

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

License Number: TA 1094

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

* * * * *

FINAL DECISION AND ORDER

BACKGROUND

On November 17, 2010, the Maryland Board of Examiners in Optometry (the "Board") issued Charges ("Charges") against Martin Tomko, O.D. (the "Respondent") pursuant to its authority under the Maryland Optometry Act (the "Act"), Maryland Health Occ. Code Ann., ("HO") §§11-101 *et seq.*, (2009 Repl. Vol.). Specifically, the Board charged Respondent with violating the following provisions of HO §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[;].

Included with the Charges to Respondent was a letter of procedure informing Respondent that a Case Resolution Conference ("CRC") had been scheduled before a panel of the Board on January 19, 2011 at the Board's office. The Board sent the Charges and letter by regular and certified mail to Respondent's address of record with the Board. The items sent via first class mail were not returned to the Board as undeliverable. The "green card" attached to the items sent via certified mail was signed

by an individual at the Respondent's residence and returned to the Board, documenting that the items were delivered to the Respondent's address.

On November 29, 2010, the Respondent advised the Board in writing that he would be attending the CRC on January 19, 2011. The Respondent, however, failed to appear at the CRC on January 19, 2011.

On January 19, 2011, the Board notified the Respondent by regular and certified mail that the CRC did not take place due to Respondent's failure to appear. The Board further advised the Respondent that this case would proceed to a hearing at the Office of Administrative Hearings ("OAH") on the Charges. The Board's letter that was sent via first-class mail was not returned to the Board as undeliverable. The "green card" attached to the certified mail was signed by an individual at the Respondent's residence and returned to the Board, documenting that the letter was delivered to the Respondent's address. The Respondent failed to respond to the Board's letter.

On February 16, 2011, the OAH sent a Notice of Hearing, Notice of In-Person Prehearing Conference, including Prehearing Conference Instructions, to the Respondent at his address of record with the Board. The Notice of In-Person Prehearing Conference stated that the Prehearing Conference was scheduled for April 14, 2011, at 9:30 a.m., at the OAH, in Hunt Valley, Maryland. These notices were not returned to OAH as undeliverable.

The Prehearing Conference Instructions required Respondent to file a Prehearing Statement with the OAH and the Office of the Attorney General ("OAG") no later than fifteen days before the April 14, 2010 Prehearing Conference. The

Respondent did not file a Prehearing Conference Statement, and, to date, Respondent has failed to file a Prehearing Statement.

On April 14, 2011, the Prehearing Conference was held before Administrative Law Judge ("ALJ") Louis N. Hurwitz at the OAH. Respondent failed to appear. The Administrative Prosecutor appeared on behalf of the State of Maryland and was ready to proceed. The Prehearing Conference Notice advised the Respondent that "failure to appear or to give timely notice of your inability to appear for the prehearing conference may result in a decision against you."

The Administrative Prosecutor requested that ALJ Hurwitz issue a Proposed Default Order, with findings of fact to be those statements contained in the Allegations of Fact in the Charges, and conclusions of law to be that Respondent violated the Maryland Optometry Act, HO § 11-313 (23) (2009 Repl. Vol). The Administrative Prosecutor also requested that ALJ Hurwitz propose that the Respondent's license to practice optometry in Maryland be revoked permanently. The Administrative Prosecutor's requests were supported by a written Motion for Proposed Default with attachments and documents in the administrative record.

On April 27, 2011, ALJ Hurwitz issued a Proposed Default Order wherein he concluded that all notices regarding the proceedings in this case before the Board and OAH were sent to the Respondent's address of record, and there was no evidence that any notices were returned to the senders. ALJ Hurwitz further concluded that the Respondent failed to appear at the Prehearing Conference after receiving proper notice and is subject to default, pursuant to Code of Maryland Regulations ("COMAR") 28.02.01.23A.

In the Proposed Default Order, ALJ Hurwitz proposed that Respondent be found in default and that the charges issued by the Board on November 17, 2010 be upheld. ALJ Hurwitz further proposed that Respondent's license to practice optometry in the State of Maryland be revoked.

In the Proposed Default Order, dated April 27, 2011, ALJ Hurwitz advised Respondent of his right to file written exceptions to the Proposed Default Order within fifteen (15) days from the date of the Proposed Default Order. On May 10, 2011, the Respondent sent correspondence to the Board via facsimile, in which he requested that the Board postpone taking action on the Proposed Default Order. The Board accepted the Respondent's correspondence as Respondent's written exceptions to the Proposed Default Order.

In response to the Respondent's correspondence, on May 19, 2011, the Administrative Prosecutor filed with the Board the State's Response to Exceptions to Proposed Order of Default.

Pursuant to COMAR 10.28.04.06D(8) and (9), an Exceptions Hearing was scheduled before the Board on September 28, 2011. Notice of the Exceptions Hearing was sent to the Respondent at his address of record with the Board via first-class and certified mail on June 17, 2011. The Notice that was sent via first-class mail was not returned to the Board as undeliverable. The "green card" attached to the certified mail was signed by an individual at the Respondent's residence and returned to the Board, documenting that the Notice was delivered to the Respondent's address.

On September 28, 2011, an Exceptions Hearing was held before a quorum of the Board. The Administrative Prosecutor appeared and was ready to proceed. Neither the

Respondent nor a representative of the Respondent appeared for the hearing. Pursuant to HO § 11-315(e), the hearing proceeded as scheduled.

The Board issues this Final Decision and Order based upon its consideration of the entire record, including the Proposed Default Order, the State's Motion for Default, exceptions filed by the parties and oral argument presented by the Administrative Prosecutor at the Exceptions Hearing. For the reasons set forth below, the Board adopts the ALJ's Proposed Default Order in its entirety. The ALJ's Proposed Default Order is attached and incorporated herein as Appendix A.

FINDINGS OF FACT

The Board adopts the Findings of Fact numbered 1 through 15 as set forth in the Proposed Default Order dated April 27, 2011. The Board has found these facts by a preponderance of the evidence and has incorporated by reference the ALJ's proposed Findings of Facts into this Final Decision and Order.

The Board also finds the following facts by a preponderance of the evidence:

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) 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 (attached and incorporated herein as Appendix B), 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 tested positive for EtG and EtS on May 21, 2009 and August 31, 2009.

17. As a result of the Respondent's positive urinalysis, on January 20, 2010 the Board issued a Notice of Intent to Revoke the Respondent's license to practice optometry in the State of Maryland.

18. The Respondent requested a hearing, and a case resolution conference was held on April 22, 2010.

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.

19. At the case resolution conference, the Respondent agreed to enter into a Consent Order (the "2010 Consent Order"), whereby his license was suspended for a period of one (1) year, followed by three (3) years of probation.

20. The 2010 Consent Order required, inter alia, that:

[t]he Respondent shall continue to submit to random urine screenings in continuation of his contract with FirstLab pursuant to his January 14, 2009 Consent Order with the Board[.]

21. The 2010 Consent Order further stated that:

2. 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[.]

22. Upon review of the Respondent's electronic records with FirstLab, the Board learned that the Respondent failed to submit to urine screenings on June 23, 2010 and July 19, 2010. The electronic records further indicate that the Respondent called in every day, including the dates in question, to determine whether he was required to provide a urine sample.

23. By a letter dated August 13, 2010, the Board notified the Respondent of his noncompliance with the 2010 Consent Order and requested a response by August 25, 2010.

24. On August 24, 2010, the Respondent submitted correspondence by facsimile in which he stated that "samples were submitted on both dates," and that he "contacted FirstLab but [his] inquiries went unanswered." The Respondent could not

provide any evidence in support of his claim that he submitted urine samples on both dates.

25. A subsequent review of the Respondent's electronic records with FirstLab indicated that the Respondent failed to submit to urine screenings on August 3, 2010, September 1, 2010, September 22, 2010, and November 1, 2010. Respondent, however, did call in on those days, and all other dates, to determine whether he was required to provide a urine sample.

26. The Respondent did submit to a urine screening, with negative results, on October 26, 2010.

27. The Respondent did not call in on November 3, 2010.

28. Based upon the above facts, the Board concludes that the Respondent violated the 2010 Consent Order and H.O. § 11-313(23) (Commits an act of unprofessional conduct in the practice of optometry[;]).

DISCUSSION

The Board agrees with the rationale of the ALJ in the Discussion section of the Proposed Default Order, which is incorporated by reference into this Final Decision and Order. (See, Appendix A.) Respondent had received proper notice of the prehearing conference, yet failed to appear at the prehearing conference. Pursuant to COMAR 28.02.01.23A, if, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may issue a proposed default order against the defaulting party. Therefore, the Board adopts the Proposed Default Order in its entirety.

Respondent also received proper notice of the Exceptions Hearing, yet failed to appear at the Exceptions Hearing. Pursuant to HO § 11-315(e), if, after due notice, the individual against whom the action is contemplated fails to appear, the Board may hear and determine the matter.

Respondent has failed to comply with the 2010 Consent Order (attached and incorporated herein as Appendix C), by failing to submit to urine screenings on June 23, 2010, July 19, 2010, August 3, 2010, September 1, 2010, September 22, 2010 and November 1, 2010. Moreover, the Respondent has made no effort to contact the Board throughout these proceedings, except on 2 occasions by facsimile. Respondent's failure to submit to toxicology screenings is in violation of the 2010 Consent Order and also in violation of HO § 11-313(23) (Commits an act of unprofessional conduct in the practice of optometry[;]).

Respondent's behavior as described in the Findings of Fact indicates Respondent's complete disregard for the Board and his indifference in retaining his license to practice optometry in Maryland. In light of Respondent's past medical and psychological history, as detailed in the prior Consent Orders (see Appendices B and C), without treatment, Respondent is a danger to himself and to others. Respondent's failure to submit to toxicology screenings, along with his history of drug and alcohol use, lead the Board to conclude that Respondent is in an impaired state of being, both mentally and physically. Therefore, Respondent is not competent to practice optometry at this time.

CONCLUSIONS OF LAW

The Board adopts and incorporates by reference the conclusions made by the ALJ in the Proposed Default Order dated April 27, 2011, wherein the ALJ proposed that the Charges issued by the Board on November 17, 2010 be upheld. Accordingly, in light of the foregoing Findings of Fact, Discussion and the Proposed Default Order, the Board finds that the Respondent violated H.O. §11-313 (23).

SANCTION

The Respondent's conduct constitutes a serious violation of the Maryland Optometry Act. Respondent's erratic and often bizarre behavior, coupled with his medical and psychological history, indicates that he is a danger to himself and to others. Respondent is not competent to practice optometry. In addition, in light of Respondent's flagrant disregard for the requirements of the Board's orders, the Board believes that a severe sanction is necessary to deter further misconduct by the Respondent and by other optometrists who may be tempted to abdicate their professional responsibilities. The Board concludes that it is necessary to revoke Respondent's license in order to protect the health, safety and welfare of potential patients.

As the Board's sanctions act as a "catharsis for the profession and a prophylactic for the public," (McDonnell v. Comm'n on Medical Discipline, 301 Md. 426, 436 (1984)), it is imperative that optometrists understand that serious misconduct has serious ramifications and is likely to have an effect on one's license to practice one's profession. It is for all of these reasons that the Board has determined that revocation is the appropriate sanction for Respondent's misconduct.

The Board believes, however, that there is a possibility that the Respondent may once again safely practice optometry after a receiving treatment for his mental health and substance abuse issues. Should Respondent choose to undergo such treatment, the Board may consider a Petition for Reinstatement in the future.

Prior to filing a Petition for Reinstatement, however, Respondent must demonstrate proof of compliance with a drug treatment program and mental health treatment with a Board-approved, licensed mental health professional. With his Petition for Reinstatement, Respondent must file copies of reports from his drug treatment and mental health treatment. Respondent must also provide a report from his mental health treatment provider that addresses all of Respondent's mental health issues, substance abuse issues, overall well-being, fitness to practice optometry, and whether or not the mental health treatment provider recommends that Respondent's license be reinstated. The Board also may require additional medical evaluations by Board-approved providers, prior to considering a Petition for Reinstatement.

Prior to petitioning the Board for reinstatement, Respondent also must successfully complete a professional ethics course. Respondent must provide documentation of this with his Petition for Reinstatement.

The Board finds that absent receiving mental health and substance abuse treatment and completing educational coursework in professional ethics, the Respondent is likely to engage again in similar unprofessional conduct to the detriment of the health, safety and welfare of his patients. Therefore, it is necessary for the Board to revoke Respondent's license in order to protect the public at this time.

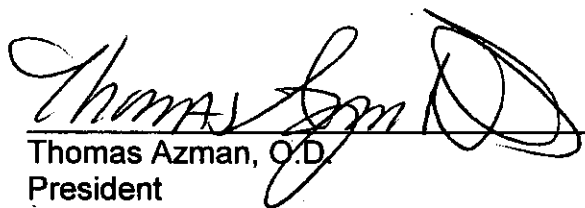
ORDER

Based upon the foregoing Findings of Fact, Discussion and Conclusions of Law, it is this 13TH day of DECEMBER, 2011, upon affirmative vote by a majority of Board members serving, hereby

ORDERED that Maryland optometry license of Respondent, Martin Tomko, license number TA 1094, is **REVOKED**; and it is further

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

ORDERED that this is a Final Order of the Maryland State 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, Maryland State Gov't Code Ann. §§10-611 *et seq.* (2009 Repl. Vol., and 2010 Supp.).


Thomas Azman, O.D.
President
Maryland State Board of
Examiners in Optometry

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. §11-318(b), you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days from your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

APPENDIX A

IN THE MATTER OF THE STATE
BOARD OF EXAMINERS IN
OPTOMETRY

v.

MARTIN TOMKO, O.D.
License No. TA 1094

* BEFORE LOUIS N. HURWITZ,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHMH-BOPT-109-11-05780
*

* * * * *

PROPOSED DEFAULT ORDER

STATEMENT OF THE CASE
FINDINGS OF FACT
DISCUSSION
PROPOSED ORDER

STATEMENT OF THE CASE

On February 16, 2011, the Office of Administrative Hearings (OAH) sent a Notice of In-Person Prehearing Conference to the respective parties. On April 14, 2011, I convened a prehearing conference in the above-referenced matter at 9:30 a.m. at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland (the OAH). Tracee Orlove Fruman, Assistant Attorney General/Administrative Prosecutor, appeared on behalf of the State of Maryland, but Martin Tomko, O.D. (Respondent) did not appear and did not contact the OAH. Upon the Respondent's failure to appear, the State moved for a Proposed Default Order,¹ citing several documents in the administrative record and attachments filed with its Motion for Proposed Default.

¹ Ms. Fruman's written Motion listed ALJ Susan Sinrod as presiding over this case. Several days prior to the prehearing conference, Judge Sinrod's unavailability necessitated the reassignment of this case to another judge.

FINDINGS OF FACT

In consideration of the State's Motion for Proposed Default, I find the following:

1. On or about January 14, 2009, the State Board of Examiners in Optometry (Board) entered into a consent order (Order) with the Respondent in the wake of his violations under the Maryland Optometry Act (the Act).
2. On or about May 26, 2010, the Board entered into a second Order whereby the Respondent's license was suspended for a period of one year, followed by three years of probation.
3. On November 17, 2010, the Board sent a Notice of Charges and Hearing Under the Act, advising the Respondent that he was being charged with violating section 11-313(23) of Health Occupations Article by committing an act of unprofessional conduct in the practice of optometry. The Board sent the letter by regular and certified mail to the Respondent's address of record with the Board: 5211 Daybrook Circle, #327, Baltimore, Maryland, 21237.
4. The Board's correspondence informed the Respondent that it was scheduling a Case Resolution Conference for January 19, 2011.
5. The November 17, 2010 Notice sent via first class mail was not returned by the U.S. Postal Services as undeliverable. The "green card" attached to the certified mail was returned to the Board, signed by "T. Marks," documenting that it was received at the Respondent's address.
6. The Respondent contacted the Board in writing and indicated that he would be present for the January 19, 2011 Case Resolution Conference.

7. Neither the Respondent nor anyone designated to represent him appeared at the January 19, 2011 Case Resolution Conference.
8. On January 19, 2011, the Board notified the Respondent by regular and certified mail that the January 19, 2011 Case Resolution Conference did not proceed because he failed to appear. The Board further advised the Respondent that the case would proceed to a hearing before the OAH.
9. The January 19, 2010 Notice sent via first class mail was not returned by the U.S. Postal Services as undeliverable. The "green card" attached to the certified mail was returned to the Board, signed by "T. Marks," documenting that it was received at the Respondent's address on January 20, 2011.
10. The Respondent failed to respond to this Notice.
11. On February 16, 2011, the OAH sent a Notice of Hearing, Notice of In-Person Prehearing Conference, including Prehearing Conference Instructions, to the Respondent at his address of record with the Board. The Notice stated that the Prehearing Conference was scheduled for 9:30 a.m. on April 14, 2011 at the OAH in Hunt Valley, Maryland.
12. This mailing was not returned as undeliverable.
13. The Prehearing Conference instructions required that a Prehearing Statement be filed with the OAH and the Office of the Attorney General no later than fifteen days before the April 14, 2010 Prehearing Conference. The Respondent did not file a Prehearing Conference Statement.

14. The Prehearing Conference Notice advised the Respondent that "failure to appear or to give timely notice of your inability to appear for the prehearing conference may result in a decision against you."
15. On April 14, 2011, the prehearing conference was held. Ms. Fruman, representing the Board appeared, however neither the Respondent nor a representative of the Respondent appeared or otherwise contacted the OAH.

DISCUSSION

Section 11-315 of the Maryland Optometry Act, Md. Code Ann., Health Occ. §§ 11-101 through 11-602 (2009 & Supp. 2010), requires that notice of a hearing be given to a respondent in accordance with the Title 10, Subtitle 2 of the State Government Article, the contested case provisions of Maryland's Administrative Procedure Act (APA). Those notice requirements were met in this case. *See*, Md. Code Ann., State Gov't. § 10-209 (2009). *See also*, Code of Maryland Regulations (COMAR) 10.28.03.08B ("An optometrist shall report a change of principal address within 30 days."). When notice has been provided in the manner required by statute or regulation, the party to whom the notice has been directed has no legitimate claim that the notice given was inadequate or defective. *See State v. Barnes*, 273 Md. 195 (1974).

The notice of charges, notice of Case Resolution Conference and notice of Prehearing Conference were mailed to the Respondent as required by statute. The notices were sent to the Respondent's address of record with the Board. Additionally, the Respondent had actual notice that he was under investigation by the Board, and that charges were filed. The Respondent responded via written correspondence that he intended to attend the Case Resolution Conference scheduled for January 19, 2011. In fact, the Respondent failed to appear at the January 19, 2011

Case Resolution Conference. Since that time, the Board has not received any communication from the Respondent. The Board transmitted the case to the OAH for a hearing, where it was received on February 11, 2011. On February 16, 2011, the OAH sent the Respondent a separate Notice of In-Person Prehearing Conference and Notice of Hearing. The Respondent failed to appear after proper notice and is subject to default. COMAR 28.02.01.23A.

In its motion for default, the State requested that the Board's charges be upheld and that the Respondent's license be revoked. By this order I propose that the State's requests be granted.

PROPOSED ORDER

IT IS THEREFORE PROPOSED that the Respondent be found in default; and

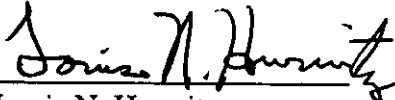
IT IS FURTHER PROPOSED that the charges asserting that the Respondent had violated the Maryland Optometry Act, Md. Code Ann., Health Occ. §§ 11-101 through 11-602 (2009 & Supp. 2010) for unprofessional conduct in the practice of optometry and for violating his 2010 Consent Order with the Board, be upheld, and

IT IS FURTHER PROPOSED that the Respondent's registration to practice as a optometrist be revoked, and

IT IS FURTHER PROPOSED that all further proceedings in the above-captioned matter be **TERMINATED**; and

FURTHER, in accordance with COMAR 28.02.01.23C and 10.28.04.06D(2), the Respondent or his authorized representative may file exceptions to this Proposed Order with the Board within fifteen days.

April 27, 2011
Date Proposed Order Mailed


Louis N. Hurwitz
Administrative Law Judge

LNH
#122109

Copies Mailed To:

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Administrative Prosecutor
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APPENDIX B

IN THE MATTER OF

MARTIN TOMKO, O.D.

Respondent

License Number: TA 1094

BEFORE THE

MARYLAND BOARD OF

EXAMINERS IN OPTOMETRY

Case Number: 2008-018

* * * * *

CONSENT ORDER FOR REINSTATEMENT OF LICENSURE

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 deny his petition for reinstatement to practice optometry under the Maryland Optometry Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 11-101 *et seq.* (2005 Repl. Vol.) and charged the Respondent with violating certain provisions of the Act.

The pertinent provisions of the Act provide:

H.O. § 11-302. Qualifications of applicants.

* * *

(b) *Moral character.* – The applicant shall be of good moral character.

In addition, § 11-313 of the Act provides:

§ 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:

- (18) Is professionally, physically or mentally incompetent;
- (25) Willfully engages in conduct that is likely to . . . harm the public.

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, under License No. TA 1094. The Respondent is currently certified by the Board as a therapeutically certified optometrist, which authorizes him to administer and prescribe certain therapeutic pharmaceutical agents and to remove superficial foreign bodies from a human eye, adnexa, or lacrimal system. The Respondent is currently unemployed.
2. On or about April 30, 2007, the Respondent submitted an application for inactive status licensure to the Board. The Board received the application along with the inactive status fee on May 3, 2007.
3. By letter to the Board dated June 24, 2007, the Respondent sought to explain the circumstances regarding his proposed licensure renewal for 2007. According to the Respondent, he had accumulated only twenty-five (25) hours of the fifty (50) hours of continuing education required for licensure renewal.
4. The Respondent explained and self-reported in his June 24, 2007, letter to the Board that he had been diagnosed with anxiety and had been prescribed Toprol XL and Xanax. According to the Respondent, the anxiety and medication led to a lapse in judgment resulting in a drinking and driving incident

occurring on August 25, 2006.

5. The Respondent admitted in his letter that the drinking and driving incident involved a motor vehicle accident where his vehicle was totaled and he registered a 0.15 blood alcohol content. The Respondent reported that he spent two days at the emergency and psychiatric divisions of Johns Hopkins prior to being released, after which he was charged with seventeen misdemeanor offenses including driving under the influence ("DUI"). The Respondent stated that no one was injured from the accident.

6. The Respondent also stated that he suffered a complete psychological breakdown and left the United States for New Zealand. The Respondent's family tracked him down in New Zealand and brought him back to Baltimore. Upon his return, he was admitted to Sheppard Pratt and diagnosed with bipolar disorder and panic disorder.

7. Court records indicate that the Respondent 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.

8. The Respondent informed the Board that he was sentenced on March 22, 2007, to sixty (60) days for the DUI offense, and served thirty-seven (37) days at the Harford County Detention Center. He 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.

9. As a result of his situation, the Respondent requested an accommodation from the Board on June 24, 2007, to complete his continuing education requirements for his 2007 licensure renewal. The Respondent requested that the Board permit him to satisfy his continuing education with less costly alternatives such as correspondence coursework.

10. On November 6, 2007, the Respondent submitted medical documentation supporting his request for waiver of continuing education requirements for his 2007 licensure renewal application.

11. By letter dated October 10, 2007, the Board notified the Respondent that it had granted his request to be placed on inactive status. The letter further informed the Respondent of the requirement to document his continuing education under the Act.

12. At its meeting on November 14, 2007, the Board granted the Respondent's request to waive his continuing education requirements as part of his 2007 licensure renewal. By letter dated December 6, 2007, the Board notified the Respondent that his request for waiver of continuing education requirements was granted. However, the Board also informed the Respondent that if he were to apply for reinstatement of his license that the Board would review his file in its entirety and take into account all information in deciding whether to grant his reinstatement petition.

13. 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.

14. 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 signed by the Respondent on July 7, 2008. The terms of the Consent Order require the Respondent to cause quarterly reports by his therapist(s) to be submitted to the Board certifying that he is compliant with his therapy for a minimum of five (5) years from the date of signing the Consent Order. The Consent Order further provides in part that the Respondent's therapists would be required to immediately notify the Board if the Respondent ceases to be compliant with treatment, fails to take his medications, misses appointments, terminates the relationship, or otherwise poses a risk to his patients in the professional opinion of the therapist(s).

15. By letter dated July 24, 2008, the Board provided the Respondent 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.

16. Prior to the informal conference, verification of information provided by the Respondent relative to his prior traffic convictions revealed pending criminal charges that had not been reported to the Board. Specifically, on or about August 3, 2008, the Respondent was criminally charged with a violation of Md. Crim. L. Code Ann. § 10-201(c)(2)(disorderly conduct) and with a violation of Md. Crim L. Code Ann. § 10-201(c)(4)(disturbing the peace) in the District Court for Harford County for an incident that occurred in the late afternoon on August 2, 2008. The Respondent's criminal trial charges arising out of the August 2, 2008,

incident were placed on the stet docket on October 20, 2008, in the District Court for Harford County.

17. 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 work.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 14TH day of JANUARY, 200~~8~~⁹, by a majority of the Board considering this case:

ORDERED that the Respondent's petition for reinstatement to practice optometry in the State of Maryland shall be **GRANTED**; and be it further

ORDERED that effective immediately upon issuance of the license by the Board, the Respondent's license to practice optometry in the State of Maryland shall be placed on **PROBATION** for a **PERIOD OF THREE (3) YEARS**, to commence from the date that his license is reinstated, subject to 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 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:

 - 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.
3. 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.
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.

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 of this Consent Order; and be it further

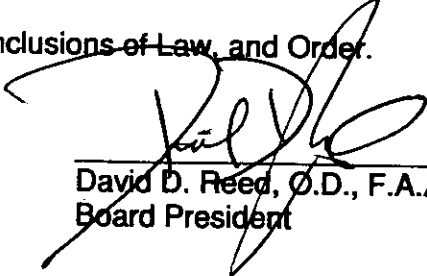
ORDERED after the conclusion of the entire **THREE (3) YEAR** period of **PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, provided the Respondent has satisfactorily complied with all conditions of this Consent 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 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, and provided there are no pending complaints regarding the Respondent before the Board; and be it further

ORDERED that should the Respondent violate any of the terms or conditions of this Consent Order, the Board, after notice, opportunity for a hearing and determination of violation may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, provided said violation having been proven by a preponderance of the evidence; 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.

1/14/09
Date


David D. Reed, O.D., F.A.A.O
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.*

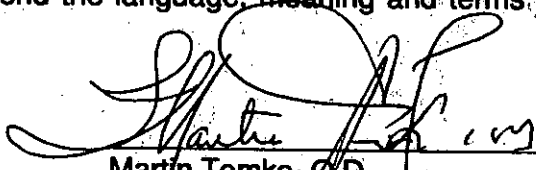
2. I acknowledge the validity and enforceability of this Consent Order as if entered after a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to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

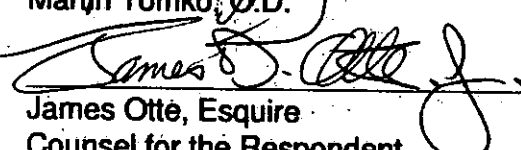
4. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my registration to practice optometry.

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

12-22-08
Date


Martin Tomko, O.D.

Reviewed and approved by:

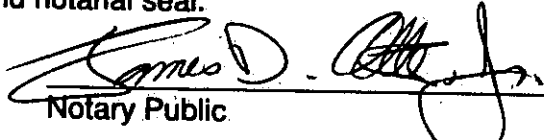

James Otte, Esquire
Counsel for the Respondent

STATE OF MARYLAND

CITY/COUNTY OF HARFORD :

I HEREBY CERTIFY that on this 22ND day of DECEMBER, 2008, before me, JAMES D. OTTE, JR., 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: 3-1-2010

Notary Public
James Dean Otte, Jr.
Harford County, MD
My Commission Expires 3-1-2010

APPENDIX C

IN THE MATTER OF

MARTIN TOMKO, O.D.

Respondent

License Number: TA 1094

*

BEFORE THE

*

MARYLAND BOARD OF

*

EXAMINERS IN OPTOMETRY

*

Case Number: 2008-018

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

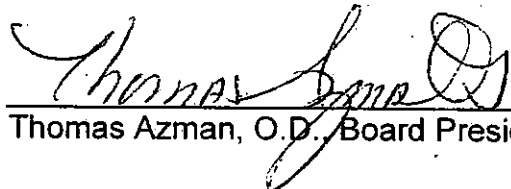
ORDERED that the terms and conditions of the Consent Order dated January 14, 2009 **remain in full force and effect**; and be it further

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

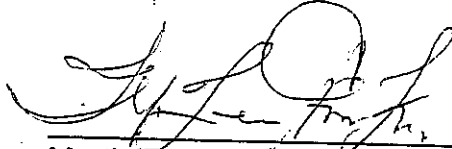
CONSENT OF MARTIN TOMKO, O.D.

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: 03/06/12

