

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE OPTOMETRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : FINAL DECISION AND ORDER
 MARK KONYN, O.D., : LS0706141OPT
 RESPONDENT. :
 :

[Division of Enforcement Case # 06 OPT 014]

The parties to this action for the purposes of Wis. Stat. § 227.53:

Mark Konyn, O.D.
815 N. Cass Street
Milwaukee, WI 53202

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Optometry Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Optometry Examining 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. Mark Konyn, O.D., Respondent, date of birth April 4, 1959, is licensed and currently registered by the Wisconsin Optometry Examining Board (Board) as an optometrist in the state of Wisconsin pursuant to license number 2088 which was first granted July 13, 1985. Pursuant to Wis. Stat. § 449.18, the Board has also issued Respondent a TPA certificate which allows him to use therapeutic pharmaceutical agents.

2. Respondent's last address reported to the Department of Regulation and Licensing is 815 N. Cass Street Milwaukee, WI 53202.

3. Each person licensed to practice as an optometrist in the state of Wisconsin, who wished to legally practice optometry in Wisconsin during the 2006-2007 biennium, was required to renew his or her certificate of registration by January 1, 2006. [Wis. Stats. §§ 440.08(2)(a)54., and 449.06.]

4. An optometrist holding a TPA certificate who also wished to renew the TPA certificate for the 2006-2007 biennium was required to complete 30 hours of approved continuing education relating to diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye, including 7 hours in the diagnosis and management of glaucoma and 2 hours in the responsible use of controlled substances, during January 1, 2004 through December 31, 2005. [Wis. Adm. Code § Opt 6.04]

Renewal of TPA Certificate for 2004-2005 Biennium

5. Respondent renewed his certificate of registration and his TPA certificate for the 2004-2005 biennium by completing and signing a renewal form that was sent to him by the Department of Regulation and Licensing (Department). The renewal form contained the following language, immediately above the line which Respondent was to date and sign:

“As a holder of a TPA/DPA Certificate I have completed the required number of hours of continuing education credits per Wisconsin Administrative Code Opt 6.04 and/or RL 10.02(1)(a) during the period beginning January 1, 2002 and ending December 31, 2003, and I have or will have evidence of this which I will furnish to the Optometry Examining Board upon request.”

6. In April 2004, the Board randomly audited whether Respondent had complied with the continuing education requirements during January 1, 2002 through December 31, 2003.

In response to the audit, Respondent was unable to locate and provide documentation of any continuing education programs he completed during the 2002-2003 period.

Rather than disciplining Respondent for this violation, the Board allowed Respondent to complete 30 hours of continuing education during 2004-2005 which were then applied to meet the Board's requirements for education which was to have been obtained during the 2002-2003 biennium.

Respondent was informed that he would not be allowed to apply those hours again toward satisfaction of the continuing education required to be obtained during the 2004-2005 period.

Respondent was also informed that he would be audited again if he sought to renew his TPA certificate for the 2006-2007 biennium.

Renewal of TPA Certificate for 2006-2007 Biennium

7. Respondent renewed his certificate of registration and his TPA certificate for the 2006-2007 biennium by completing and signing a renewal form that was sent to him by the Department. That renewal form contained the following language, immediately above the line which Respondent was to date and sign:

“As a holder of a TPA/DPA Certificate I have completed the required number of hours of continuing education credits per Wisconsin Administrative Code Opt 6.04 and/or RL 10.02(1)(a) during the period beginning January 1, 2004 and ending December 31, 2005, and I have or will have evidence of this which I will furnish to the Optometry Examining Board upon request.”

8. On July 14, 2006, at the request of the Board, the Department sent an audit letter to Respondent requesting him to send the Board verification that he had completed the 30 hours of board-approved continuing education, which he had claimed to have completed prior to renewing his certificate of registration for the 2006-2007 biennium.

9. In response to this audit, Respondent submitted documentation of the continuing education programs he completed during the 2004-2005 period. Although not allowed to do so, Respondent attempted to apply the same hours of continuing education completed in 2004-2005 which the Board had allowed him apply to meet the 2002-2003 requirements. During 2004-2005, Respondent only completed 17.5 hours of board-approved continuing education, including 4.5 hours in the diagnosis and management of glaucoma and 1.5 hours in the responsible use of controlled substances, which could be counted toward the requirement.

10. On December 22, 2006, the Division of Enforcement (DOE) sent a letter to Respondent notifying him of his non-compliance with the Board's continuing education requirements and informing him that to comply with the Board's requirements, he must submit documentation of having completed an additional 12.5 hours of board-approved continuing education, including evidence of having obtained 2.5 hours in the diagnosis and management of glaucoma and .5 hour in the responsible use of controlled substances. The letter also notified Respondent he was not allowed to use therapeutic pharmaceuticals until he had met this requirement.

11. Respondent submitted documentation of having obtained an additional 13.5 hours of board-approved continuing education during 2006-2007, including sufficient hours in the diagnosis and management of glaucoma and in the responsible use of controlled substances, by completing:

Optometric Fall Conference 2006 (7.5 hours), sponsored by Eye Care Specialists – November 5,

2006

The Aging Eye: Prevention, Management, and Remediation of age-related diseases – COPE ID: 16553-GO (3 hours), sponsored by Pacific University – March 6, 2007

A Review of Low Vision Rehabilitation – COPE ID: 15911-LV (3 hours), sponsored by Pacific University – March 6, 2007

12. Respondent completed an additional 13.5 hours of board-approved continuing education after December 31, 2005, of which 12.5 hours were counted toward fulfilling the continuing education requirements for the 2004-2005 biennium. **RESPONDENT SHALL NOT COUNT THOSE 12.5 HOURS TOWARD THE 30 HOURS HE WILL BE REQUIRED TO OBTAIN DURING THE CURRENT BIENNIUM.**

13. Respondent did not complete a total of 30 hours of board-approved continuing education prior to renewing his TPA certificate, and therefore failed to comply with the continuing education requirements.

CONCLUSIONS OF LAW

1. The Wisconsin Optometry Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 449.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. By having obtained only 17.5 hours of board-approved continuing education required by Wis. Adm. Code § OPT 6.04 and having certified on his renewal application for his TPA certificate for the 2006-2007 biennium that he had obtained the required 30 hours, Respondent received his TPA certificate by error or fraud and is subject to discipline pursuant to Wis. Stat. § 449.07(1)(a).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Mark Konyn, O.D., is hereby REPRIMANDED for his conduct.
2. Respondent is prohibited from applying 12.5 of the 13.5 hours received for completion of the programs identified in Finding of Fact 11, above, toward satisfaction of the continuing education required to be obtained during the period January 1, 2006 through December 14, 2007.
3. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$300.00 pursuant to Wis. Stat. § 440.22(2).
4. Payment shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817
5. In the event Respondent fails to pay costs as ordered, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order.
6. This Order is effective on the date of its signing.

By: Swaminat Balachandran
A Member of the Board

6/14/07

Date

STATE OF WISCONSIN
BEFORE THE OPTOMETRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : STIPULATION
MARK KONYN, O.D., : LS _____ OPT
RESPONDENT. :

[Division of Enforcement Case # 06 OPT 014]

It is hereby stipulated and agreed, by and between Mark Konyn, O.D., Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (file 06 OPT 014). Respondent consents to the resolution of this matter by stipulation and without a hearing.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by 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 applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Mark Konyn, O.D.

Date

Respondent
815 N. Cass Street
Milwaukee, WI 53202

John R. Zwieg
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date