his follow-up visit, Patient A contacted the Respondent and told him that he still was having problems with lens.

12. The Respondent arranged for Patient A to drop off his eyeglasses at the Frederick office.

13. As instructed by the Respondent, Patient A went to the Frederick office to drop off his eyeglasses.

14. When Patient A arrived at the Frederick office to drop off his eyeglasses, he noticed that it was closed. Patient A placed his eyeglasses and eyeglass case in the office mailbox slot.

15. After leaving his eyeglasses and his eyeglass case at the Frederick office, Patient A made approximately fifteen to twenty attempts to contact the Respondent by telephone.

16. Patient A tried to reach the Respondent at his office or at the cellular phone number that the Respondent had given Patient A.

17. After each attempt to reach the Respondent, Patient A left a voice message explaining the need for his eyeglasses and asking that the Respondent return his call.

18. Patient A has not had any contact with the Respondent since May 2003.

19. In January 2006, Patient A received the eyeglasses and the eyeglass case that he had left with the Respondent more than two years earlier.

20. Patient A noticed that the Respondent made no adjustments to his eyeglasses.

21. On December 19, 2005, the Board issued a subpoena requesting that the Respondent provide the Board with Patient A's medical records.

22. The Board subpoena requested that the Respondent deliver immediately upon issuance of the subpoena, the medical records of Patient A.

23. On or about January 12, 2006, the subpoena was personally served on the Respondent by the Board investigator.

24. On January 23, 2006, the Board investigator spoke with the Respondent. The Respondent informed the Board investigator that he was trying to locate Patient A's medical records.

25. On January 31, 2006, the Board investigator attempted to contact the Respondent by telephone about the subpoena that had been issued by the Board.

26. After the Board investigator was unable to reach the Respondent on January 31, 2006, he left a voice message on the Respondent's cellular phone informing the Respondent that he had not received the information requested on the subpoena.

27. On February 10, 2006, the Board investigator attempted to contact the Respondent by telephone about the subpoena that had been issued by the Board.

28. After the Board investigator was unable to reach the Respondent on February 10, 2006, he left a voice message on the Respondent's cellular phone informing the Respondent that he had not received the information requested on the subpoena.

29. On February 21, 2006, the Board investigator attempted to contact the Respondent about the subpoena that was issued by the Board.

30. After the Board investigator was unable to reach the Respondent on February 21, 2006, he left a voice message on the Respondent's cellular phone informing the Respondent that he had not received the information requested on the subpoena.

31. The Respondent failed to comply with the Board's subpoena dated December 19, 2005.

32. The Respondent's failure to comply with the Board's subpoena and his failure to complete his optometric care of Patient A as set forth above, is a violation of the Act.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact the Board concludes that the Respondent violated H.O. §§ 11-313 (4) and (23).

ORDER

Based on the foregoing Findings of Fact, and Conclusions of Law, it is this 26th day of July, 2006, by a majority of the full authorized membership of the Board hereby

ORDERED that the Respondent's license to practice optometry is hereby **SUSPENDED** for a period of **SIXTY (60) DAYS** and said suspension shall be immediately **STAYED**; and be it further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of one **(1) year** subject to the following terms and conditions:

1. The Respondent shall pay a fine in the amount of one thousand dollars (\$1,000) within sixty (60) days of the date that this Order is signed by the Board. The Respondent's failure to comply with this condition shall result in the immediate lifting of the Respondent's stayed suspension.
2. The Respondent shall engage the services of a Board pre-approved mentor within sixty (60) days of the date that this Order is signed by the Board. The Board pre-approved mentor shall monitor the Respondent's optometry practice. The Respondent's optometry practice will be subject to random, on-site peer review and records review by the Board pre-approved mentor. The Respondent shall provide the Board with satisfactory proof that he has engaged the services of a Board pre-approved mentor. The Respondent's failure to comply with the conditions set forth in this paragraph shall result in the immediate lifting of the Respondent's stayed suspension.
3. The Respondent shall be responsible for ensuring that the Board pre-approved mentor provides the Board with quarterly reports of the Respondent's progress. The first quarterly report shall be received by the Board no later than 5 p.m. on October 26, 2006. Subsequent reports shall be received by 5 p.m. on January 26, 2007, April 26, 2007, and July 26, 2007. The Respondent is responsible for ensuring that the Board receives the quarterly reports by the dates and the time indicated in this paragraph. The Respondent's failure to comply with the conditions set forth in this paragraph shall result in the immediate lifting of the Respondent's stayed suspension.
4. The Respondent shall enroll in a Board pre-approved one-on-one ethics tutorial that is 10-12 weeks in duration, within sixty (60) days of the date that this Order is signed by the Board. Within forty-five (45) days of completing of the ethics tutorial, the Respondent shall prepare and submit to the Board a paper that focuses on professional ethics and integrity in the practice of optometry. The Respondent shall provide the Board with proof satisfactory that he has enrolled in and completed an ethics tutorial as described herein. The Respondent's failure to comply with the conditions set forth in this paragraph shall result in the immediate lifting of the Respondent's stayed suspension.

ORDERED that at the end of Respondent's probationary period, the Respondent must file a written petition with the Board for termination of his probationary status and reinstatement of his license without any conditions or restrictions. The

Respondent's written petition for termination of his probationary status and reinstatement of his license without any conditions or restrictions will not be granted if the Respondent has not fulfilled all the terms and conditions of probation set forth herein, is not in violation of this Order, and there are no outstanding complaints against the Respondent. If the Respondent fails to make any such written petition, then the probationary period status shall continue indefinitely, subject to the terms and conditions set forth in this Order; and be it further

ORDERED that if the Respondent violates any other term or condition of this Order that is not outlined in paragraphs 1-4 set forth above, or any state or federal law governing the practice of optometry, then the Board, after a determination of violation and notice, and an opportunity for a hearing, may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, said violation of probation being proved by a preponderance of evidence; and be it further

ORDERED that any violation of the terms and conditions of this Order shall constitute unprofessional conduct; and be it further

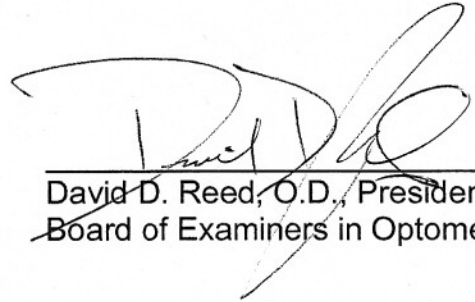
ORDERED that the Respondent shall be responsible for all costs incurred under this Order; and be it further

ORDERED that for purposes of public disclosure and, as permitted by Md. State Govt. Code Ann. § 10-617(h) (2004 Repl. Vol. and 2005 Supp.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and will be disclosed to any national reporting bank or others to whom the Board is mandated to report; and be it further

ORDERED that the conditions of this Order be, and the same is hereby, effective as of the date of this Order; and be it further

ORDERED that this is a **FINAL ORDER** and, as such, is a public document pursuant to Md. State Govt. Code Ann. §§ 10-611 *et seq.* (2004 Repl. Vol and 2005 Suppl.).

7/26/06
Date



David D. Reed, O.D., President
Board of Examiners in Optometry

CONSENT OF PHILIP BERRY, O.D.

I, **Philip Berry, O.D., License Number TA0980**, by affixing my signature hereto, acknowledge that:

1. I am not represented by an attorney. I have waived my right to have an attorney represent me in this matter.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 11-315 (2005 Repl. Vol.) and Md. State Govt. Code Ann. §§ 10-201 *et seq.* (2004 Repl. Vol. and 2005 Suppl.).

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

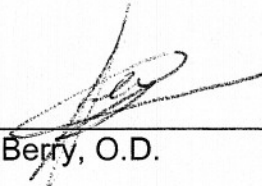
4. I voluntarily enter into and consent to the foregoing Findings of Fact, Conclusions of Law and Order and agree to abide by the terms and conditions set forth herein, as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a fully evidentiary hearing, and any right to appeal this Consent Order as set forth in Md. Health Occ. Code Ann. § 11-318 and Md. State Govt. Code Ann. §§ 10-201 *et seq.* (2004 Rep. Vol. and 2005 Suppl.).

5. I acknowledge that by failing to abide by the terms and conditions set forth in this Consent Order, and, following proper procedures, I may be subject to disciplinary

action, which may include revocation of my license to practice optometry in the State of Maryland.

6. I sign this Consent Order, without reservation, as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

7/12/06
Date

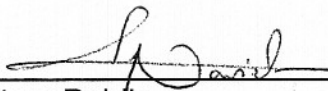

Philip Berry, O.D.

NOTARY

STATE OF Maryland
CITY/COUNTY OF Olney / Montgomery

I HEREBY CERTIFY THAT on this 12th day of July, 2006, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared **Philip Berry, O.D., License Number TA0980**, and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: Oct. 17th 2009

NAVID *
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires October 17, 2009