BEFORE THE BOARD OF OPTOMETRY

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:	)	
	)	
DONALD L. BADER,	)	Case No. OPT-S2B-02B-01-002
License No. ODP-920,	)	
	)	**STIPULATION AND**
Respondent.	)	**CONSENT ORDER**
	)	

Optometry\P1194lwa

WHEREAS, information having been received by the Idaho State Board of Optometry (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Donald L. Bader (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of optometry in the State of Idaho in accordance with title 54, chapter 15, Idaho Code.

2. Respondent Donald L. Bader is a licensee of the Idaho State Board of Optometry and holds License No. ODP-920 to practice optometry in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 15, Idaho Code.

3. On or about February 21, 2001, Respondent conducted an eye examination for Rhonda Nienburg. Respondent's records for Ms. Nienburg reflect that Ms. Nienburg had a history of migraine headaches and took Norco (hydrocodone bitartrate/APAP), a controlled substance, for the migraines.

4. Respondent's controlled substance registration with the Idaho Board of Pharmacy expired on March 3, 2000.

5. On or about March 8, 2001, Respondent signed and gave Ms. Nienburg a prescription for Norco, #25 with two refills.

6. On or about March 16, 2001, Respondent signed and gave Ms. Nienburg a prescription for Norco, #10 with two refills.

7. On or about March 17, 2001, Respondent signed and gave Ms. Nienburg a prescription for Norco, #25 with two refills.

8. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of optometry, specifically Idaho Code § 54-1510(4) and IDAPA 24.10.01.425.01 - ~~425.~~03. and - 425.10. Violations of these laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice optometry in the State of Idaho.

9. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his license as set forth in Section C below.

B.

I, Donald L. Bader, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice optometry in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of optometry in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of Five Hundred and No/100 Dollars ($500.00) within thirty (30) days of the entry of the Board's Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of Two Hundred Seventy and No/100 Dollars ($270.00) within sixty (60) days of the entry of the Board's Order.

3. Respondent's TPA certificate shall be suspended for one (1) year. The suspension shall be stayed provided Respondent complies with this Stipulation and provided Respondent complies with all laws and rules governing the practice of optometry. Should the Board find that Respondent has violated the terms of this Stipulation and/or the laws and rules governing the practice of optometry, the term of suspension shall be immediately imposed.

4. Should Respondent renew his controlled substance registration within five (5) years of the date the Board executes this Stipulation, Respondent shall provide copies of all records required by state and federal law to the Board upon its request.

5. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

6. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-1510. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based

upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337-50.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

> I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 15 day of AUGUST, 2001.

Donald L. Bader
Respondent

I concur in this stipulation and order.

DATED this 20 day of August, 2001.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Kirsten Wallace
Kirsten L. Wallace
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-1509, the foregoing is adopted as the decision of the Board of Optometry in this matter and shall be effective on the 1st day of Nov., 2001. **IT IS SO ORDERED.**

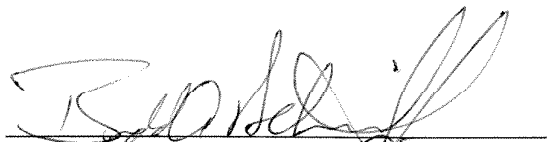
IDAHO STATE BOARD
OF OPTOMETRY

By James K. Dean OD
~~Kenneth W. King, Jr.~~, Chair
KW/ Dick Vester, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November, 2001, I caused to be served a true and correct copy of the foregoing by the following method to:

Donald L. Bader, O.D. 350 N. Milwaukee, #2153 Boise, ID 83788	☒ U.S. Mail ☐ Hand Delivery ☒ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☐ Statehouse Mail
Kirsten L. Wallace Deputy Attorney General P.O. Box 83720 Boise, ID 83720-0010	☐ U.S. Mail ☐ Hand Delivery ☐ Certified Mail, Return Receipt Requested ☐ Overnight Mail ☐ Facsimile: _____ ☒ Statehouse Mail



Budd Hetrick, Deputy Chief
Bureau of Occupational Licenses