

not perform a visual field test on this patient, although the patient record indicated that the visual field test was performed on this date (T10:20-25 and T11:1-12). The patient record for the July 1995 and the August 1997 visit also contained a notation that the patient had a full field in both eyes when in reality he only had light perception in his left eye (T11: 8-23). Upon further questioning, Respondent informed the Board that he dilated the patient's eyes at the first visit and he noted on the patient record that the disc to cup ratio was .2 for the right eye. However, he advised the Board that the record contained an error and this ratio was for the left eye (13:5-15). The patient record also included an item which asked whether the "patient was notified about glaucoma ____yes." The Board noted that this item was not checked off on any of the patient notes for the various eye examinations (T14:17-25). Despite his failure to note on the patient record that he notified the patient about glaucoma, Respondent alleged that he spoke to the patient about the high pressure and advised him to see a specialist and the patient chose to ignore this advise. Dr. Diering acknowledged that any pressure over 22 or 23 should be checked and that he would consider any pressure in the high 20s or 30s to be a medical emergency (T19:16-25- T20: 12-20). Respondent also informed the Board that he has made modifications to his patient record and his patient history form as a result of the litigation.

Having reviewed the entire record, including the testimony of respondent at the investigative inquiry, it appears to the Board that respondent failed to diagnose glaucoma in this patient and to treat the elevated pressure he found during the eye examinations performed on July 17, 1995 and August 7, 1997.

These facts establish basis for disciplinary action pursuant to N.J.S.A. 45:1-21(d).

It appearing that respondent desires to resolve this matter without admissions and without recourse to formal proceedings and for good cause shown:

IT IS ON THIS DAY OF NOVEMBER, 2003

HEREBY ORDERED AND AGREED THAT:

1. Respondent shall provide documentation to the Board of successful completion of the following continuing education courses:

- A. A 20 hour course in glaucoma.
- B. A 5 hour record keeping course.

These courses shall be completed within 6 months of the entry of the within Consent Order. Further, these courses, which are in addition to the regularly required continuing education hours, shall be approved by the Board in writing prior to attendance. The respondent is to submit written proof that the course work has been successfully completed.

2. Unless performed under the direct supervision of Dr. Valerie Longo, O.D., Respondent shall cease and desist from treating any patient where there is a suspicion of glaucoma until he has successfully completed the glaucoma course and must immediately refer the patient to a specialist. Additionally, respondent shall engage at his own expense a monitor to review all patient records once a week. This monitor shall be approved by the Board and must be a licensed NJ optometrist. The Board has agreed to accept Dr. Valerie Longo, O.D. as the monitor. Dr. Longo shall remain in place until the two courses are successfully completed. Dr. Longo shall submit a written report to the Board to explain the status of Dr. Diering's patient records. The report shall be due after the third and six

month of her review. The remuneration of the monitor, Dr. Longo, is the responsibility of the respondent. The respondent may continue to perform all other eye examinations except for the treatment of glaucoma patients while he is taking the continuing education listed in paragraph #1 of this Consent Order.

3. Respondent is hereby assessed civil penalties, pursuant to N.J.S.A. 45:1-22 in the amount of \$ 10, 000 for the conduct with respect to his failure to treat or diagnose glaucoma in violation of N.J.S.A. 45:1-21(d). The sum of \$7500 will be stayed in the event that the respondent shall successfully completes the continuing education courses listed in paragraph #1 in this consent order. Thus, the respondent will be responsible to pay a penalty of \$2500.00 no later than 30 days from the entry of this Consent Order. Payment for the civil penalties totaling \$2500 shall be submitted by certified check or money order made payable to the State of New Jersey and shall be sent to Susan Gartland, Executive Director, New Jersey State Board of Optometrists, P.O. Box 45012, 124 Halsey Street, Newark, New Jersey, 07101. In payment of the \$2500 in civil penalties, respondent shall make twelve monthly payments of \$ 208.33 per payment. The first payment shall be due by December 1, 2003 and subsequent payments shall continue to be due by the first of each month until all twelve payments are completed. In the event that respondent does not make a timely payment, the full balance will immediately become due. Subsequent violations will subject respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

4. Respondent is hereby assessed the costs of the investigation to the State in this matter in the amount of \$ 315. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the

Board no later than twenty-one days from the entry of this Consent Order. Payment shall be sent to the attention of Susan Gartland, Executive Director at the address described in paragraph #3.

5. Failure to remit any payment required by this Order will result in the filing of a certificate of debt.

6. This Consent Order is entered into by the Respondent to resolve a disputed claim and to avoid costly and protracted litigation. It is not to be construed as an admission of liability by the Respondent.

NEW JERSEY STATE BOARD OF OPTOMETRISTS

By: Leonard M. Steiner
Leonard Steiner
Board President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

John Diering
John Diering, O.D.

Dated: 12/8/03