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BEFORE THE TENNESSEE BOARD OF OPTOMETRY

In the Matter of:)
)
JOSEPH W. REMKE, III, O.D.)
License No. 620)
Lawrenceburg, Tennessee 38464)
)
RESPONDENT)

20
Docket No. 17.19-112562A

NOTICE OF HEARING

The Division of Health Related Boards of the Tennessee Department of Health, by and through the Office of General Counsel, hereby gives Notice to all interested parties that pursuant to the attached Petition for Declaratory Order, the above-styled cause of action has been set on the Tennessee Board of Optometry docket to come for hearing on August 10, 2011, at 9:00 a.m., or as soon thereafter as the Board will take up the matter for hearing, at the Health Related Boards, 227 French Landing, First Floor, Conference Room, Nashville, Tennessee 37228.

Respectfully submitted this 31st day of May, 2011.



Brian L. Sims, BPR No. 029511
Assistant General Counsel
Tennessee Department of Health
Office of General Counsel
220 Athens Way, Suite 210
Nashville, Tennessee 37243
(615) 741-1611

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing has been served upon Respondent, Joseph W. Remke, III, by and through his counsel of record, Charles M. Duke, Esq., Taylor, Pigue, Marchetti & Mink, PLLC, 2908 Poston Avenue, Nashville, Tennessee 37203, and upon the Tennessee Association of Optometric Physicians at 2727 Bransford Avenue, Nashville, Tennessee 37204, by United States mail, certified, numbers 7010 1670 0000 4787 3717 and 7010 1670 0000 4787 1621, return receipt requested, by United States mail, First Class, with sufficient postage thereon to reach its destination.

This 1st day of June, 2011.



Brian L. Sims
Assistant General Counsel

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:)
)
JOSEPH W. REMKE, III, O.D.)
RESPONDENT)
)
TENNESSEE LICENSE NO.: 620)

BEFORE THE TENNESSEE
BOARD OF OPTOMETRY

CASE NO.: 200802539

PETITION FOR DECLARATORY ORDER

Comes now the Respondent, Joseph W. Remke, III, by and through counsel, and respectfully submits herewith his Petition for Declaratory Order, altering or amending the Consent Order approved by this Board on or about the 26th day of May, 2010. Respondent respectfully requests that the Consent Order in question be amended by shortening and removing any probationary period or other limiting factors which affect the optometry license of the Respondent. For grounds, Petitioner would state and show as follows:

1. Petitioner, the Respondent herein, is Joseph W. Remke, III. His address is 507 Douglas Drive, Lawrenceburg, Tennessee 38464. His telephone number is 931-762-4863.

2. The attorneys for the Petitioner, Respondent herein, are Thomas F. Mink, II, Keith W. Blair, and Charles M. Duke of the firm of Taylor, Pigue, Marchetti & Mink, PLLC. The address for the attorneys for the Petitioner is 2908 Poston Avenue, Nashville, Tennessee 37203. The phone number is 615-320-3225.

3. Petitioner respectfully submits that, for the purposes of this Petition, he represents no organization which needs to be identified.

4. Petitioner respectfully submits that, since entry of the Consent Order in question, EXHIBIT "A" to the Affidavit of the Petitioner, attached hereto as EXHIBIT "1", on or about May 26, 2010, Petitioner has sought in every way to comply with the mandates set forth in said Consent Order. As set forth in Petitioner's Affidavit (EXHIBIT "1" hereto), he has been compliant with the terms of his probation and compliant with the requirements of his TMF contract. Petitioner has ceased and desisted from any and all activity complained of, and he will continue voluntarily in his compliance with the material and substance of the mandates of the Consent Order including, but not limited to, requirements set forth in paragraphs 2, 3, 4, 5, and 7.

Since entry of the Consent Order on or around May 26, 2010, Petitioner has discovered a result not anticipated by the Petitioner nor the Board when the Consent Order was approved. Insurance companies with which the Petitioner has contractual relationships, which provide health and optometry insurance coverage in the Lawrenceburg and/or the Lawrence County community, are systematically cancelling and revoking contractual relationships with the Petitioner herein, based upon the impediment to his license which the Consent Order has produced. As set forth in Petitioner's Affidavit (EXHIBIT "1" hereto) he practices in a small community, Lawrenceburg, Lawrence County, Tennessee, wherein his patients are largely dependent, if not completely dependent, upon health and optometry insurance policies to provide for payment for their optometric care. To date, two (2) companies (Cigna and Bluegrass) have terminated their contractual relationship with the Petitioner, based upon the limits placed upon his license by the Consent Order. A third insurance carrier, Blue Cross/Blue Shield, is currently reviewing the situation and, if the relief sought herein is not granted, it is fully expected that the contractual relationship between the Petitioner and Blue Cross/Blue Shield will end.

Should these cancellations/revocations continue, it will be impossible for the Petitioner to continue to practice optometry as the absence of contractual relationships between the Petitioner and various insurance carriers renders Petitioner financially incapable of practicing optometry in Lawrenceburg and/or Lawrence County, Tennessee, where he has practiced for over 34 years.

5. Petitioner respectfully requests that the Consent Order, entered May 26, 2010, be amended by shortening any probation period and/or other limiting factors which are adversely affecting the optometry license of the Petitioner herein. As stated above, Petitioner has been fully compliant with all of the mandates set forth in the Consent Order and, should the Board shorten and remove the probationary period set forth in said Consent Order, Petitioner respectfully submits that he will continue to comply with the further mandates of the Order. As set for in Petitioner's Affidavit (EXHIBIT "1" hereto) he has been fully compliant with his TMF contract. He has undergone a physical and a psychological screening, both of which indicated that he was not in any way addicted to the medications complained of originally. Further, Petitioner has undergone periodic screenings as required by the Consent Order, all of which have been negative. The requirement for the screenings ends as of May 3, 2011, less than one (1) month from the filing of this Petition.

6. Petitioner would respectfully submit to the Board that the Consent Order in question, from which the Petitioner respectfully requests relief as to the probationary period or other limiting factors, is attached hereto as EXHIBIT "A" to Petitioner's Affidavit (EXHIBIT "1" hereto). More specifically, the provisions/mandates of the Consent Order are set forth in paragraph 1 of said Consent Order.

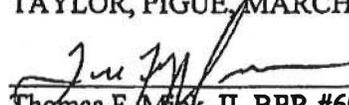
7. Petitioner respectfully submits that, as stated hereinabove, the imposition of probation on the Petitioner's optometry license has resulted in two (2) insurance carriers to date,

with the potential for several more to follow, cancelling and/or revoking contractual relationships with Petitioner, based upon the impediment to his license which the Consent Order, or more specifically, probationary period, has produced.

For the foregoing reasons, the Petitioner, by and through counsel, respectfully requests that the Board consider this Petition and grant the relief sought herein. The relief sought is requested pursuant to T.C.A. § 4-5-223 and Rule 1200-10-1-.11 of the General Rules and Regulations of the Tennessee Department of Health Division of Health Related Boards.

Respectfully submitted,

TAYLOR, FIGUE, MARCHETTI & MINK


Thomas F. Mink, II, BPR #6067
Charles M. Duke, BPR # 23607
Keith W. Blair, BPR #15366
2908 Poston Avenue
Nashville, Tennessee 37203
(615) 320-3225
(615) 320-3244 Fax

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of the foregoing document has been mailed via electronic mail and U.S. Mail to:

Ms. Diona E. Loyden
Mr. Ben Mezer
Assistant General Counsel
Office of General Counsel
Tennessee Department of Health
220 Athens Way
Suite 210
Nashville, Tennessee 37243

Dated this 18th day of April, 2011.


Thomas F. Mink, II

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:)
)
)
JOSEPH W. REMKE, III, O.D.)
RESPONDENT)
)
)
TENNESSEE LICENSE NO.: 620)

BEFORE THE TENNESSEE
BOARD OF OPTOMETRY
CASE NO.: 200802539

AFFIDAVIT OF JOSEPH W. REMKE, III, O.D.

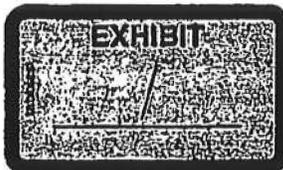
STATE OF TENNESSEE)
COUNTY OF LAWRENCE)

I, Joseph W, Remke, III, being duly sworn, would state and show on my oath as follows:

1. I am a practicing optometrist, License Number 620, which was issued to me on September 6, 1976. I am licensed by the Board of Optometry as an optometrist in the State of Tennessee.

2. On or around May 26, 2010, I entered into a Consent Order, a copy of which is attached hereto and denoted as EXHIBIT "A", regarding charges brought against me as enumerated therein. Pursuant to the Consent Order, my optometry license was placed on probation for a period of not less than five (5) years. In addition, as set forth in the Consent Order, further requirements were placed upon me regarding maintaining good and lawful conduct, no violations of any laws, and strict compliance with a TMF contract, for which I must maintain 100% compliance.

3. I would respectfully submit that, since entry of the Consent Order in question (EXHIBIT "A" hereto) I have, in every way, complied with the requirements placed upon me by said Consent Order. Pursuant to the TMF provisions of the Consent Order, I have undergone a



physical and a psychological screening, which indicated that I was in no way addicted to the medications complained of. Further, I have undergone periodic screenings, all of which have been negative. The requirement for screenings ends as of May 3, 2011.

4. As required by the Consent Order (EXHIBIT "A" hereto), I have paid all costs, as ordered.

5. Since agreeing to the Consent Order, which was entered on or around May 26, 2010, I have learned that it acts as an impediment against my license and it is now adversely affecting my ability to practice optometry in the State of Tennessee, more specifically, the small community of Lawrenceburg, Lawrence County, Tennessee where my practice is located.

6. My optometry practice in Lawrenceburg, Lawrence County, Tennessee, mainly consists of patients who are largely, if not completely, dependent upon health insurance policies to provide for payment for their optometric care.

7. Since agreeing to the Consent Order, contracts with various insurance companies; to wit, Bluegrass Family Health, of the State of Kentucky, and Cigna/Great-West Health Care, have come up for renewal. Upon submitting the necessary paperwork for renewal of the contractual relationships with these insurance carriers, which provide coverage in the Lawrenceburg and/or Lawrence County community, the insurance carriers have systematically cancelled and revoked their contractual relationships with me, based upon the impediment to my license which the Consent Order has produced. At the time that the Consent Order was entered into, it was unknown or unappreciated that such a harsh result would occur.

8. Currently, my contract with Blue Cross/Blue Shield, another health insurance provider, is under review, and if the Consent Order (EXHIBIT "A" hereto) is not modified as requested in the Petition for Declaratory Order, submitted herewith on my behalf, I readily

believe that my contractual relationship with Blue Cross/Blue Shield will be cancelled and/or revoked.

9. The absence of contractual relationships between these and other health insurance providers will render me financially incapable of practicing optometry in Lawrenceburg and/or Lawrence County, Tennessee, where I have practiced for over 34 years. Needless to say, this results in a severe financial impediment which is imposed upon me and my optometry practice, which renders it impossible for me to practice my profession under my license. In no way was such a harsh and severe result anticipated by me or by the Board when the Consent Order in question (EXHIBIT "A" hereto) was approved.

10. Based upon this, I would respectfully request that the Board grant the Petition for Declaratory Order submitted on my behalf, and remove the probationary period and/or impediments to my license, so that, hopefully, I will be able to practice optometry. At this juncture, my practice is being reduced to a "cash only" type of practice, which cannot be sustained in Lawrenceburg and/or Lawrence County, Tennessee. In addition, the impediment to my license may adversely affect my ability for any future State or National Board Certification that may be available, and further affect my ability to potentially sell my practice in the future.

Further affiant saith not.

Signed this 5th day of April, 2011

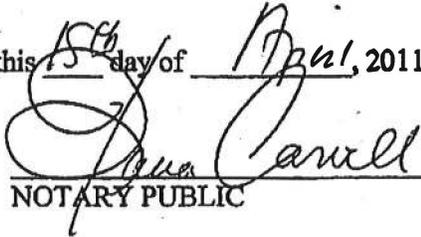

JOSEPH W. REMKE, III, O.D.

STATE OF TENNESSEE)
COUNTY OF LAWRENCE)

Sworn to and subscribed before me this 15th day of April, 2011.



My Commission Expires: 6-4-12.



NOTARY PUBLIC

Respectfully submitted,

TAYLOR, FIGUE, MARCHETTI & MINK



Thomas F. Mink, II, BPR #6067
Charles M. Duke, BPR # 23607
2908 Poston Avenue
Nashville, Tennessee 37203
(615) 320-3225
(615) 320-3244 Fax

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE
)	BOARD OF OPTOMETRY
JOSEPH W. REMKE, III, O.D.)	
RESPONDENT)	CASE NO.: 200802539
)	
)	
TENNESSEE LICENSE NO.: 620)	

CONSENT ORDER

Comes now the Division of Health Related Boards of the Tennessee Department of Health ("State"), by and through the Office of General Counsel, and Respondent, Joseph W. Remke, O.D., ("Respondent"), and respectfully moves the Tennessee Board of Optometry ("Board") for approval of this Consent Order affecting Respondent's optometry license in the State of Tennessee.

The Board is responsible for the regulation and supervision of optometrists licensed to practice in the State of Tennessee. TENN. CODE ANN. § 63-8-101, *et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Optometric Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-8-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the Official Compilation of Rules and Regulations of the State of Tennessee ("TENN. COMP. R. & REGS.").

The Respondent, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that



presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. STIPULATIONS OF FACT

1. The Respondent has been at all times pertinent hereto licensed by the Board as an optometrist in the State of Tennessee, having been granted license number 620 on September 6, 1976.
2. Respondent ordered Hydrocodone from approximately 1995 to 2008 and Diazepam from approximately 2006 to 2008 from his wholesale pharmaceutical distributor for personal use.

II. GROUNDS FOR DISCIPLINE

3. The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for the discipline of Respondent's optometry license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Optometric Act,

TENN. CODE ANN. § 63-8-101, *et seq.* and TENN. COMP. R. & REGS for which disciplinary action before and by the Board is authorized:

4. The facts stipulated in paragraph 2, *supra*, constitute "unprofessional conduct" and therefore a violation of TENN. CODE ANN. § 63-8-120(a)(2):

(2) Immoral, unprofessional or dishonorable conduct;

III. POLICY STATEMENT

The Tennessee Board of Optometry takes the following action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

IV. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

- 1) Respondent's Tennessee Optometry License is hereby immediately placed upon **PROBATION** for a period of five (5) years and until Respondent has completed the requirements in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9. Respondent must petition for an Order of Compliance for the Probation on Respondent's license to be lifted.
- 2) Respondent agrees to restrict Respondent's DEA number(s) to only prescribing schedule IV and V drugs for a period of time to run concurrent with the Probation of Respondent's Tennessee Optometry License.
- 3) Respondent agrees to not order any products containing pseudoephedrine, except Respondent may purchase the legally allowed amount, in the manner provided by T.C.A. 39-17-431(c).
- 4) During the period of Probation Respondent shall maintain good and lawful conduct and

any violation of law, other than minor traffic violations, will be a violation of the terms of this Order.

- 5) Within thirty (30) days of the entry of this Order Respondent must begin participating in random urine monitoring for substance abuse for a period of one year, under the auspices of the Tennessee Medical Foundation. During the period that Respondent is required to participate in the random urine monitoring for substance abuse under the auspices of the TMF, he shall:
 - a) Cause the TMF to notify the Board's Consultant in writing of any positive results of the random urine drug screens.
- 6) Respondent understands that a urine drug screen that yields a positive result for a controlled substance that Respondent does not have a valid prescription for shall be a violation of the terms of this Order.
- 7) Respondent must enroll in and successfully complete within one (1) year of the entry of this Order, the four (4) day medical course entitled "*Controlled Substance Management*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio.
- 8) Respondent must pay, pursuant to TENN. CODE ANN. § 63-8-120 and Rule 1045-2-.10(7) of the TENN. COMP. R. & REGS., the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Affidavit of Costs prepared and filed by counsel for the Department. Said costs shall not exceed seven thousand dollars (\$7,000.00).
- 9) Any and all costs shall be paid in full within thirty (30) days after the issuance of the

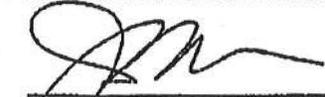
Affidavit of Costs. Payment shall be made by certified check, cashier's check, or money order, payable to the State of Tennessee, Department of Health. Any and all payments shall be forwarded to the Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227 French Landing, Suite 201, Nashville, Tennessee 37243. A notation shall be placed on said money order or such check that it is payable for the Affidavit of Costs of Joseph W. Remke, O.D., Case No. 200802539.

- 10) Respondent understands that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank and/or similar agency.

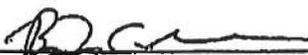
This Consent Order was approved by a majority of a quorum of the Tennessee Board of Optometry at a public meeting of the Board and signed this 26th day of May, 2010.


Chairperson
Tennessee Board of Optometry

APPROVED FOR ENTRY:


Joseph W. Remke, O.D.
P.O. Box 620
Lawrenceburg, Tennessee 38464

3-29-10
DATE


Benjamin C. Mezer, BPR # 027426
Office of General Counsel
Assistant General Counsel

5/26/10
DATE

**Suite 210
220 Athens Way
Nashville, Tennessee 37243
(615) 741-1611**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the following by delivering same in the United States regular mail and United States certified mail, number 7009 ~~0820-0001-2426-1413~~ ^{8250 00040767 7864}, return receipt requested, with sufficient postage thereon to reach its destination.

Joseph W. Remke, O.D.
P.O. Box 620
Lawrenceburg, Tennessee 38464

This 27th day of May, 2010.


Benjamin C. Mezer
Assistant General Counsel