

**BEFORE THE BOARD OF EXAMINERS IN OPTOMETRY
STATE OF KANSAS**

In the Matter of

**Vincent Pennipede, O.D.
Kansas License No. 1227-3**

Case No. 2009-03

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Board of Examiners in Optometry (the "Board") and Vincent Pennipede, O.D. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Douglas DeZube of DeZube Miller, LLC, 440 West 109th Street, Third Floor, Overland Park, KS 66211.

2. The Board is a Kansas administrative agency vested with the authority, pursuant to K.S.A. 74-1501 and K.S.A. 74-1504, to carry out and enforce the provisions of the Kansas Optometry Act, K.S.A. 65-1501 *et seq.*, including conducting hearings and proceedings to revoke, suspend, or otherwise discipline a Kansas license to practice optometry.

3. The Respondent is presently entitled to engage in the practice of optometry in the State of Kansas by reason of the Board having issued him Kansas license number 1227-3. At all times relevant hereto, the Respondent has held a current license to engage in the practice of optometry in the State of Kansas, and is a "Licensee" as that term is defined by K.S.A. 65-1501a(c) and K.A.R. 65-4-1(i).

4. The Board has received certain information, has investigated, and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Optometry Act, K.S.A. 65-1501 *et seq.*

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that:

A. On more than one occasion, Respondent prescribed for himself and for his family members drugs that are unrelated to the practice of optometry.

6. The Board hereby finds and concludes that Respondent's conduct, as described above is grounds for disciplinary action in the State of Kansas, pursuant to K.S.A. 65-1517(b) as defined in K.S.A. 65-1516(b)(13) by prescribing, dispensing, administering, distributing a prescription drug or substances, in an excessive, improper or inappropriate manner or quantity or not in the course of the Respondent's professional practice.

7. The Board hereby finds and the Respondent hereby agrees that the following disposition is just and appropriate under the circumstances:

A. FINE. Respondent hereby agrees and consents to the Board entering an order requiring that the Respondent, within ten (10) days of the date of the Final Agency Order contemplated hereby, pay to the Board an administrative fine in the amount of Three Thousand Dollars (\$3,000.00).

B. OTHER REQUIREMENTS. Respondent hereby acknowledges and agrees that as a condition of this Stipulation and Final Agency Order, he must:

1. Comply fully with this Stipulation and Final Agency Order; and
2. Comply fully with the Kansas Optometry Act, the Board's rules and regulations and all state and federal laws relating to Kansas optometrists.

8. Respondent hereby agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation, which led to this disciplinary action, and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

9. The stipulations contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. The Respondent further agrees that the Kansas Optometry Act, K.S.A. 65-1501 *et seq.*, is constitutional on its face and as applied in this case.

11. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

12. The Respondent acknowledges that he has the following rights:

- A. To have formal notice of charges served upon him;
- B. To file a response to the charges;
- C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and
- D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act For Judicial Review and Civil Enforcement of Agency Action.

13. The Respondent freely waives these foregoing rights and acknowledges that the said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against him to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

14. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing or after having had the opportunity to do so. The Respondent further acknowledges that he has read this Stipulation and Final Agency order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

15. Time is of the essence to this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of an alleged violation of this

Stipulation and Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

16. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

17. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

18. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

19. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas, in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601, *et seq.*, and to serve such a petition for judicial review on the Kansas Board of Examiners in Optometry by serving Penny Bowie, Executive Officer at 3109 West 6th Street, Suite B, Lawrence, Kansas 66049. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:



Vincent Pennipede, O.D.

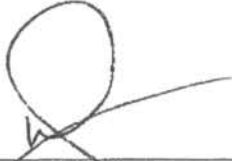
3 FEB 2010

Date



Douglas Ayre, O.D.
President – Kansas Board of Examiners in
Optometry

4/29/10
Date



Douglas DeZube
DEZUBE MILLER, LLC
4400 West 109th Street, Third Floor,
Overland Park, KS 66211

Date



Randall J. Forbes, P.A. #09089
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
TEL: (785) 232-7266
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Attorney for Kansas Board of Examiners
In Optometry

2.15.10
Date

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STATE OF KANSAS

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FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Board of Examiners in Optometry (the "Board") hereby approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this the 29 day of April, 2010.

KANSAS BOARD OF EXAMINERS IN OPTOMETRY

By:



Douglas Ayre, O.D.
President


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, on this the 5th day of May, 2010, addressed to:

Randall J. Forbes
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603

Vincent Pennipede, O.D.
10120 West 119th Street
Overland Park, Kansas 66213

Douglas K. DeZube, Esq.
DeZube Miller, LLC
4400 West 109th Street, Third Floor
Overland Park, KS 66211


Penny Bowie
Executive Director

