

STATE OF FLORIDA  
BOARD OF OPTOMETRY

Final Order No. DOH-19-1239- FOF-MQA

FILED DATE - AUG 05 2019

Department of Health

By: [Signature]  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

ALBERT C. EVANS, O.D.

Respondent.

DOH CASE NO.: 2012-15585  
DOAH CASE NO.: 18-006323 PL  
LICENSE NO.: OPC 1738

2019 AUG -8 PM 1:22

DEPARTMENT OF HEALTH  
ADMINISTRATIVE HEARINGS

FILED

**FINAL ORDER**

THIS CAUSE came before the Board of Optometry ("Board") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on July 17, 2019, in Orlando, Florida, for consideration of the Recommended Order ("RO") entered in this case by ELIZABETH W. MCARTHUR, Administrative Law Judge ("ALJ"). Petitioner was represented by Kimberly Marshall, Assistant General Counsel, and Chad Dunn, Assistant General Counsel. Respondent was present and represented by his counsel of record, William Gus Belcher, Esquire. Copies of the RO, Respondent's Exceptions to the RO, and Petitioner's Response to Respondent's Exceptions to the RO are attached hereto as Exhibits A, B, and C, respectively, in the above-styled cause.

Upon review of the Recommended Order, the written argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

**RULING ON EXCEPTIONS**

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and ruled as follows:

**Exception No. 1:** Respondent filed an exception to Paragraphs 62 and 63 of the Recommended Order. Counsel for Respondent contends that the First Amended Complaint did

not provide sufficient notice that the allegation of the published advertisement for a "Free Eye Exam for Glasses" included as a core issue consideration that "the advertisement created the false impression that a patient could obtain a free prescription for eyeglasses." Counsel for Petitioner responded that the First Administrative Complaint "plainly" afforded Respondent reasonable notice regarding the patient, the advertisement, and the conduct warranting disciplinary action. The Board reviewed and considered Respondent's exception to Paragraphs 62 and 63 and rejected the exception for the reasons stated by counsel for Petitioner and contained in Petitioner's Response.

**Exception No. 2:** Respondent filed an exception to Paragraph 22 and Endnote 3 of the Recommended Order. Counsel for Respondent objects to the ALJ's determination that there is "no persuasive credible evidence" that the patient was informed of a dilation fee before the dilation drops were administered and, accordingly, requests that the Board reconsider the ALJ's credibility determination. Counsel for Petitioner responded, pursuant to case law precedence, that the Board does not have the ability to re-weigh or judge the credibility of the witnesses. The Board reviewed and considered Respondent's exception to Paragraph 22 and Endnote 3 and rejected the exception for the reasons set forth in Petitioner's Responses to Respondent's Exceptions to the Recommended Order.

**Exception No. 3:** Respondent filed an exception to Paragraphs 49, 51, and 52 of the Recommended Order. Counsel for Respondent objects to the findings of fact regarding Respondent's decision to bill patient's insurance using the code 92019, denoting a limited examination under general anesthesia, as "willful." The Board reviewed and considered Respondent's exception to Paragraphs 49, 51, and 52 and rejected the exception, because the findings set forth therein were supported by competent substantial evidence as identified in the reasons set forth in Petitioner's Responses to Respondent's Exceptions to the Recommended Order.

**FINDINGS OF FACT**

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence in the record to support the findings of fact.

**CONCLUSIONS OF LAW**

3. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 463 Florida Statutes.
4. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

**PENALTY**

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED, AS MODIFIED HEREIN.

**WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:**

5. **Probation** - Respondent's license to practice optometry in the State of Florida is hereby placed on probation for a period of two (2) years effective the filing of this Final Order.
6. **Laws and Rules Examination** - During the two-year probationary period, Respondent is required to test and pass the Laws and Rules portion of the national board examination regarding Florida laws and rules governing the practice of optometry.
7. **Affidavit Regarding Billing Plans** - During probation, Respondent is required to submit an affidavit to the Department of Health ("Department") within 90 days of the filing of this Final Order, identifying the billing plans that he is utilizing in his practice at the time of submission. In the affidavit, for each plan, Respondent shall:
  - State that he has reviewed the billing manuals for each insurance plan that he uses;
  - Confirm that he fully understands the information in each plan;

- Identify the procedure for which he bills; and
- Confirm that his billings are compliant with the manuals for each plan.

Respondent shall also submit a supplemental affidavit to the Department within thirty (30) days of any changes to his plan usage.

8. **Audit Results** – During probation, Respondent shall submit to the Department any request for audits from vision plans within thirty (30) days of receiving the request and shall submit to the Department all audit results within thirty (30) days after receipt of the result.

9. **Advertising** – During probation, Respondent shall submit to the Department a copy of any advertising literature that he publishes regarding his practice. If the Respondent does not utilize any advertising in his practice, the Respondent shall submit a statement reflecting that he is not utilizing any advertising regarding his practice.

10. **Fine** – Respondent is assessed an administrative fine in the amount of six thousand dollars (\$6,000.00) to be paid in full within six (6) months of the filing of this Final Order, and the first payment is due within thirty (30) days of the filing of the Final Order. Payment of the fine shall be made to the Board of Optometry and mailed to: DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Optometry.

11. **Personal Appearance** – Respondent shall appear before the board at the end of the probationary period for review of the terms of his probation and determination of compliance prior to board clearance.

#### **RULING ON MOTION TO ASSESS COSTS**

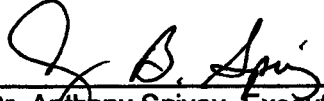
The Board, pursuant to the Settlement Agreement as entered into by both parties, reviewed Petitioner's Motion to Assess Costs, grants the Motion, and imposes the costs associated with the investigation and prosecution of this case in the amount of twenty thousand dollars (\$20,000.00) to be paid at least in equal monthly installments within six (6) years from the filing date of this Final Order, with the first payment due within thirty (30) days of the filing of this Final Order. Payment of the costs shall be made to the Board of Optometry and mailed to:

DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Optometry. The record contained no objection to the Petitioner's Motion to Assess Costs or the Settlement Agreement for Costs, a copy of each attached and incorporated by reference as composite Exhibit D.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 31<sup>st</sup> day of July, 2019.

**BOARD OF OPTOMETRY**

  
\_\_\_\_\_  
Dr. Anthony Spivey, Executive Director  
on behalf of Stuart Kaplan, O.D., CHAIR

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF THE FILING DATE OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

<sup>(KM)</sup> I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified U.S. Mail to: Elizabeth W. McArthur, Administrative Law Judge, Department of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; Albert C. Evans, O.D., P.O. Box 150026, Cape Coral, Florida 33915 and by electronic mail to: William Gus Belcher, Esq., Counsel for Respondent, [lawoffice@belcherepstein.com](mailto:lawoffice@belcherepstein.com) ; Kimberly Marshall, Assistant General Counsel, Department of Health, [Kimberly.Marshall@flhealth.gov](mailto:Kimberly.Marshall@flhealth.gov); Chad Dunn, Assistant General Counsel, Department of Health, [Chad.Dunn@flhealth.gov](mailto:Chad.Dunn@flhealth.gov); Rachele Munson, Assistant Attorney General, Office of the Attorney General, [Rachele.Munson@myfloridalegal.com](mailto:Rachele.Munson@myfloridalegal.com), on August 5, 2019.

*Angel Sanders*

Deputy Agency Clerk