

NORTH CAROLINA STATE BOARD OF EXAMINERS IN OPTOMETRY

IN THE MATTER OF
H.D. BOYLES, O.D.,

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND CONSENT ORDER**

Pursuant to that certain Notice issued on July 2, 2010, as amended, advising H.D. Boyles, O.D., of information received by the Board which, if substantiated, would be grounds for the Board to take disciplinary action against him, Dr. Boyles, through his counsel Shirley L. Fulton and James Wilson, requested that the Board convene a preliminary conference pursuant to 21 N.C.A.C. 42L .0008 for the purpose of exploring settlement possibilities. That prehearing conference took place on September 8, 2010, at 10:00 a.m. in the offices of the Board Special Counsel. In attendance at such conference were Dr. Boyles, his attorney Mr. Wilson, Board Member Dr. Andrew G. Cook, Jr., Board Executive Director Dr. John D. Robinson, and Johnny Loper, Special Counsel to the Board. Drs. Cook and Robinson and Mr. Loper constituted the Board Investigations Committee for this matter.

After information was exchanged by the parties and positions were defined and discussed, the parties agreed to submit to the Board for approval a consent order by which this matter would be disposed of without the need for further disciplinary proceedings. Accordingly, the Board enters the following Findings of Fact and Conclusions of Law, and the Board and Dr. Boyles enter this Consent Order (collectively referred to hereafter as the Consent Order).

FINDINGS OF FACT

1. Dr. Boyles is an optometrist licensed by the Board to practice optometry within the State of North Carolina. Dr. Boyles holds license number 700, and he has been licensed and in good standing with this Board since July 28, 1955.

2. The Board received information from Mr. and Mrs. Walter Vann Howard, through the Board's own investigation, and through information received from the North Carolina Opticians Board regarding Dr. Boyles' former practice location at 2430 South Church Street in Burlington, North Carolina. The information received tends to indicate that Dr. Boyles' practice operated for a period of time under the name "America's Best Vision Center"; that Dr. Boyles accepted compensation from a person, John Marsh (also known as Tony Marsh), who was not a licensed optometrist, in return for providing optometric services to individuals who previously were not patients of the practice; that Dr. Boyles was paid the amount of \$400 per day whether or not he saw any patients; that Dr. Boyles paid no rent or lease on the premises on which he conducted his practice; that America's Best Vision Center optical dispensary provided the equipment with which Dr. Boyles carried on his practice, and that Dr. Boyle paid nothing for the use of that equipment; that Dr. Boyles' practice name did not comply with the Board's statutory or regulatory requirements in this regard; that Dr. Boyles engaged in advertising practices that violated Board statutes or rules; that Dr. Boyles intentionally misled an investigator from the North Carolina Opticians Board investigating the optical dispensary co-located with Dr. Boyles' practice (the optical dispensary did business under the name America's Best Vision Center for a time, then did business under the name Premiere Family Vision Center); and that Dr. Boyles improperly terminated his practice.

3. Based on this information, the Board issued an Notice on July 2, 2010 and an Amended Notice on July 8, 2010 (copy of the Amended Notice is attached as **Exhibit A**) setting a disciplinary hearing for September 29, 2010. Pursuant to the terms of the Notice, Dr. Boyles, through his counsel, requested a prehearing conference with the Board. That prehearing conference took place on September 8, 2010.

4. Dr. Boyles is an optometrist licensed by the Board to practice optometry within the State of North Carolina. Dr. Boyles holds license number 700, and he has been licensed and in good standing with the Board since July 28, 1955. This is the first investigation of Dr. Boyles since the issuance of his license.

5. A copy of a letter from Walter Vann Howard and Jessie Howard dated April 28, 2010 was received by the Board and treated as a complaint against Dr. Boyles. The Board opened an investigation of Dr. Boyles and his practice shortly after that time.

6. As a result of the Board's investigation, the Board sent letters dated April 12, 2010, April 30, 2010, and May 28, 2010 to Dr. Boyles; Dr. Boyles' counsel responded with letters dated May 1 and May 30, 2010.

7. By virtue of the exchange of letters referred to in the previous paragraph and the conversations with Dr. Boyles at the prehearing conference, it was established that Dr. Boyles did not have an ownership interest in America's Best Vision Center. Rather, Dr. Boyles was compensated at the rate of \$400 per day by America's Best Vision Center for providing optometric services to patients referred to Dr. Boyles by America's Best Vision Center and John Marsh. Dr. Boyles did not own or lease the equipment located at America's Best Vision Center, nor did Dr. Boyles pay rent for or have a lease on the premises.

8. John Marsh, the owner and operator of America's Best Vision Center/Premier Family Vision Center, is not licensed by the North Carolina State Board of Examiners in Optometry or by the North Carolina Optician's Board.

9. During the time Dr. Boyles was in practice as America's Best Vision Center, he reviewed advertisements disseminated by the co-located optical dispensary owned by John Marsh of the type appearing at **Exhibit G**. The language of limitation in such ad ("some restrictions apply") was used by Dr. Boyles office and the optical dispensary to exclude certain common types of lenses from the "special" (e.g., bifocal or other multi-focal lenses)..

10. On or about June 1, 2010, Dr. Boyles ceased practicing at 2430 South Church Street in Burlington, North Carolina. Neither prior to ceasing practice nor immediately after doing so did Dr. Boyles provide notification to his patients of the closing of his practice or how patients could obtain their patient records.

11. Neither prior to nor immediately after ceasing practice did Dr. Boyles secure his patient records for safekeeping. His failure to do so immediately can be attributed to his lack of free and open access to the facility in which he carried on his practice. He has, since then, secured the records.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Dr. Boyles for the purpose of requiring compliance with North Carolina General Statutes and Board Rules regulating the practice of optometry within the state of North Carolina.

2. Dr. Boyles' ignorance of the requirements of North Carolina law and the rules of this Board and his failure to inquire about what such laws and regulations required or to timely seek legal counsel in this regard contributed to his violation such statutes and rules. Ignorance or

failure to determine his duties and obligations under such statutes and rules does not excuse his failure to comply with such statutes and rules.

3. Dr. Boyles has cooperated appropriately with the Board in its investigation of this matter.

4. By practicing as a proprietorship under the names "America's Best Vision Center" and "Premiere Family Vision Center," Dr. Boyles violated G.S. 90-125.

5. In accepting compensation from a person or entity not licensed to practice optometry within the State of North Carolina, Dr. Boyles violated GS. 90-125.

6. Advertisements of the type contained in Exhibit G have the tendency to mislead or deceive the public because they do not provide sufficient notice to inform a reasonable person of the types of products excluded from the offer. By allowing his services to be featured in misleading or deceptive advertisements, Dr. Boyles violated G.S. 90-121.2(a)(15) and 21 NCAC [Board Rule] 42E .0104(b).

7. Dr. Boyles did not provide appropriate notice to his patients before terminating his practice as required by 21 NCAC [Board Rule] 42B 0204.

8. Dr. Boyles did not exercise appropriate control over his patient records at or after the time he terminated his practice as required by 21 NCAC [Board Rule] 42B 0204 and 42E .0102(6).

Based on the foregoing findings of fact and conclusions of law, the Board and Dr. Boyles enter into the following Consent Order.

CONSENT ORDER

9. By entering this Consent Order, Dr. Boyles waives his right to any further notice of the charges set forth in the July 8, 2010, Notice issued to him by the Board, to any further pre-

hearing conference or settlement conference to which he might be entitled, and to any formal hearing to which he might otherwise be entitled under the July 8, 2010 Notice or under the facts set forth above, including any right to discovery, to call witnesses, or to confront or cross-examine witnesses. Dr. Boyles further waives any right to any judicial review or appeal of this Consent Order or any matter determined herein or which could have been determined herein.

10. By executing this Consent Order, Dr. Boyles represents that he has read it fully, including all findings and conclusions, that he understands the consequences of signing such Consent Order, and that he has had the opportunity to and has had this document reviewed by an attorney of his choice.

11. Based upon the foregoing findings of fact and conclusions of law the Board and Dr. Boyles agree that his license shall be suspended for a period of six months from the date of execution of this order by the Board; however, that suspension shall be suspended for the entire six months' period based upon Dr. Boyles' agreement to the following terms and conditions set forth in paragraphs 4 through 10 below for so long as he shall abide by such terms and conditions.

12. Within 30 days of the date of execution of this order by the Board, Dr. Boyles shall provide written notice to each individual patient for whom he provided treatment at his office located at 2430 South Church Street in Burlington, North Carolina, of the location of that patient's records and the manner in which such patient may acquire his/her records. Such notice will bear Dr. Boyles' return address and will indicate that if a patient requests this his/her records be mailed, Dr. Boyles will bear the costs of the mailing. Dr. Boyles will provide the Board with a list of all patients to whom such notices were mailed, and will provide the Board with all notices which are returned as undeliverable.

13. Dr. Boyles agrees that he will use his best efforts to assist in the resolution of any complaints made by his former patients against John Marsh or the optical dispensary adjacent to Dr. Boyles' former practice at 2430 South Church Street in Burlington, North Carolina. Such best efforts will include but not be limited to forwarding to John Marsh complaints from Dr. Boyles' patients who were customers of the optical dispensary and have not received spectacles or other products purchased or ordered from the optical dispensary, and to the extent possible working with John Marsh to assure that such spectacles or other products are received by the complaining patients/customers.

14. Dr. Boyles will assure that all advertisements which are created by or for him or his optometric practice or which feature or refer to his services or his practice will be clear and accurate, will provide information sufficient to allow individuals of average intelligence to understand any applicable limitations or qualifications relating to the products or services advertised, and will not otherwise be false, deceitful, or misleading.

15. Dr. Boyles understands and agrees that the Board, both inherently and under the terms of this Consent Order, has the authority to inspect, at any time, his office(s), his advertisements, and his records, including patient records, for compliance with this Consent Order and with statutes and Board Rules concerning the practice of optometry in North Carolina, and that the Board has the authority to observe or otherwise monitor his provision of professional services to any patient.

16. Dr. Boyles will pay a fine in the amount of \$1,500 to the Board within 30 days of the Board's execution of this order. Dr. Boyles understands that the fine proceeds will be paid over by the Board to the Alamance County Board of Education, as required by law.

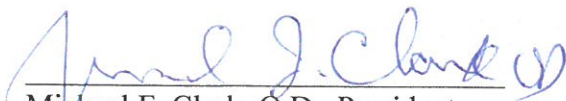
17. Dr. Boyles will reimburse the Board for its expenses, including attorneys fees, incurred in the investigation, prosecution, and settlement of this matter in the amount of \$6,000.00, without interest. Dr. Boyles will pay such reimbursement in an amount not less than \$150 per month, beginning 60 days after the Board's execution of this order, until such reimbursement is complete. Such payments will be made by Dr. Boyles so that they are received by the Board no later than the 10th day of each month.

18. Dr. Boyles will obey all statutes and rules governing the practice of optometry in North Carolina.

19. This Consent Order is subject to the approval of the entire Board. The signatures of Dr. Boyles, his counsel, and Board counsel below signify that the Board Investigations Committee commits to present this proposed Consent Order to the full Board for its consideration and recommend its approval by the Board, but all parties acknowledge that this Consent Order is of no effect unless and until a duly authorized representative of the Board executes the Consent Order in the appropriate place below. Should the Board reject this proposed order, Dr. Boyles agrees that he will not assert or contend that the fact this order and the allegations, facts, and representations contained herein have been made known to or considered by the Board is grounds for any Board member to recuse or disqualify himself/herself from any future hearing or other procedure in this matter or for a transfer of this matter or any hearing or proceeding herein to the Office of Administrative Hearings or any other forum or venue.

20. This document may be signed in multiple counterparts, each of which shall be considered an original.

SO AGREED this the 21 day of October, 2010.



Michael F. Clark, O.D., President
North Carolina State Board of
Examiners In Optometry

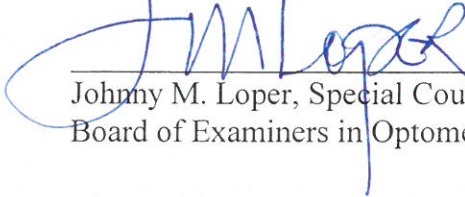
H.D. Boyles, O.D.

Johnny M. Loper, Special Counsel to
Board of Examiners in Optometry

James A. Wilson,
Attorney for Dr. Boyles

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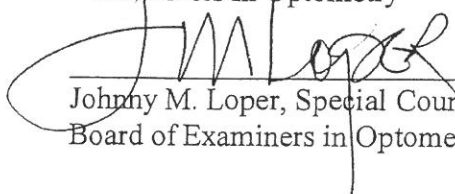
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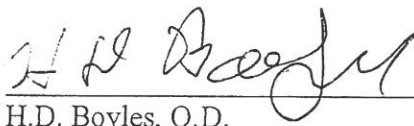
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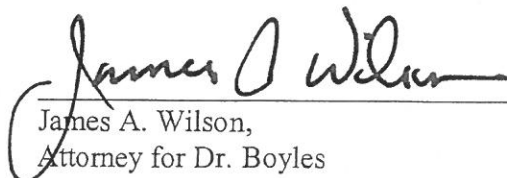
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