

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

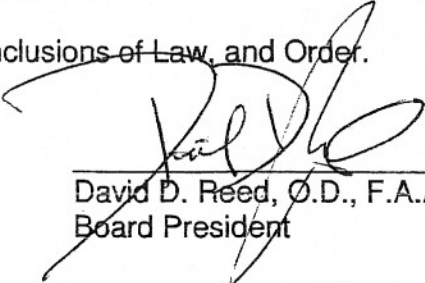
ORDERED after the conclusion of the entire **THREE (3) YEAR** period of **PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, provided the Respondent has satisfactorily complied with all conditions of this Consent 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.*

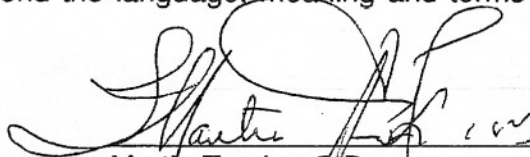
2. I acknowledge the validity and enforceability of this Consent Order as if entered after a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to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

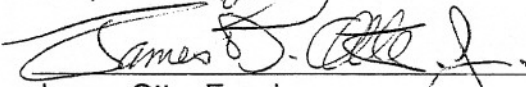
5. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

12-22-08
Date



Martin Tomko, O.D.

Reviewed and approved by:



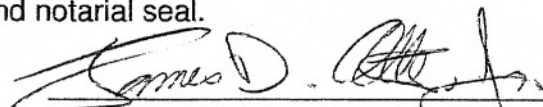
James Otte, Esquire
Counsel for the Respondent

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