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8  
9 **BEFORE THE**  
**STATE BOARD OF OPTOMETRY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 800-2016-021078

13 **MARISYLLE CASTILLO DIMDIMAN**

**STATEMENT OF ISSUES**

14 **Spectacle Lens Dispenser Applicant**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Jessica Sieferman (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the California State Board of Optometry, Department of  
21 Consumer Affairs.

22 2. On or about December 22, 2015, the Medical Board of California, Department of  
23 Consumer Affairs, received an application for a Spectacle Lens Dispenser Registration from  
24 Marisylle Castillo Dimdiman (Respondent). On or about December 18, 2015, Marisylle Castillo  
25 Dimdiman certified under penalty of perjury to the truthfulness of all statements, answers, and

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1 representations in the application. The State Board of Optometry denied the application on  
2 May 10, 2016.<sup>1</sup>

### 3 JURISDICTION

4 3. This Statement of Issues is brought before the State Board of Optometry (Board),  
5 Department of Consumer Affairs, under the authority of the following laws. All section  
6 references are to the Business and Professions Code (Code) unless otherwise indicated.

7 4. Section 2559.2 of the Code provides, in pertinent part, that an application for  
8 registration as a Spectacle Lens Dispenser may be denied under the provisions of Division 1.5  
9 (commencing with Section 475).

### 10 STATUTORY PROVISIONS

11 5. Section 475 of the Code states:

12 (a) Notwithstanding any other provisions of this code, the provisions of this  
13 division shall govern the denial of licenses on the grounds of:

14 (1) Knowingly making a false statement of material fact, or knowingly  
15 omitting to state a material fact, in an application for a license.

16 (2) Conviction of a crime.

17 (3) Commission of any act involving dishonesty, fraud or deceit with the  
18 intent to substantially benefit himself or another, or substantially injure another.

19 (4) Commission of any act which, if done by a licentiate of the business or  
20 profession in question, would be grounds for suspension or revocation of license.

21 (b) Notwithstanding any other provisions of this code, the provisions of this  
22 division shall govern the suspension and revocation of licenses on grounds specified  
23 in paragraphs (1) and (2) of subdivision (a).

24 (c) A license shall not be denied, suspended, or revoked on the grounds of a  
25 lack of good moral character or any similar ground relating to an applicant's  
26 character, reputation, personality, or habits.

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26 <sup>1</sup> The Registered Spectacle Lens Dispenser program was transferred from the jurisdiction of  
27 the Medical Board of California to the State Board of Optometry effective January 1, 2016.  
(Assem. Bill No. 684 (2015-2016 Reg. Sess.))

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6. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

7. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

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8. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

**REGULATORY PROVISIONS**

10. California Code of Regulations, title 16, section 1516 states:

(a) When considering the denial of a certificate of registration under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a certificate of registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

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1 11. California Code of Regulations, title 16, section 1517 provides, in pertinent part, that  
2 for the purpose of denial, suspension, or revocation of the certificate of registration, a crime or act  
3 shall be considered to be substantially related to the qualifications, functions, and duties if to a  
4 substantial degree it evidences present or potential unfitness to perform the functions authorized  
5 by his/her certificate of registration in a manner consistent with the public health, safety, or  
6 welfare.

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(October 20, 2011 Criminal Conviction for DUI on September 4, 2011)**

9 12. Respondent's application is subject to denial under section 480(a)(1) of the Code  
10 in that she was convicted of a crime that is substantially related to the qualifications, duties, and  
11 functions of a Spectacle Lens Dispenser. The circumstances are as follows:

12 a. On October 20, 2011, in a criminal proceeding entitled *People of the State*  
13 *of California v. Marisylle C. Dimdiman*, in the San Diego County Superior Court, Central  
14 Division, case number M138636, Respondent was convicted on her plea of guilty to violating  
15 Vehicle Code section 23152(b) (driving under the influence of alcohol with a blood alcohol  
16 concentration (BAC) of 0.8 percent or more [BAC 0.19 percent]), a misdemeanor. As a result of  
17 a plea agreement, a count for violating Vehicle Code section 23152(a) (DUI), a misdemeanor,  
18 was dismissed.

19 b. As a result of the conviction, Respondent was granted summary probation  
20 for five years and ordered to serve five days in the Public Service Program, with one day credit  
21 for time served, enroll in and complete a First Conviction Program and a MADD Impact Panel,  
22 and pay various fees and fines.

23 c. The facts that led to the conviction are that on September 4, 2011, at  
24 approximately 2:45 a.m., San Diego County Sheriff's deputies, while conducting a DUI  
25 checkpoint in San Diego, California, came in contact with Respondent. The deputies sent  
26 Respondent to secondary inspection because they noticed that she was exhibiting signs and  
27 symptoms of alcohol intoxication. The deputies had Respondent perform a field sobriety test,  
28 which she failed. Respondent provided deputies with breath samples which registered 0.15% and

1 0.17% on the P.A.S. device. Respondent was arrested and booked at the Las Colinas Detention  
2 Facility. Once at the detention facility, Respondent provided deputies with a blood sample which  
3 registered a blood alcohol concentration of 0.19 percent.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Acts Constituting Grounds for Suspension/Revocation of Registration)**

6 13. Grounds exist to deny Respondent's application under section 480(a)(3)(A) for acts  
7 which if committed by a licensee would be grounds for suspension or revocation of licensure, in  
8 that Respondent was convicted of a crime that is substantially related to the qualifications, duties  
9 and functions of a Spectacle Lens Dispenser, as is more fully detailed at paragraph 12, which is  
10 incorporated here by reference.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Misrepresentation on Application)**

13 14. Respondent's application is subject to denial under section 480(a)(2) and (d) of the  
14 Code, in that on or about December 18, 2015, in response to the question on the Application for  
15 Registration as a Spectacle Lens Dispenser, "Have you ever been convicted of or pled nolo  
16 contendere to a crime? **You are required to report any conviction that has been set aside and**  
17 **dismissed under Section 1203.4 of the Penal Code or under any other provision of law. A**  
18 **letter explaining the details of the offense is required. You must also provide certified court**  
19 **documents, arrest and probation report."** Respondent responded "No," signed the application  
20 under penalty of perjury, and failed to disclose the conviction detailed at paragraph 12.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Division of Licensing issue a decision:

24 1. Denying the application of Marisylle Castillo Dimdiman for a Spectacle Lens  
25 Dispenser Registration;

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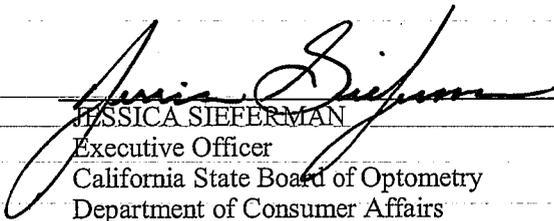
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2. ~~Taking such other and further action as deemed necessary and proper.~~

DATED: August 9, 2016

  
JESSICA SIEFERMAN  
Executive Officer  
California State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

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