

**BEFORE THE MINNESOTA
BOARD OF OPTOMETRY**

In the Matter of
Kevin F. Jund, O.D.
License No. 2915

STIPULATION AND ORDER

STIPULATION

Kevin F. Jund, O.D. ("Licensee"), and the Minnesota Board of Optometry Complaint Resolution Committee ("Committee") agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

JURISDICTION

1. The Minnesota Board of Optometry ("Board") is authorized pursuant to Minnesota Statutes sections 148.52 to 148.62 and 214.103 to license and regulate optometrists and to take disciplinary action when appropriate.

2. Licensee holds a license from the Board to practice optometry in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Order.

CONFERENCE

3. On February 15, 2022, Licensee and his attorney appeared before the Committee, composed of Eric Bailey, O.D.; Patrick O'Neill, O.D.; Sam Villela, O.D.; and Shari Knoll, Public Member, to discuss allegations contained in a Notice of Conference dated November 30, 2021. Licensee is represented by Ryan C. Ellis of Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota. Alex Mountain, Assistant Attorney General, represents the Complaint Resolution Committee.

FACTS

4. The parties agree this Stipulation and Order is based upon the following:
 - a. In May 2021, Licensee's employer ("Clinic") received a complaint from staff that Licensee incorrectly changed information in patients' medical records.
 - b. Clinic investigated Licensee's conduct and discovered that Licensee did not consistently follow up using the Goldmann tonometry measurement of intraocular pressure when the "icare" tonometry test, administered by the optometric assistant, showed a high reading. Additionally, in multiple instances, Licensee erased the number from the icare test entered by the assistant in the patient record and entered a different number, without completing an actual measurement of the pressure with Goldmann or any other tonometry test.
 - c. Licensee admitted that he changed IOP readings without ensuring he rechecked the pressure as often as multiple occasions in a single day, obtaining the pressures from the past history of the patient. Licensee recognizes that his actions were not in line with the standards of practice and created medical risk for patients.

STATUTES

5. The Committee concludes that the conduct described above constitutes a violation of Minnesota Statutes § 148.603(7), (11), and (14) and justifies the remedy described below.

REMEDY

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

6. The Board **REPRIMANDS** Licensee for engaging in the conduct and violations described above.
7. The Board places the following **CONDITIONS** on Licensee's license:

a. **Civil Penalty.** Within 90 days of the date of this Stipulation and Order, Licensee shall pay a civil penalty in the amount of \$3000. The civil penalty shall be paid by cashier's check or money order made payable to the Minnesota Board of Optometry and shall be delivered personally or by mail to the Minnesota Board of Optometry, c/o Britt Heglund, Executive Director, 335 Randolph Ave, Suite 210, St. Paul, MN 55102.

b. **Continuing Education Courses.** Licensee shall arrange to enroll in, and complete, no less than two (2) hours of continuing education for record keeping and two (2) hours of continuing education on ethics. Licensee must obtain preapproval from the Committee for the course(s) that Licensee selects. To secure preapproval, Licensee shall submit to the Committee a course description, including course objectives and the instructor's name and applicable credentials. Licensee shall complete the course(s) within six months of the date of the Stipulation and Order. Successful completion of the course(s) shall be determined at the sole discretion of the Committee and verified by Licensee's submission of an official certificate indicating completion of the preapproved course. These CE courses may not count toward Licensee's general CE requirements for licensure renewal.

c. **Notice to Employer.** Within ten (10) days of the date of this Stipulation and Order, Licensee is required to present the executed Stipulation and Order to all employers for all places of employment where Licensee currently practices as an Optometrist.

d. **Employer Acknowledgment.** Within 30 days of the date of this Stipulation and Order, Licensee shall cause to be submitted from each employer notified pursuant to paragraph 7.c. confirmation that Licensee notified such employers in accordance with paragraph 7.c.

8. Upon successful completion of the remedies set forth above, the conditions named in paragraph 7 may be removed upon petition by Licensee. The burden of proof shall be on Licensee to demonstrate by a preponderance of the evidence that he is capable of practicing in a fit and competent manner. Licensee may be required to meet with the Committee upon submitting his petition. The Committee may make a recommendation to the Board regarding what action the Board should take on Licensee's petition. Upon hearing the petition, the Board may continue, modify, or remove the conditions set forth herein.

9. Licensee is responsible for all costs incurred as a result of compliance with this Stipulation and Order.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

10. If Licensee fails to comply with or violates this Stipulation and Order, the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least 20 days before the hearing, the Committee shall mail Licensee a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within ten days after the notice is mailed, Licensee shall submit a written response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

b. The Committee, in its discretion, may schedule a conference with Licensee prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through agreement.

c. Prior to the hearing before the Board, the Committee and Licensee may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Licensee may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. The Committee shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Licensee has failed to submit a timely response to the allegations, Licensee may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. With respect to allegations that Licensee failed to comply with or violated this Stipulation and Order, Licensee waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Licensee's correction of a violation before the conference, hearing, or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek discipline when it first learns of a violation shall not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board shall dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional conditions or limitations on Licensee's practice, suspension, or revocation of Licensee's license.

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Licensee's license pursuant to Minnesota Statutes section 214.077 based on a

violation of this Stipulation and Order or based on conduct of Licensee not specifically referred to herein.

g. Nothing herein shall limit Licensee's rights related to allegations or other matters unrelated to the issues addressed in this Stipulation and Order.

ADDITIONAL REQUIREMENTS

11. In the event Licensee should leave Minnesota to reside or to practice outside of the state, Licensee shall give the Board written notification of the new location, as well as dates of departure and return. If Licensee leaves the state, the terms of this Stipulation and Order continue to apply unless waived in writing.

12. If while residing or practicing in Minnesota, Licensee should become employed at any other optometry clinic or facility or move, Licensee shall notify the Board in writing of the new address and telephone number within ten days.

13. Within ten days of execution of this Stipulation and Order, Licensee shall provide the Board with the names of all states in which Licensee is licensed to practice optometry or has applied for licensure as an optometrist.

OTHER INFORMATION

14. With respect to the issues addressed in this Stipulation and Order, Licensee waives the contested case hearing and all other procedures before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or rules.

15. Licensee waives any claims against the Board, the Minnesota Attorney General's Office, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Order, which may otherwise be available to Licensee.

16. This Stipulation and Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

17. Licensee has read, understands, and agrees to this Stipulation and Order and has voluntarily signed the Stipulation and Order. This Stipulation and Order contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation.

18. In the event the Board in its discretion does not approve this settlement, this Stipulation and Order is withdrawn and will be of no evidentiary value and may not be relied upon nor introduced in any disciplinary action by either party hereto except that Licensee agrees that should the Board reject this Stipulation and Order and if this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Order or of any records relating hereto.

19. Either party may seek enforcement of this Stipulation and Order in any appropriate civil court.

20. This Stipulation and Order shall not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate action on the basis of any act, conduct, or admission of Licensee which constitutes grounds for disciplinary action, and which is not directly related to the specific facts and circumstances set forth in this document.

DATA PRACTICES NOTICES

21. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Therefore, employers and other individuals will be able to see this entire Stipulation and Order by searching

Licensee's name on the Board's website, or by requesting a copy of this Stipulation and Order from the Board. Data regarding this action will be provided to data banks as required by Federal law and consistent with Board policy.

BOARD OF OPTOMETRY
COMPLAINT RESOLUTION COMMITTEE



KEVIN F. JUND, O.D.
Licensee

Dated: 3-16-, 2022



ERIC BAILEY, O.D.
Committee Member

Dated: 3/23, 2022

ORDER

Upon consideration of the Stipulation, the Board **REPRIMANDS** Licensee, imposes a **CIVIL PENALTY**, places **CONDITIONS** upon Licensee's license, and adopts all of the terms described above on this 23 day of March, 2022.

MINNESOTA BOARD
OF OPTOMETRY



BRITT HEGLUND
Executive Director

|#5172698-v1