

**BEFORE THE IOWA BOARD OF OPTOMETRY**

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<b>IN THE MATTER OF:</b>	)	
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<b>Mark Davis, O.D.,</b>	)	<b>CASE NO. OPT 10-004</b>
	)	
<b>RESPONDENT</b>	)	<b>NOTICE OF HEARING</b>
	)	<b>AND STATEMENT OF CHARGES</b>
	)	

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**COMES NOW** the Iowa Board of Optometry (hereinafter “the Board”) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code Sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent Mark Davis was issued Iowa Optometry license number 01888 on July 15, 1989. Respondent’s license became inactive on July 31, 2012. Respondent’s address as reported to the Board is 321 Clay Street, Cedar Falls, IA 50613.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on July 11, 2013, before the Board of Optometry. The hearing shall begin at 10:00 am and shall be located in the Lucas State Office Building, Fifth Floor Conference Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address: Board of Optometry, 5<sup>th</sup> Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and

be present to assist and advise the board at hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 154, and 272C.

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 154, and 272C and 645 IAC chapter 183.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 645 IAC 11.21.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

Respondent is charged with habitual intoxication or addiction to the use of drugs, in violation of Iowa Code sections 147.55(4) and 272C.10(4), and 645 IAC 183.2(6).

### **Count II**

Respondent is charged with obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority in violation of 645 IAC 183.2(7).

### **Count III**

Respondent is charged with negligence by the licensee in the practice of the profession, including conduct, practice or conditions which impair the ability to safely and skillfully practice the profession, in violation of 645 IAC 183.2(10).

#### **Count IV**

Respondent is charged with conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence in violation of Iowa Code sections 147.55(5), 272C.10(5), and 645 IAC 183.2(11).

#### **Count V**

Respondent is charged with failure to comply with the terms of a Board order in violation of Iowa Code sections 272C.9(1) and 645 IAC sections 4.15 and 183.2(19).

#### **Count VI**

Respondent is charged with representing himself as an optometry practitioner when his license was on inactive status, in violation of Iowa Code sections 147.2(1), 154.1 and 645 IAC 183.2(25).

#### **D. FACTUAL CIRCUMSTANCES**

1. On March 10, 2006, Respondent was convicted of Operating While Intoxicated, Second Offense, in Buchanan County, Iowa.
2. On February 14, 2010, Respondent was charged with Possession of a Controlled Substance – Marijuana.
3. On April 30, 2010, Respondent was a passenger in his own car when it was pulled over by police. The officer reported Respondent smelled of marijuana

and alcohol. Marijuana was found under the mat in the passenger seat compartment. A urine sample revealed Respondent's urine contained cocaine metabolites and cannabinoids. The possession charge was dismissed, with court costs assessed to the Respondent.

4. On June 24, 2010, Respondent was arrested for Operating While Intoxicated, Second Offense, and for Possession of a Controlled Substance – Marijuana in Linn County, Iowa.

5. On August 28, 2010, Respondent was arrested for Operating While Intoxicated, Second Offense, and for Possession of a Controlled Substance – Marijuana in Linn County Iowa.

6. On January 21, 2011, Respondent was convicted of two counts of Operating While Intoxicated, Second Offense, in Linn County, Iowa. Respondent was originally sentenced to 247 days in jail, 240 days suspended, put on probation and assessed a fine. However, on March 23, 2012, Respondent's suspended sentence was revoked and he was sentenced to 240 days in jail on each charge to be served concurrently. Respondent was also convicted of possession of a controlled substance, related to the incident that occurred on August 28, 2010.

7. On October 9, 2012, the Board issued a Confidential Substance Abuse Evaluation Order requiring Respondent to obtain comprehensive substance abuse evaluation. He failed to provide documentation to the Board that he completed the substance abuse evaluation as ordered.

8. Respondent practiced optometry at Perry L. Krieger, O.D. and

Associates, Cedar Falls, Iowa from December 31, 2011 until February 26, 2013. His license was inactive during the time period of July 31, 2012 until February 26, 2013.

#### **E. SETTLEMENT**

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC Chapter 12. If you are interested in pursuing settlement of this matter, please contact Julie Bussanmas, Assistant Attorney General, at 515-281-5637.

#### **F. PROBABLE CAUSE FINDING**

On the 4<sup>th</sup> day of April, 2013, the Iowa Board of Optometry found probable cause to file this Notice of Hearing and Statement of Charges.



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Chairperson  
Iowa Board of Optometry  
Lucas State Office Building, 5<sup>th</sup> Floor  
Des Moines, IA 50319

Copies to:

Julie Bussanmas  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor Hoover Bldg.  
Des Moines, IA 50319

Mark Davis, O.D.  
321 Clay Street  
Cedar Falls, IA 50613