



**BEFORE THE MINNESOTA
BOARD OF OPTOMETRY**



In the Matter of
Tamra G. Emerson, O.D.
License No. 2078

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between Tamra G. Emerson, 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 has been advised by Board representatives that she may choose to be represented by legal counsel in this matter. Although aware of her right to representation by counsel, Respondent has knowingly and expressly waived that right. The Committee was represented by Nathan W. Hart, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2131, telephone (651) 296-7575.

FACTS

3. For the purpose of this stipulation, the Board may consider the following facts as true:
 - a. Respondent had seen patient #1 (Female; DOB 2/3/66) regularly since January 13, 1999; patient #2 (Male; DOB 4/22/93) since August 3, 2001; and patient #3 (Male; DOB 4/2/96) since August 4, 2003. Patient #1 is the mother of patients #2 and #3. No specific

problems were identified until May 7, 2008, other than some changes in patient #1's corrective lenses.

b. On May 7, 2008, patient #1, patient #2, and patient #3 presented for scheduled appointments. Patient #1 stated she was having frontal headaches, patient #2's records indicated patient #1 stated he "blinks a lot," and patient #3's records stated he was having trouble focusing on near objects.

c. Under the assessment portions of patient #2's and patient #3's records, the word "headache" was written and referred the reader to retinal photographs. Patient #1 stated she never told Respondent or employee #1 that her sons had headaches.

d. On all three records, additional entries were written and dated July 21, 2008. Respondent admitted making these later entries. On patient #1's record, Respondent's new entry stated when the patient returned to the office on July 21, 2008, she reported a family history of headaches. The July 21, 2008, entry on patient #2's record stated "per mom family history of [headaches] (she gets [headaches])." The July 21, 2008, entry on patient #3's record stated "per mom [family history] of [headaches in mother]."

e. The insurance claim sheets on all three patients listed the same two diagnosis codes: 367 (refraction disorder) and 784 (headaches). The cost of the retinal photography was a total of \$155 each (\$105 for the technical component of the test and \$50 for the professional component).

f. Employee #1 performed the retinal photography on all three patients during their appointments at Respondent's office, as part of Respondent's routine pre-testing process. Neither Respondent nor employee #1 explained to patient #1 the cost of the retinal

photography and the fact it may not be covered by insurance. Patient #1 said Respondent never asked her or her sons whether they were having headaches.

g. During her interview with an investigator from the Minnesota Attorney General's Office, Respondent stated "pretty much everyone" gets retinal photography, depending on family history, medical problems, and medications. Respondent said she tells employee #1 what types of history or presenting problems require retinal photography, rather than ordering this test in a patient-specific manner. Respondent said employee #1 would have performed the retinal photography on all three patients without her specific orders, because their symptoms warranted it.

h. During her interview with an investigator from the Minnesota Attorney General's Office, employee #1 verified she is authorized to perform retinal photography on patients with diabetes, hypertension, and known retinal disease without a patient-specific order from Respondent. However, employee #1 said she relies on Respondent to order retinal photography. Employee #1 said she would not normally decide to do retinal photography on patients complaining of headaches without specific direction from Respondent. She also said she would not do retinal photography on children simply due to a family history of headaches. Employee #1 could not think of any reason why she would do retinal photography on a child complaining of "blinking" or "blurry vision" without Respondent specifically ordering it. Employee #1 could not recall the circumstances of patient #1, patient #2, or patient #3's visits or the reason retinal photography was performed on all three patients.

i. Respondent stated employee #1 explains to patients before testing that retinal photography may not be covered. However, employee #1 said she does not routinely discuss with patients whether or not retinal photography may be covered by their insurer.

However, she did say if the issue was brought up and discussed, she would document this in the patient record.

j. Patient #1 stated when she found out insurance would not pay for the retinal photography, on May 27, 2008, she contacted Respondent's office to discuss her concerns that her sons' claims listed diagnoses of headaches. She spoke with the office business manager. Patient #1 stated the office manager treated her rudely, told her what insurance chose to cover or not to cover was her own concern, and hung up on her.

k. Patient #1 said she spoke to Respondent on the telephone about seven to ten days later. Respondent stated she would check into the matter and call her back. Before Respondent called her back, patient #1 found out the invoices for her and her sons were turned in to a collection agency. Respondent admitted she was not aware the invoices had been submitted to collections by the office manager. Respondent said patient #1 did not give her enough time to look into the matter.

l. On July 21, 2008, patient #1 went to the clinic and asked to speak with Respondent. The office manager brought patient #1 to Respondent's office, at which time patient #1 reminded Respondent that her sons never complained of headaches. Patient #1 said the office manager then "took over" and "yelled" at her, stating the office was "not going to waste any more time dealing with [her]." Patient #1 said she returned to the main reception area, paid the bills, and left. Respondent did not seem concerned about having her business manager in the office when patient #1 met with her to discuss her medical record documentation. Respondent later admitted the conversation with patient #1 might have improved if the office manager were not present.

m. Patient #1 later attempted to obtain copies of the clinic records for her and her sons. She signed a waiver form, listing her name and the names of her sons. Patient #1 said the office manager refused to honor this waiver because it was too vague. As of December 9, 2008, patient #1 had not received the requested records.

n. Respondent stated she would automatically order retinal photography on anyone who was blinking a lot or having trouble focusing. She also assumed patient #2 and patient #3 had headaches because their visual acuity was not 20/20 and they needed correction. However, the retinal photography was completed before Respondent determined they needed correction. Respondent stated she may have asked the children whether they had headaches but admitted she did not document this. Respondent said if a mother presented with her children and said she personally was having headaches, she would still order retinal photography not only for the parent but also the children.

STATUTES

4. The Committee views Respondent's practices as inappropriate in such a way as to require Board action under Minn. Stat. § 148.57, subd. 3, 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 **REPRIMANDING**,

CONDITIONING, and RESTRICTING Respondent's license to practice in the State of Minnesota as follows:

Respondent shall successfully complete the following courses, approved in advance by the Discipline Committee, within 12 months of the date this stipulation and order is adopted by the Board:

a. Two continuing education units in coding, including how to properly code diagnosis requirements;

b. Two continuing education units in professional ethics; and

c. Two continuing education units in the proper use of retinal photography, including when it is appropriate to order the test and when it is appropriate to charge for the test.

6. Respondent shall pay a civil penalty to the Board in the amount of five thousand (\$5000.00) dollars to recover investigative costs, and to deprive Respondent of any economic advantage gained by reason of the violation. Payment of \$5000.00 shall be remitted in full to the Minnesota Board of Optometry at Suite 550, 2829 University Avenue SE, Minneapolis, Minnesota 55414-3222, within twelve (12) months of the date this stipulation and order is adopted by the Board.

7. 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.

8. 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.

9. 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 at the Board of Optometry, University Park Plaza, 2829 University Avenue S.E., Suite 550, Minneapolis, Minnesota 55414-3222.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 National Practitioner Data Bank.

Dated: 01-31-2011

Dated: 04/12/2011

Tamra G. Emerson, O.D.
TAMRA G. EMERSON, O.D.
Respondent

Jonathan C. Veitke, O.D.
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 5th day of April, 2011.

MINNESOTA BOARD OF OPTOMETRY

By: Laurie Mickelson

AG: #2495975-v1