

BEFORE THE MINNESOTA

BOARD OF OPTOMETRY

In the Matter of
Jane Linville, O.D.
License No. 2278

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Jane Linville, O.D. ("Respondent"), and the Discipline Committee ("Committee") of the Minnesota Board of Optometry ("Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which she holds a license to practice optometry in the State of Minnesota.

2. Respondent is represented by Joseph J. Dudley Jr., Dudley & Smith, P.A., 101 East Fifth Street, Suite 2602, St. Paul, Minnesota 55101, telephone (651) 291-1717. The Committee was represented by Nathan W. Hart, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, telephone (651) 296-7575.

FACTS

3. For the purpose of this stipulation, the Board may consider the following facts as true:

- a. Respondent was licensed to practice optometry on July 22, 1989.
- b. On August 17, 2006, Respondent wrote a prescription for her son for amphetamine salts (Adderall), a Schedule II controlled substance, and attempted to have it filled at a pharmacy. However, the pharmacist refused to fill the prescription because, as a doctor of optometry, Respondent was prohibited from prescribing Schedule II controlled substances.

c. Respondent's prescribing records were obtained from pharmacies in and around her area of practice and contained the following:

1) Between January 17 and July 19, 2006, Respondent wrote six prescriptions (some with refills) for her son for fluoxetine (Prozac) 20 mg, Singulair 10 mg, Albuterol inhaler, and two prescriptions for Adderall.

2) Respondent wrote one prescription for her stepdaughter for Metronidazole 500 mg, which was filled on March 24, 2006.

3) Between January 31 and November 16, 2006, Respondent wrote six prescriptions (some with refills) for her husband for Singulair 10 mg; almotriptan (Axert) 12.3 mg; Tramadol (Ultram) 50 mg; Butalbital/APAP 50/325 mg (Fioricet), a Schedule III controlled substance; and Rizatriptan (Maxalt) 10 mg.

4) Respondent wrote one prescription (with two refills) for herself for Ultram 50 mg, which was filled in August, October, and November 2006.

d. During an interview with an investigator from the Minnesota Attorney General's Office, Respondent acknowledged her authority to prescribe only Schedule IV and Schedule V controlled substances.

STATUTES

4. Respondent acknowledges the conduct described in paragraph 3 above constitutes a violation of Minn. Stat. § 148.576, subd. 1, and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action under these statutes.

REMEDY

5. Upon this Stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an order as follows:

a. Respondent is hereby **REPRIMANDED** for the conduct set forth in paragraph 3 above.

b. Respondent's license to practice optometry in the State of Minnesota is hereby **RESTRICTED**. Specifically, Respondent's authority to use and prescribe oral medications is suspended.

c. Respondent's license to practice optometry in the State of Minnesota is hereby **CONDITIONAL** upon her compliance with the following requirements:

1) Within seven days from the date this Stipulation and Order is adopted by the Board, Respondent shall contact the Health Professionals Services Program ("HPSP") and arrange to undergo an evaluation. If recommended by HPSP, Respondent shall enter into a Participation Agreement and Monitoring Plan with HPSP within seven days of any such recommendation and maintain compliance therewith.

2) Respondent shall obtain a psychological evaluation. The evaluation shall be performed by a licensee of the Minnesota Board of Psychology who has been approved in advance by the Discipline Committee. Respondent is responsible for the cost of the evaluation; however, the results of the evaluation shall be sent directly to the Board office and shall meet the following requirements:

a) Verification the evaluator has received a copy of this Stipulation and Order and the information submitted by the Board;

b) A summary of the results of the evaluation and recommendations for treatment, if necessary; and

c) Any other information the evaluator believes would assist the Board in its ultimate review of the matter.

3) Should any treatment be recommended by the evaluator, Respondent shall comply with the treatment recommendations and shall be responsible for the cost of the treatment. The therapist who will provide the treatment shall be a different psychologist from the evaluator and shall be approved in advance by the Discipline Committee. Respondent shall only terminate therapy upon approval by the Committee, based upon a recommendation made by Respondent's treating therapist. The therapist shall submit a report to the Committee every three months and at the time Respondent petitions for an unconditional license. The first report is due three months from the date treatment begins, and all subsequent reports shall be submitted the first day of the month in which they are due. Each report shall provide and/or address:

a) In the first report, a statement that the therapist has received and reviewed a copy of this Stipulation and Order. Additionally, the therapist shall identify an initial treatment plan with goals devised specifically for Respondent; and

b) Each month thereafter, the therapist shall provide a statement regarding the dates and number and frequency of meetings between Respondent and the therapist subsequent to the last report.

d. Respondent shall pay a civil penalty of \$1000. The civil penalty shall be paid within 90 days from the date this Stipulation and Order is adopted by the Board.

6. Respondent may petition the Board for an unconditional license upon discharge from HPSP for successful completion of her Participation Agreement and Monitoring Plan, or if Respondent was not required to enter into a Participation Agreement and Monitoring Plan, two years from the date this Stipulation and Order was adopted by the Board and upon completion of all terms, provisions, and conditions of this Stipulation and Order. The Board may, at any regularly scheduled meeting at which Respondent has made a timely petition, take any of the following actions:

- a. Remove the conditions attached to the license of Respondent;
- b. Amend the conditions attached to the license of Respondent;
- c. Continue the conditions attached to the license of Respondent upon her failure to meet her burden of proof; or
- d. Impose additional conditions on the license of Respondent.

NONCOMPLIANCE WITH STIPULATION AND ORDER

7. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, the Committee shall schedule a hearing before the Board. The Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Respondent shall submit a response to the allegations at least three days before the hearing. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their

positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice or suspension or revocation of Respondent's license.

8. This stipulation shall not in any way limit or affect the authority of the Board to initiate contested case proceedings against Respondent on the basis of any act, conduct, or omission of Respondent justifying disciplinary action occurring before or after the date of this Stipulation and Order which is not related to the facts, circumstances, or requirements referenced herein.

9. Respondent shall comply with the laws and rules of the Board. Respondent agrees that failure to comply with the Board's laws and rules shall be a violation of this Stipulation and Order.

10. Respondent shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this Stipulation and Order, including requests for explanations, documents, office inspections, and/or appearances at conferences.

11. Within seven days of any change, Respondent shall provide the Board with her current address and telephone information. The information shall be sent to Laurel E. Mickelson, Board of Optometry, 2829 University Avenue S.E., Suite 550, Minneapolis, Minnesota 55414-3222.

12. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of her residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's limited or conditioned license in Minnesota unless Respondent demonstrates that practice in another state conforms completely with this Stipulation and Order.

13. This stipulation, related investigative reports, and other documents shall constitute the entire record of the proceeding upon which this order is based. The investigative reports, other documents, or summaries thereof, may be filed with the Board with the stipulation. Any reports or other material related to this matter which are received after the date the Board approves the Stipulation and Order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

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

15. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States Constitutions, statutes, or rules and agrees that the order to be entered pursuant to the stipulation shall be the final order herein.

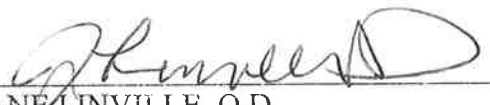
16. Respondent hereby acknowledges that she has read and understands this stipulation and has voluntarily entered into the stipulation without threat or promise by the Board or any of its members, employees, or agents. This stipulation contains the entire agreement

between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this stipulation.

17. Respondent hereby knowingly and voluntarily waives any and all claims against the Board, the Minnesota Attorney General, the State of Minnesota and their agents, employees and representatives which may otherwise be available to Respondent under the Americans With Disabilities Act or the Minnesota Human Rights Act relative to the action taken or authorized against Respondent's license to practice optometry under this stipulation.

18. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, if they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this Stipulation and Order to the appropriate databanks.

Dated: 2-8, 2008


JANE LINVILLE, O.D.
Respondent

Dated: 6/16, 2008


FOR THE COMMITTEE

ORDER

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Board this 17 day of June, 2008.

MINNESOTA BOARD OF OPTOMETRY

By:

Larive Mickelson

AG: #1854653-v1