

STATE OF MAINE
BOARD OF OPTOMETRY

In re:) CONSENT
Daniel Brooks, O.D.) AGREEMENT
Complaint No. OP06-01)

INTRODUCTION

This document is a Consent Agreement ("Consent Agreement") concerning the license of Daniel Brooks to practice as an optometrist in the State of Maine. The parties to the Consent Agreement are: Daniel Brooks ("Dr. Brooks"); the Maine State Board of Optometry ("Board"); and the State of Maine Department of Attorney General ("Attorney General"). The Consent Agreement is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 2431-A(2).

STATEMENT OF FACTS

1. Dr. Brooks is a licensed optometrist in the State of Maine.
2. On May 30, 2006, the Board received a complaint from [REDACTED] ("[REDACTED]") against Dr. Brooks' license ("Complaint"). The Complaint alleges, among other things, that Dr. Brooks failed to promptly release [REDACTED]'s patient record to [REDACTED] upon his request.
3. In the course of the investigation of the Complaint, the Board received and inspected copies of [REDACTED]'s patient records. The records documented that Dr. Brooks wrote a prescription for oral antibiotics covering a span of four weeks for [REDACTED]. In addition, the records did not contain a treatment plan, were unsigned and

undated and were unclear with respect to critical medical information such as what medications were actually prescribed to ██████████

4. Pursuant to 22 M.R.S.A. § 1711-B(2) of Maine State law, a medical provider may not withhold patient records based on nonpayment.

5. Pursuant to 32 M.R.S.A. § 2430(2)(A), an optometrist may write prescriptions for oral antibiotics not to exceed a ten-day supply.

6. Pursuant to 32 M.R.S.A. § 2417(3), the minimum standards for a competent professional eye examination include:

- A. A history of the patient's visual problems and care;
- B. A test of the acuity of each eye, uncorrected and with best correction;
- C. An examination for an abnormal condition or any significant characteristics of internal and external ocular tissues;
- D. Advice for medical treatment or referral, or both;
- E. Objective and subjective refraction of the eyes; and
- F. A cover test or muscle balance tests, or both.

7. Community standards governing the practice of optometry require documentation of each patient visit on a separate record each and every one of which is signed and dated.

8. Pursuant to 32 M.R.S.A. § 2431-A(2)(F), any violation of a standard of professional behavior is a ground for discipline by the board.

9. Pursuant to 32 M.R.S.A. § 2431-A(2)(H), any violation of the Board's law is a ground for discipline by the Board.

10. The parties have agreed to enter into the Consent Agreement in order to resolve this matter.

COVENANTS

In order to resolve fully the complaint against Dr. Brooks' optometrist license without further legal proceedings, it is agreed to among the parties that:

1. Dr. Brooks admits that he violated 32 M.R.S.A. § 2430(2)(A) by writing a prescription for oral antibiotics that exceeded the ten-day statutory limit;

2. Dr. Brooks admits that he committed unprofessional conduct by both failing to release the patient records upon request and maintaining deficient patient records;

3. Dr. Brooks agrees to accept a FORMAL REPRIMAND from the Board for the above violations;

4. Dr. Brooks agrees to pay a fine of Three Hundred Dollars (\$300.00) for the two violations of 32 M.R.S.A. § 2430(2)(A) and a fine of Two Hundred Dollars (\$200.00) for withholding patient records for a total fine of Five Hundred Dollars (\$500.00). Said fine is to be paid by **CERTIFIED CHECK OR MONEY ORDER** made payable to "Treasurer, State of Maine" and submitted at the time Dr. Brooks submits the signed Consent Agreement;

5. Dr. Brooks agrees to provide evidence of satisfactory completion of a course in patient recordkeeping no later than 365 days from the date he signs the Consent Agreement. The course must be a minimum of 2.0 credit hours and must be submitted to the Board 60 days in advance for its review and prior approval. The course must include basic recordkeeping instruction including such elements as the appropriate manner to

take a patient history, both medical and social/personal, as well as the proper recording of clinical findings and appropriate assessment and development of treatment plans.

All costs associated with the recordkeeping course are to be borne by Dr. Brooks, and this course will not be eligible for credit towards relicensure;

6. Dr. Brooks agrees to abide by all of the laws and rules of the Board in the future;

7. The Attorney General and the Board agree that no further agency or legal action will be taken against Dr. Brooks' license based on the facts described herein, except in the event that Dr. Brooks does not comply fully with the terms of the Consent Agreement. The Attorney General and the Board agree that no further agency or legal action will be taken against Dr. Brooks' license. Any violation of the Consent Agreement will be a ground for discipline by the Board;

8. The Consent Agreement is not subject to appeal;

9. The Consent Agreement is not subject to amendment except by written agreement of all parties;

10. The Consent Agreement is a public document within the meaning of 1 M.R.S.A. § 402, et seq.;


11. Dr. Brooks understands that the execution of this Consent Agreement is completely voluntary and that he has the right to consult with an attorney before signing the Consent Agreement; and

12. Dr. Brooks understands that his signature indicates that he has read and understands this Consent Agreement and that he enters into it of his own free will.

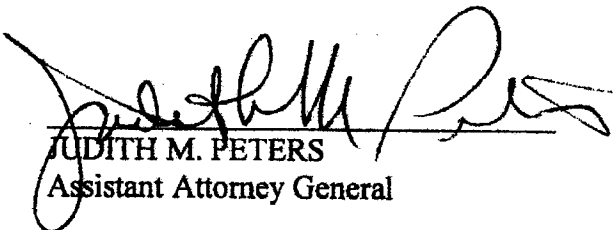
Dated: 2/20/07


DANIEL BROOKS, O.D.

Dated: 3/1/07


BRIAN DANIELS, O.D., President, *Acting*
Board of Optometry

Dated: 3/5/07


JUDITH M. PETERS
Assistant Attorney General

STATE OF MAINE
MAINE BOARD OF OPTOMETRY

In Re:
Leonard Shaw, O.D.

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DECISION AND ORDER

INTRODUCTION

Pursuant to 32 M.R.S.A. § 2431-A and 10 M.R.S.A. § 8003(5), the Maine Board of Optometry ("the Board") met in public session at the Department of Professional and Financial Regulation, 122 Northern Avenue, Gardiner, Maine on May 5, 2006, for an adjudicatory hearing in the matter of Leonard Shaw, O.D. Attending the hearing were board members Brian L. Daniels, O.D., J. David Heward, O.D., James P. Savage, O.D., and Nicole C. Shipp, O.D. For purposes of the adjudicatory hearing, Doctors Daniels, Heward, and Savage participated as the voting members of the Board. Dr. Shipp did not participate as a voting member in the decision but rather participated as the State's witness in her role of complaint officer.

The hearing arose as a result of an investigation of a complaint filed with the Board by ██████████ on August 8, 2005. Judith Peters, Assistant Attorney General, presented the State's case. Leonard Shaw, O.D., was present, without counsel, and presented his defense. Susan Sparaco, Assistant Attorney General, served as the Board's hearing officer.

The Board considered the State's Exhibits Numbers 1-12 and the testimony of Nicole Shipp, O.D., and Leonard Shaw, O.D. At the conclusion of the hearing, the Board

deliberated, and based on the preponderance of evidence, rendered the following decision.

FINDINGS OF FACT

Proper record keeping is an important and necessary component of patient care and an integral part of the practice of optometry. Dr. Shaw's records are deficient with respect to information regarding patient history; acuity; abnormal conditions or significant characteristics of internal and external ocular tissues; advice for medical treatment or referral; objective and subjective refraction of the eyes; and a cover test or muscle balance test or both. The above cited information is necessary to meet the minimum standards of a competent eye examination.

CONCLUSIONS OF LAW

1. Dr. Shaw's records fail to meet the requirements of 32 M.R.S.A. § 2417(3). A violation of 32 M.R.S.A. § 2417(3) is a ground for discipline under 32 M.R.S.A. § 2431-A(2)(H).
2. The deficiencies in Dr. Shaw's records reflect incompetence within the meaning of 32 M.R.S.A. § 2431-A(2)(E)(2).

DISCIPLINARY SANCTION

Based on the above findings of facts and conclusions of law, the Board voted unanimously to impose the following sanctions:

1. Leonard Shaw, O.D., is hereby **REPRIMANDED**. The Board is issuing a reprimand to impress upon Dr. Shaw and other practitioners that proper documentation and record keeping must be maintained as part of appropriate and safe patient care.

2. Dr. Shaw shall complete a 2.0 hour continuing education course in record keeping by August 1, 2007 as a condition of probation.

3. As a further condition of probation, to ascertain Dr. Shaw's progress in the area of record keeping, Dr. Shaw shall make his patient records available for inspection by a Board designee at a mutually agreeable time with a minimum 24 hours notice. This condition of probation will remain in effect until three (3) months after completion of the above-described continuing education course in record keeping.


COSTS

Pursuant to 10 M.R.S.A. § 8003-D, the Board voted unanimously to impose upon Dr. Shaw the costs, should they arise, for preparation of the administrative record.

SO ORDERED.

Dated:

5/15/2006


Brian L. Daniels, O.D., Acting Chair
Maine Board of Optometry

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. § 11001 and 10 M.R.S.A. § 8003(5), any party may appeal this Decision and Order by filing a Petition for Review in the Superior Court within thirty (30) days of the receipt of this Order. The Petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action in which they wish reviewed. This shall contain a concise statement as to the

nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the Maine Board of Optometry, all parties to the agencies proceedings, and the Maine Attorney General.