

STATE OF IOWA
BEFORE THE BOARD OF OPTOMETRY EXAMINERS

IN THE MATTER OF:)	CASE NO. 04-005
)	
Dwayne F. Sturtevant, O.D.)	COMBINED STATEMENT OF
License No. 152-01511)	CHARGES, INFORMAL
)	SETTLEMENT AGREEMENT,
RESPONDENT)	AND CONSENT ORDER

The Iowa Board of Optometry Examiners (Board) and Dwayne F. Sturtevant, O.D. (Respondent) enter into this Combined Statement of Charges, Informal Settlement Agreement, and Consent Order (Agreement) pursuant to Iowa Code sections 17A.10(2), 272C.3(4), and chapter 645 Iowa Administrative Code (IAC) rule 12.1.

1. Respondent presently possesses license number 152-01511 to practice optometry in the State of Iowa. Board records indicate that Respondent was first licensed in Iowa on July 20, 1966 and is currently licensed through June 6, 2006. His address is 8415 Iowa St., Omaha, NE 68122.

2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 154, and 272C. Licenses issued by the Board are subject to the laws of the State of Iowa and the administrative rules promulgated by the Board.

STATEMENT OF CHARGES

COUNT I

3. Respondent is charged with misstatements in renewing his Optometry license in violation of Iowa Code sections 147.55 and 154.4 and 645 IAC rule 183.2(1)(a).

CIRCUMSTANCES

4. In connection with the renewal of his optometry license for the period July 1, 2004 – June 30, 2006 he answered “No” to questions as to whether he had been convicted of any crime, other than minor traffic violations, and “No” as to whether any state licensing board had instituted any disciplinary proceedings since the last renewal. His answers were made on May 5, 2004.

5. In fact respondent had been convicted of operating a motor vehicle while intoxicated on January 29, 2004. This was a third offense since September 15, 1995. As a result of these two OWI convictions and arrest leading to the January 29, 2004 conviction, the Nebraska Department of Health and Human Services, Regulation and Licensure, initiated disciplinary action against respondent on December 1, 2003.

COUNT II

6. Respondent is charged with failing to report disciplinary action against him within 30 days of final action by the state of Nebraska which occurred on September 22, 2004 in violation of 645 IAC rule 183.2(13) and (14).

CIRCUMSTANCES

7. The settlement of the Nebraska Disciplinary action in case no. 70-31201 resulted in an Order on Agreed Settlement on September 23, 2004. Respondent did not at any time notify the Board of this action.

SETTLEMENT AGREEMENT

8. Respondent agrees not to contest the above stated charge before the Board.

9. Respondent has a right to receive notice of the charge and to request a hearing before the Board on the merits of the charge, but waives its right to notice and a hearing and all attendant rights, including the right to appeal or seek judicial review of the Board's actions, by freely and voluntarily entering into this Agreement. This Agreement shall constitute the final order of the Board in this case.

10. Respondent agrees that the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

11. This Agreement shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of future violations.

12. Any failure by Respondent to comply with the terms and conditions of this Agreement shall subject Respondent to further licensee disciplinary action which could be initiated by the Board through the filing of a statement of charges with a hearing to be held on the merits.

13. This Agreement is subject to approval by the Board:

- (a) If the Board does not approve this Agreement, it shall be of no force or effect on either party and it shall not be admissible for any purpose in further proceedings in this matter.
- (b) If the Board approves this Agreement, it shall fully dispose of all issues in this case.

14. This Agreement is a public record pursuant to Iowa Code sections 272C.3(4) and 272C.6(4)(2005).

15. This Agreement shall not be binding as to any new complaints received by the Board.

CONSENT ORDER

IT IS THEREFORE ORDERED:

16. Respondent's license to practice optometry in the state of Iowa shall be placed on probation for a period of five (5) years.

17. Respondent will comply with all terms of the Nebraska settlement dated August 10, 2004. The same restrictions imposed on his practice in Nebraska shall apply in Iowa. Respondent will provide a copy of all documents required by the Nebraska settlement to the Iowa Board. A copy of the Nebraska August 10, 2004 Settlement will be attached hereto.

18. Upon request of the Board, the Respondent shall appear before the Board to report on the status of Respondent's operations and to answer any questions or concerns the Board may have regarding Respondent's compliance with this Agreement. The Board shall provide Respondent with reasonable notice of the date, time, and place of any requested appearance. Respondent agrees that any such appearance would be governed by 645 Iowa Administrative Code rule 9.7 and that it waives any and all objections to the members of the Board both participating in the appearance and later participating as decision makers in a contested case proceeding.

19. Respondent agrees to pay to the Board a civil monetary penalty of \$1000 (\$500 on both Counts). Respondent shall remit full payment of the civil monetary penalty to the Board within 30 days of the date this Agreement is executed by the Board.

20. Upon full compliance with the above terms and conditions, Respondent's license to practice optometry in the state of Iowa shall be restored to its full privileges free and clear of all probationary restrictions.

WHEREFORE, the terms of this Statement of Charges, Informal Settlement Agreement, and Consent Order are agreed to and accepted by the Iowa Board of Optometry Examiners and Respondent.

This combined statement of charges, informal settlement agreement and consent order is approved by the Board on July 7, 2005.