

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
ROBERT N. EMERY, O.D.,	:	LS0906111OPT
RESPONDENT.	:	

[Division of Enforcement Case #'s 06 OPT 008 & 07 OPT 012]

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

Robert N. Emery, O.D.
1813 S. Highland Avenue
Sparta, WI 54656

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. Robert N. Emery, O.D., Respondent, date of birth June 11, 1949, is licensed and currently registered by the Wisconsin Optometry Examining Board as an optometrist in the state of Wisconsin pursuant to license number 1577, which was first granted August 6, 1977.
2. Respondent’s last address reported to the Department of Regulation and Licensing is 1813 S. Highland Avenue, Sparta, WI 54656.
3. At the time of the events set out below, Respondent was employed as an optometrist at Tomah Veteran’s Administration Medical Center in Tomah, Wisconsin.

COUNT ONE

4. On October 16, 2000, Mr. A (DOB 6/11/49) saw Respondent because he had been experiencing distorted vision in his left eye over the past couple of weeks. Mr. A was diabetic and had a previous history of a retinal bleed in his left eye. Respondent observed a significant retinal bleed between the optic nerve and the macula.

5. Instead of referring Mr. A to an ophthalmologist specializing in retina care, Respondent sent a note to Mr. A's primary care practitioner, a physician's assistant, asking him to see Mr. A before his scheduled appointment for the purpose of correcting the underlying systemic health conditions. Respondent encouraged Mr. A to return to the clinic if he has any changes in his vision.

6. In response to the Division's inquiry, Respondent explained that he thought the vision issue was a symptom that would be relieved if Mr. A's uncontrolled diabetes had been addressed.

7. Mr. A subsequently lost central vision in his left eye from subretinal neovascular disease.

8. Respondent, by failing to refer Mr. A to an ophthalmologist for follow-up, engaged in conduct which constituted a substantial danger to the health, welfare, or safety of a patient.

COUNT TWO

9. On three occasions between July and October 2004, Respondent saw patients who had or were at risk for insulin-dependent diabetes mellitus with background retinopathy. Respondent failed to perform and/or to appropriately schedule the patients for follow-up dilated funduscopy examinations (DFE).

10. Minimal standards of care in the profession of optometry require that patients who have or who are at risk for insulin-dependent diabetes mellitus with background retinopathy undergo complete examinations, including dilated funduscopy examinations at least annually, and/or when their condition appears to have changed.

COUNT THREE

11. On September 1, 2004, Respondent saw a patient who was suspected to have glaucoma. Respondent did not perform an intraocular pressure test because the patient was squinting, and therefore failed to diagnose the patient's ocular hypertension.

12. Minimal standards of care in the profession of optometry require that patients suspected of having glaucoma undergo a complete examination, including testing of intraocular pressure, even if a patient is squinting.

COUNT FOUR

13. On August 31, 2004, Respondent saw a patient and noted that the patient had undergone an DFE at another clinic on May 14, 2004. Respondent did not document the result of the DFE, nor did Respondent document any needed follow-up. The patient's records do not indicate that any DFE was conducted between January 2004 and January 2005.

14. The minimum standard of care in the field of optometry required Respondent to follow-up by either obtaining a record of the patient's DFE or rescheduling an appointment so the DFE could be conducted within a few weeks.

COUNT FIVE

15. On June 27, 2001, Respondent saw a patient with corrected visual acuity of 20/40 and 20/40. On August 17, 2004, Respondent saw the patient again and the patient's corrected visual acuity was 20/50 and 20/80. Respondent did not provide any diagnosis or otherwise explain the decline in the patient's visual acuity.

16. The minimal standard of care in the field of optometry required that Respondent diagnose or otherwise explain the patient's decline and/or provide a case plan to do so.

COUNT SIX

17. On August 9, 2004, Respondent saw a patient who had previously been diagnosed with insulin-dependent diabetes mellitus with background retinopathy. Respondent did not perform an DFE, but noted, "retinopathy seems to be

gone.” Respondent then wrote a treatment plan requiring monitoring in six months with an DFE. On October 25, 2004, the patient was seen by another optometrist who performed DFE and observed that the patient still had insulin-dependent diabetes mellitus with background retinopathy.

18. Minimal standards of care in the profession of optometry required a complete examination, including DFE, in a patient with insulin-dependent diabetes mellitus with background retinopathy, particularly if the patient’s condition seems to have changed.

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. Respondent, by engaging in the conduct set out above, has committed unprofessional conduct as defined by Wis. Adm. Code § Opt 5.15(1), and is subject to discipline pursuant to Wis. Stat. § 449.07(1)(f).

3. Respondent, by engaging in the conduct set out above, has committed unprofessional conduct as defined by Wis. Adm. Code § Opt 5.15(2), and is subject to discipline pursuant to Wis. Stat. § 449.07(1)(f).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Robert N. Emery, O.D., is hereby REPRIMANDED for his conduct.

2. Respondent’s license is LIMITED as follows:

a. Within 180 days of the date of this Order, Respondent shall provide proof sufficient to the Board, or its designee, of Respondent’s satisfactory completion of a total of four (4) hours of continuing education in the care and management of patients with diabetes, including evaluation of the retina, which course(s) shall first be approved by the Board, or its designee.

b. Upon Respondent providing proof sufficient to the Board, or its designee, that he has completed the education, the Board shall issue an Order removing this limitation of Respondent’s license.

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 \$1,160.00 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 Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

5. In the event that Respondent fails to pay costs as ordered or fails to comply with the ordered continuing education, Respondent’s license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

6. This Order is effective on the date of its signing.

By: Gregory Foster
A Member of the Board

6/11/09
Date

STATE OF WISCONSIN
BEFORE THE OPTOMETRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : STIPULATION
ROBERT N. EMERY, O.D., : LS _____ OPT
RESPONDENT. :

[Division of Enforcement Case #'s 06 OPT 008 & 07 OPT 012]

It is hereby stipulated and agreed, by and between Robert N. Emery, O.D., Respondent; Jessica T. Kirchner o Birnbaum, Seymour, Kirchner & Birnbaum LLP, attorneys for Respondent; and Sandra L. Nowack, attorney for th Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of pending investigations of Respondent's licensure by the Division o Enforcement (files 06 OPT 008 & 07 OPT 012). 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 preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses o his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any propose decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition fo rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, th Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has obtained 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 th Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or conser 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 o this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that thi 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 close session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement an 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 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 th attached Final Decision and Order.

Robert N. Emery, O.D.
Respondent
1813 S. Highland Avenue
Sparta, WI 54656

Date

Jessica T. Kirchner
Birnbaum, Seymour, Kirchner & Birnbaum LLP
Attorneys for Respondent
P.O Box 308
LaCrosse, WI 54602-0308

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date