

IN THE MATTER OF
HARRY L. HART, O.D.
Respondent

License Number: TA0626

* BEFORE THE
* MARYLAND BOARD OF
* EXAMINERS IN OPTOMETRY
* Case Number: 2012-011

* * * * *

CONSENT ORDER

On August 8, 2012, the Maryland Board of Examiners in Optometry (the "Board") charged **HARRY L. HART** (the "Respondent"), License Number TA0626, with violating Maryland Optometry Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") §§ 11-101 *et seq.* (2009 Repl. Vol.).

Specifically, the Board charged the Respondent with violation of the following provisions of the Act under § 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:

- (17) Behaves immorally in the practice of optometry;
- (21) Has violated any provision of this title;
- (22) Violates any rule or regulation adopted by the Board; [and]
- (23) Commits an act of unprofessional conduct in the practice of optometry[.]

The Board charged the Respondent with violating the following provisions of Code Md. Regs. ("COMAR") tit. 10 § 28.14.03, which provide the following:

B. In the capacity of or identity as a licensed optometrist, the licensee may not:

* * *

- (3) Exploit a relationship with a patient for personal advantage or

satisfaction;

The Board also charged the Respondent with violating the following provisions of COMAR 10.28.14.04, which provide:

- A. An optometrist may not engage in sexual misconduct in the practice of optometry.
- B. Sexual misconduct includes, but is not limited to:
 - * * *
 - (4) Inappropriate touching of a client or patient in a sexual manner;
 - (5) Therapeutically unnecessary discussion of sexual matters or other verbal conduct of a sexual nature while treating a patient;
 - * * *
 - (8) Sexual exploitation; [and]
 - (9) Inappropriate sexual language.

On September 19, 2012, a Case Resolution Conference was held before a panel of the Board. As a result, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. At all times relevant to these charges, the Respondent was and is an optometrist licensed to practice in the State of Maryland.
2. The Respondent was initially licensed to practice optometry in the State of Maryland on August 1, 1971. The Respondent's current license is set to expire on June 30, 2013.
3. At the time of the acts described herein, the Respondent was practicing optometry at a practice located at 855 High Street, Chestertown, Maryland.
4. On or about January 4, 2012, the Board received a complaint from Patient A,¹ a

¹ The names of the individuals and entities set forth herein are confidential.

former patient of the Respondent. Patient A attached a copy of a signed sworn written statement that she had filed with the Chestertown Police Department on or about November 23, 2011. In the statement, Patient A alleged that the Respondent had acted inappropriately, including making inappropriate sexual comments to her, during an eye examination on November 2, 2011, at the Respondent's Chestertown practice.

5. As a result of the complaint filed by Patient A, the Board opened an investigation. During the course of the investigation, the Board also received written complaints from Patients B and C alleging inappropriate behavior on the part of the Respondent during eye examinations. The Board's investigative findings are set forth below.

Patient A

6. Patient A, then a forty-seven (47) year old African-American female, initially went to see the Respondent on November 2, 2011, to have her eyes checked due to blurry vision while reading.

7. On the date of her appointment, Patient A was called back to the examination room almost immediately, where she was alone with the Respondent. She sat on a stool and the Respondent began to look into her eyes.

8. The Respondent told Patient A how "pretty" her eyes were. The Respondent then observed a tattoo on Patient A's chest and asked her "are your nipples pierced as well?"

9. The Respondent looked at Patient A's tattoo and informed her that it looked keloid.² Without first asking Patient A or informing Patient A that he was going to touch her chest, the Respondent touched the tattoo on Patient A's chest with his hand.

² Keloid is an area of irregular fibrous tissue formed at the site of a scar or injury.

10. Later in the examination, the Respondent informed Patient A that "sex is good 15 minutes a day" and that African-American women need to have more sex.

11. Over the next several days, Patient A and the Respondent had several telephone conversations. Patient A informed the Respondent that she was not comfortable with the examination that had taken place on November 2, 2011, and that she felt the Respondent "had come onto her."

12. In or about November 2011, Patient A returned to the Respondent's office to meet with the Respondent and his wife. At the meeting, the parties discussed a payment of \$10,000 as a potential resolution of the matter.

13. In an interview with a Board investigator on or about April 30, 2012, the Respondent described his treatment of Patient A on November 2, 2011. The Respondent admitted telling Patient A that she had "pretty eyes" and asking Patient A whether her nipples were pierced.

14. During the April 30, 2012, interview, the Respondent also admitted to touching Patient A's tattoo located on her chest with his hand during the November 2, 2011, examination and to telling Patient A that sex is good fifteen (15) minutes per day.

Patient B

15. Patient B, then a forty-eight (48) year old African-American female, originally went to see the Respondent on or about September 29, 2010, at the Respondent's Chestertown office based on a referral from her primary care physician after experiencing blurry vision.

16. After entering the Respondent's office, the Respondent asked Patient B whether "black women have pink nipples like white women?" The Respondent's question made Patient B feel uncomfortable.

17. While examining Patient B's eyes, the Respondent did not speak about Patient B's eyes, but instead spoke about Ethiopian people and their racial composition. This also made Patient B feel uncomfortable.

18. In an interview with a Board investigator on or about April 30, 2012, the Respondent admitted that he spoke about the pigmentation of the skin of Ethiopian people during Patient B's eye examination. The Respondent could not recall asking Patient B whether black women have pink nipples, but stated "I may have implied it."

Patient C

19. Patient C, then a forty (40) year old African American female, originally went to see the Respondent for an eye examination on or about October 12, 2010.

20. After entering the Respondent's Chestertown office for her eye examination, the Respondent began speaking to Patient C about Vitamin D. The Respondent informed Patient C that she needed to take Vitamin D pills because, as a black woman, Patient C could not lay out in the sun like a white woman. Patient C did not believe that the Respondent's statements had anything to do with her eyesight, and the Respondent never informed Patient C of any correlation between his statements and Patient C's eyesight.

21. The Respondent's statements to Patients A, B, and C during the course of eye examinations as set forth above constitutes immoral behavior in the practice of optometry, in violation of Health Occ. § 11-313(17); commission of an act(s) of

unprofessional conduct in the practice of optometry, in violation of Health Occ. § 11-313(23); violation of any provision of the title or rule or regulation adopted under the title, in violation of Health Occ. §§ 11-313(21) and (22), *to wit*, COMAR 10.28.14.03B(3) (Exploit a relationship with a patient for personal advantage or satisfaction), and COMAR 10.28.14.04A (sexual misconduct in the practice of optometry).

22. The Respondent's touching of Patient A's tattoo on her chest without first asking Patient A or informing Patient A that he was going to touch her chest constitutes immoral behavior in the practice of optometry, in violation of Health Occ. § 11-313(17); commission of an act(s) of unprofessional conduct in the practice of optometry, in violation of Health Occ. § 11-313(23); violation of any provision of the title or rule or regulation adopted under the title, in violation of Health Occ. §§ 11-313(21) and (22), *to wit*, COMAR 10.28.14.03B(3) (Exploit a relationship with a patient for personal advantage or satisfaction), and COMAR 10.28.14.04A (sexual misconduct in the practice of optometry).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's conduct, as set forth above, constitutes a violation of Md. Health Occ. Code Ann. § 11-313(17)(behaves immorally in the practice of optometry), (21)(has violated any provision of this title), (22)(violates any rule or regulation adopted by the Board) and (23)(commits an act of unprofessional conduct in the practice of optometry), and COMAR 10.28.14.03 and COMAR 10.28.14.04.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 9TH day of NOVEMBER, 2012, by a majority of the Board considering this case:

ORDERED that the Respondent's license to practice as an Optometrist shall be **SUSPENDED** for a minimum of **THIRTY (30) DAYS**, subject to the following conditions:

- (a) The period of active suspension shall begin on **December 1, 2012**, and run through at least **December 31, 2012**.
- (b) Dr. Hart shall pay an administrative monetary penalty in the amount of **\$1,000.00** within the **thirty (30) day period of SUSPENSION**. If Dr. Hart fails to pay, in whole or in part, the administrative monetary penalty, the period of active suspension will continue until Dr. Hart pays the penalty in full; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of **TWO (2) YEARS**, to begin on the date the Board executes this Consent Order, subject to the following terms and conditions:

- (a) The Respondent shall at all times utilize a chaperone who shall be physically present in the examination room for the entire duration of the period when the Respondent conducts examinations of female patients. The Respondent shall not conduct any examinations of female patients without the presence of the chaperone;
- (b) Within **one (1) year** of the date the Board executes the Consent Order, the Respondent shall successfully complete, at his own expense, a Board-approved course in professional ethics, with particular attention to boundary issues. The Respondent shall submit to the Board written documentation regarding the particular course he proposes to fulfill this condition. The Board reserves the right to require the Respondent to provide further information regarding the course he proposes, and further reserves the right to reject his proposed course and require submission of an alternative proposal. The Board will approve a course only if it deems the curriculum and the duration of the course adequate to fulfill the need. The Respondent shall be responsible for submitting written documentation to the Board of his successful completion of this course. The Respondent agrees that he may not use this course work to fulfill any requirements mandated for continuing

licensure;

(c) The Respondent shall be subject to **UNANNOUNCED INSPECTIONS** of his practice at the Board's discretion; and be it further

ORDERED that the Respondent's failure to comply with any of the conditions of this Consent Order, shall be considered a violation of probation and a violation of this Consent Order; and it is 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 an evidentiary hearing if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any other disciplinary sanctions that the Board may have imposed in this case, including additional probationary terms and conditions, reprimand, suspension, revocation and/or monetary penalty; and it is further

ORDERED that the Respondent shall comply with and practice within all statutes and regulations governing the practice of optometry in the State of Maryland; and it is further

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

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 *et seq.* (2009 Repl. Vol.).

11-9-12
Date

Jó Anne Brilliant, O.D.
Board President
Maryland Board of Examiners in
Optometry

CONSENT

I, Harry L. Hart, O.D., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of 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 the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order voluntarily and without reservation, after having an opportunity to consult with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

10-22-12
Date

Harry L. Hart O.D.
Harry L. Hart, O.D.

NOTARY

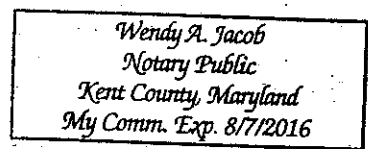
STATE OF MARYLAND
CITY/COUNTY OF Kent

Wendy A. Jacob
Notary Public
Kent County, Maryland
My Comm. Exp. 8/7/2016

I HEREBY CERTIFY that on this 22nd day of October

2012, before me, a Notary Public of the foregoing State and City/County personally appear Harry L. Hart, O.D., License Number TA0626, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Wendy A. Jacob
Notary Public

My commission expires: 2016