

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

FILE COPY

STATE OF WISCONSIN
BEFORE THE OPTOMETRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

RANDALL G. MELCHERT, O.D.,
RESPONDENT.

FINAL DECISION AND ORDER
LS8708191OPT

The parties to this action for the purposes of Wis. Stats. sec.
227.53 are:

Randall G. Melchert, O.D.
12345 West Capitol Drive
Wauwatosa, WI 53222

Attorney John McLario
N88 W16783 Main Street
Menomonee Falls, WI 53051

Optometry Examining Board
P. O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the
attached Stipulation as the final disposition of this matter, subject to
the approval of the Board. The Board has reviewed this Stipulation and
considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation
and makes the following:

FINDINGS OF FACT

1. Randall G. Melchert, O.D. is duly licensed as an optometrist in
the State of Wisconsin (license #1634); this license was granted August 12,
1978. Dr. Melchert's address on file with the Optometry Examining Board is
12345 West Capitol Drive, Wauwatosa, Wisconsin 53222.
2. Dr. Melchert's date of birth is December 3, 1952.
3. On March 9, 1987, Patient A was experiencing redness and pain in
her left eye. Patient A went to the offices of Dr. Randall Melchert.

RECEIVED

FEB 1 1988

Dept. of Regulation & Licensing
Division of Enforcement

4. Patient A presented herself to Dr. Melchert with a complaint that her eye "felt cut."

5. Dr. Melchert then prescribed and dispensed a 3.5 gm tube of ointment, "Opto-Poly" (Bacitracin zinc and Polymyxin B sulfate ophthalmic ointment which is also commonly known as "Polysporin," which is available without a prescription for other usages), to Patient A as treatment for this condition. The tube label contained the following words: "Caution: Federal Law prohibits dispensing without prescription."

6. Dr. Melchert instructed Patient A to put some ointment in her left eye every four hours and to return to his office the next day.

7. Dr. Melchert noted in Patient A's records for March 9, 1987: "O.S. sore w/edema present. Gave Polysporin. Return 1 day. Diagnosis: conjunctivitis."

8. Dr. Melchert did not on March 9, 1987 refer Patient A to a medical specialist for treatment or evaluation of her eye condition. However, he told her to return to his office within 24 hours for further evaluation and/or referral to a medical specialist.

9. Dr. Melchert billed Patient A \$21.00: \$11.00 for diagnostic & treatment services, \$10.00 for miscellaneous supplies.

10. On March 10, 1987, Patient A sought the services of a physician/ophthalmologist.

11. "Opto-Poly", Bacitracin zinc and Polymyxin B sulfate ophthalmic ointment, is a prescription drug, and the same ointment ingredients are also sold as a non-prescription ointment and commonly used for cuts, abrasions, and minor irritations under the name of "Polysporin."

CONCLUSIONS OF LAW

1. The Wisconsin Optometry Examining Board has jurisdiction over this matter and authority to take disciplinary action against the Respondent pursuant to Wis. Stats. sec. 449.07(1).

2. The Wisconsin Optometry Examining Board is authorized to enter into the attached Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. Respondent engaged in unlawful and unprofessional conduct contrary to Wis. Stats. secs. 449.08(1)(e), 449.01(1)(b) in that he prescribed and dispensed a prescription medication other than in legitimate practice and is, therefore, subject to disciplinary action against his license pursuant to Wis. Stats. sec. 449.07(1).

ORDER

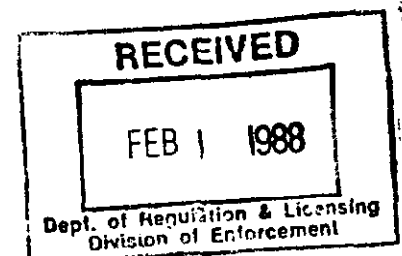
NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Stipulation of the parties, attached hereto, is accepted.

IT IS FURTHER ORDERED that the optometrist license of Randall G. Melchert, Respondent, shall be SUSPENDED for a period of two (2) weeks commencing MARCH 13, 1988 and continuing through MARCH 26, 1988. During the suspension, the Respondent may not practice optometry and may not advise any person or function as a consult in the practice of optometry.

IT IS FURTHER ORDERED that effective the date of this order:

- (a.) The Respondent must post a conspicuous sign in his office waiting room which states: "Under Wisconsin law, an optometrist may neither dispense nor prescribe medications to his patients."
- (b.) The Respondent must remove all medications and drugs from his business premises, and may not keep any medications or drugs on said premises except Diagnostic Pharmaceutical Agents authorized pursuant to Wis. Stats. sec. 449.17 and Wis. Adm. Code Chap. RL 10, and except any medications specifically authorized by law for optometric practice.
- (c.) By December 31, 1988 Respondent shall take and pass the Law and Ethics section of the Wisconsin Optometry licensure examination.
- (d.) For a period of two (2) years, the Respondent shall submit written quarterly reports to the Optometry Examining Board verifying that he has neither dispensed nor prescribed medications to his patients. Respondent shall also verify in these quarterly reports that he is in compliance with all current Wisconsin Statutes and Rules on the practice of optometry. Respondent shall also indicate in said report, when appropriate, the date(s) on which he took/passed the required examinations. All required reports shall be due on the following dates: MAY 15, 1988; AUGUST 15, 1988; NOVEMBER 15, 1988; FEBRUARY 15, 1989; MAY 15, 1989; AUGUST 15, 1989; NOVEMBER 15, 1989; FEBRUARY 15, 1990.
- (e.) Upon successful compliance for a period of one (1) year with the provisions of paragraph (e), the Respondent may petition the Board, to revise, modify, or eliminate any of the above conditions, so long as such change is not in violation of the requirements of law. The Wisconsin Optometry Examining Board may deny Respondent's petition or make modifications upon terms and conditions outlined by the Board. The decision regarding such a



petition will be in the sole discretion of the Wisconsin Optometry Examining Board. If the Board withholds approval of a petition offered under this section, it shall not be considered a denial of license within the meaning of Wis. Stats. sec. 227.01(3)(a), and shall not entitle Respondent to a hearing on the Board's decision not to allow a change in conditions.

(f.) Violation of any of the terms of this Order may result in the summary suspension of the Respondent's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline.

(g.) This Order shall become effective on the dates specified, except for provisions (a) and (b), which are effective the date of signing.

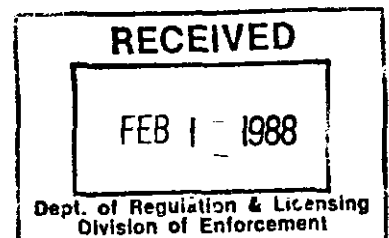
OPTOMETRY EXAMINING BOARD

By:

[Signature]
A Member of the Board

Feb. 12, 1988
Date

SS:cld
120-205



STATE OF WISCONSIN
BEFORE THE OPTOMETRY EXAMINING BOARD

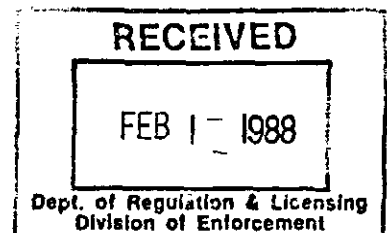
IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

RANDALL G. MELCHERT, O.D.,
RESPONDENT.

STIPULATION

It is hereby stipulated and agreed, by and between, Randall G. Melchert O.D., Respondent; John McLario, Attorney for Respondent; Sherry Steffel, Attorney for Complainant, Wisconsin Department of Regulation and Licensing, Division of Enforcement; and the Wisconsin Optometry Examining Board, as follows:

1. That Randall G. Melchert, O.D., Respondent herein, date of birth December 3, 1952, 12345 West Capitol Drive, Wauwatosa, Wisconsin 53222, is duly licensed as an optometrist in the State of Wisconsin pursuant to license #1634, which was granted August 12, 1978.
2. That a Complaint consisting of one count was filed against Thomas G. Melchert, O.D., Respondent herein, on August 19, 1987, and was duly served upon Respondent on or about August 20, 1987.
3. That Respondent has read the Complaint and understands the nature of the allegations against him.
4. That Respondent is aware of and understands each of the Respondent's rights, including the right to a hearing on the allegations against him at which time the State has the burden of proving these allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him, the right to call witnesses in his behalf, and to compel their attendance by a subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other rights afforded the Respondent under the United States Constitution, the Wisconsin Constitution and the Wisconsin Statutes and Wisconsin Administrative Code.
5. That Respondent freely, voluntarily and knowingly waives each and every one of the rights set forth in paragraph 4 above.
6. That Respondent, Randall G. Melchert, admits all of the allegations of the Complaint as amended by this Stipulation and the Findings of Fact of



the Final Decision and Order, withdraws his Answer to the Complaint, and consents to the entry of the attached Final Decision and Order.

7. That the Department of Regulation and Licensing, Division of Enforcement, recommends that the Wisconsin Optometry Examining Board accept the Stipulation and issue the attached Findings of Fact, Conclusions of Law and Order. All parties agree that counsel for Respondent, counsel for Complainant and the Board Advisor assigned to this matter may appear before the Optometry Examining Board to argue on behalf of acceptance of this Stipulation.

8. That pursuant to sec. 227.44(5), Wis. Stats., the Wisconsin Optometry Examining Board has jurisdiction over this matter, authority to enter into this Stipulation, and authority to issue the attached order.

9. That the Findings of Fact, Conclusions of Law and Order attached to this Stipulation may be made and entered by the Wisconsin Optometry Examining Board without further notice to any party.

10. In the event any portion of this Stipulation or Findings of Fact, Conclusions of Law or Order is not accepted by the Wisconsin Optometry Examining Board, the entire Stipulation and Findings of Fact, Conclusions of Law and Order shall be void and have no effect.

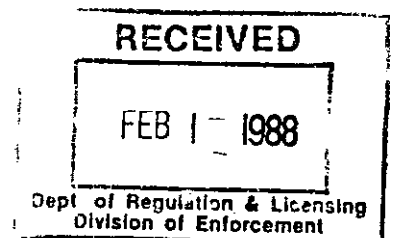
11. That this Stipulation may be submitted directly to the Wisconsin Optometry Examining Board and need not be submitted to Wayne Austin, the hearing examiner appointed in this matter.

12. That this agreement in no way prejudices the Optometry Examining Board in any further action against Respondent based on any acts not alleged in the present Complaint which might be violative of the Wisconsin Optometry Examining Board Statutes and Rules.

13. If this Stipulation is adopted by the Wisconsin Optometry Examining Board, the attached Order shall become effective as stated in the order.

14. Violation of any of the conditions specified in the Order constitutes a basis for disciplinary action by the Optometry Examining Board, and may constitute grounds for further suspension or revocation of Dr. Melchert's license to practice optometry in the State of Wisconsin.

15. The Respondent acknowledges that the Board has the authority and power to enforce the provisions of Chapter 449, Wisconsin Statutes and Chapters Opt 1-11, Wis. Adm. Code. Pursuant to that authority, the Board, or a representative of the Board, may at any time inspect the offices and records of an optometrist during regular office hours. The



Board also may or may not avail itself of its right to authorize undercover investigation to verify compliance with Board orders and Wisconsin Statutes and Rules.

January 28, 1988
Date

Randall G. Melchert O.D.
Randall G. Melchert, O.D., Respondent

Jan 28, 1988
Date

John McLario
John McLario, Attorney
Attorney for Respondent

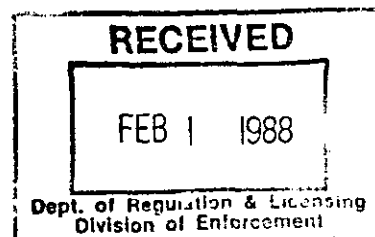
January 26, 1988
Date

Sherry Steffel
Sherry Steffel, Attorney for Complainant
Department of Regulation and Licensing
Division of Enforcement

Feb. 12, 1988
Date

Lois B. Glavin, O.D.
A Member of the Board

SS:cld
2562



NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Optometry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Optometry Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Optometry Examining Board.

The date of mailing of this decision is February 15, 1988.

WLD:dms
886-490