BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: **PHILLIP MCELDOWNEY** **9580 Garden Grove, #105** **Garden Grove, CA 92844** **Certificate of Registration to Practice Optometry No. 9742** Respondent.	Case No. OPT 9742 OAH No. 2010061376

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 18, 2011.

It is so ORDERED January 19, 2011.

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR.
Attorney General of California
JAMES LEDAKIS
Supervising Deputy Attorney General
KAREN L. GORDON
Deputy Attorney General
State Bar No. 137969
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2073
Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: **PHILLIP MCELDOWNEY** **9580 Garden Grove, #105** **Garden Grove, CA 92844** **Certificate of Registration to Practice Optometry No. 9742** Respondent.	Case No. OPT 9742 OAH No. 2010061376 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the State Board of Optometry of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Petition to Revoke Probation.

PARTIES

1. Mona Maggio (Complainant) is the Executive Officer of the State Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Karen L. Gordon, Deputy Attorney General.

2. Respondent Phillip McEldowney (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about September 6, 1991, the State Board of Optometry issued Certificate of Registration to Practice Optometry No. 9742 to Phillip McEldowney (Respondent). The Optometry License was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. OPT 9742 and will expire on October 31, 2011, unless renewed.

JURISDICTION

4. Petition to Revoke Probation No. OPT 9742 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on June 4, 2010. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. OPT 9742 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Petition to Revoke Probation No. OPT 9742. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

///

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. OPT 9742.

9. Respondent agrees that his Optometry License is subject to discipline and he agrees to be bound by the State Board of Optometry (Board)'s probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certificate of Registration to Practice Optometry No. 9742 issued to Respondent Phillip McEldowney (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

SEVERABILITY CLAUSE Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS. Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of optometry in California. Respondent shall notify the Board in writing within three days of any incident resulting in his arrest or charges filed against, or a citation issued against, Respondent.

2. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. FUNCTION AS AN OPTOMETRIST Respondent shall function as an optometrist for a minimum of 24 hours per week for the entire term of his probation period.

5. NOTICE TO EMPLOYER Respondent shall provide to the board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and

supervisors to communicate regarding the licensee's work status, performance, and monitoring. Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Stipulated Settlement in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

The employer will then inform the Board, in writing, that he is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

6. NOTICE TO PATIENTS During the period of probation, Respondent shall post a notice in a prominent place in his office that is conspicuous and readable to the public. The notice shall state the Respondent's Optometrist license is on probation and shall contain the telephone number the State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to his practice of Optometry. The above-described notices shall be approved by the board within 30 days of the effective date of this decision.

7. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his physical residence address as well.

8. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be $ 1,832.50 and shall be paid in full directly to the Board, in a Board approved payment plan, within 6 months from the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due. The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

9. TAKE AND PASS LICENSURE EXAMINATION Respondent shall take and pass the California Laws and Regulations Examination (CLRE). Respondent shall pay the established examination fees. Respondent shall not practice until he passes this exam. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

10. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his license expiration date shall constitute a violation of probation.

11. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any

employment where representation as an optometrist was provided.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

12. LICENSE SURRENDER During Respondent's term of probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the condition of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.

13. VIOLATION OF PROBATION If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

14. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

15. DIRECT SUPERVISION During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to an optometrist who is on duty and immediately available in

the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he is functioning as a licensed optometrist. The appropriate level of supervision must be approved by the Board prior to commencement of work.

16. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his supervisor submits complete and timely reports. Failure to ensure each supervisor submits complete and timely reports shall constitute a violation of probation.

17. EMPLOYMENT LIMITATIONS Respondent shall not work in any health care setting as a supervisor of optometrists. The Board may additionally restrict respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

18. CONTINUING EDUCATION COURSE IN ETHICS Within 90 days of the effective date of the Board's Decision and Order, respondent shall submit the name of a continuing education course in ethics for prior Board approval. Said course must be taken and completed within one year from the effective date of the Board's Decision and Order.

The costs associated with the ethics course shall be paid by the respondent. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. Respondent shall submit to the Board the original transcripts or certificates of completion for the ethics course. The Board shall return the original documents to respondent after photocopying them for its records.

19. PRACTICE BY LEGAL NAME Respondent shall use his legal name in all his professional endeavors as an optometrist, including but not limited to, any and all advertising, signage, business cards, letterhead, and name tags. He shall be known to clients and staff as Phillip McEldowney, O.D. Any use of any other name, including Dr. Bo, shall be a violation of probation.

20. HAVE NO BUSINESS RELATIONSHIP WITH A REGISTERED DISPENSING OPTICIAN Respondent shall have no membership, proprietary interest, co ownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with a registered dispensing optician.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Optometry License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 11/5/10

PHILLIP MCELDOWNEY
Respondent

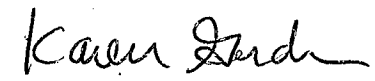
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: 11-8-10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
JAMES LEDAKIS
Supervising Deputy Attorney General



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

SD2010800631
70366651.docx

Exhibit A

Petition to Revoke Probation No. OPT 9742

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
SHERRY L. LEDAKIS
Deputy Attorney General
State Bar No. 131767
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2078
Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against, **PHILLIP MCELDOWNEY** **9580 Garden Grove, #105** **Garden Grove, CA 92844** **Certificate of Registration to Practice Optometry No. 9742** Respondent.	Case No. 2003-181 **PETITION TO REVOKE PROBATION**

Complainant alleges:

1. Mona Maggio (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

2. On or about September 6, 1991, the State Board of Optometry issued Certificate of Registration to Practice Optometry No. 9742 to Phillip McEldowney (Respondent). The Optometry License was in effect at all times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

Prior Disciplinary Action

3. In a disciplinary action entitled *In the Matter of the Accusation Against Phillip McEldowney*, Case No. 2003 181, the State Board of Optometry, issued a decision, effective July

10, 2006, in which Respondent's Optometry License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

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

5. Code section 118(b) provides:

> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

6. Code sections 3024 and 3090 provide that the Board may take disciplinary action against any optometry license issued by the Board, including, but not limited to, revocation or suspension of the license, in addition to placing terms and conditions on the license.

7. This petition to revoke probation is brought pursuant to Condition No. 12 of the Decision and Order in Case No. 2003-181 which states:

> VIOLATION OF PROBATION - If Respondent violates the conditions of his probation, the Board, after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license.
>
> If, during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

8. Respondent's probation is subject to revocation because he failed to comply with several terms of probation, as set forth below.

///

///

FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply with Board's Probation Program)

9. At all times after the effective date of Respondent's probation, Condition 3 stated:

> COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.
>
> Respondent shall comply with the Board's probation surveillance program, including but not limited to, allowing access to respondent's optometric practice and patient records upon request of the Board or its agent. Upon successful completion of probation, respondent's license shall be fully restored.

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, by failing to submit the required quarterly written reports to the Board, by failing to obtain a Board approved supervisor, by failing to take the law portion of the licensing examination, and by failing to complete a continuing education course in ethics, the details of which are set forth with more particularity below.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Submit Written Reports)

11. At all times after the effective date of Respondent's probation, Condition 6 stated:

> SUBMIT WRITTEN REPORTS – Respondent during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all of the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
>
> Respondent shall provide a copy of this decision to the optometric regulatory agency in every state and territory in which he has an optometry license.

12. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 6, in that the Board has required that he submit quarterly reports, and Respondent has only submitted two quarterly reports documenting his compliance with the terms of probation during the entire probationary period.

///

THIRD CAUSE TO REVOKE PROBATION

(Failure to Obtain an Approved Supervisor)

13. At all times after the effective date of Respondent's probation, Condition 9 stated:

SUPERVISION – Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing the practice of optometry.

Respondent shall practice only under the direct supervision of an optometrist in good standing (no current discipline) with the Board of Optometry, unless alternative methods of supervision and/or collaboration (e.g., with an ophthalmologist or other physician) are approved. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each work day.

14. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, by failing to obtain a Board approved supervisor as referenced above.

FOURTH CAUSE TO REVOKE PROBATION

(Failed to Take Law Portion of Licensing Examination)

15. At all times after the effective date of Respondent's probation, Condition 14 stated:

RE-EXAMINATION – Within 60 days of the effective date of this decision, or within some other time as prescribed in writing by the board, Respondent shall take and pass the law portion of the licensing exam. If respondent fails this examination, Respondent must take and pass a re-examination as approved by the board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. The Respondent shall pay the cost of any such examination.

If Respondent fails the first examination, Respondent shall cease the practice of optometry until the re-examination has been successfully passed as evidenced by written notice to Respondent from the board. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

16. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, in that he failed to take the examination referenced above.

///

///

///

///

FIFTH CAUSE TO REVOKE PROBATION

(Failed to Take Ethics Course)

17. At all times after the effective date of Respondent's probation, Condition 15 stated:

> CONTINUING EDUCATION COURSE IN ETHICS – Within 90 days of the effective date of the Board's Decision and Order, Respondent shall submit the name of a continuing education course in ethics for prior Board approval. Said course must be taken and completed within one year from the effective date of the Board's Decision and Order. The costs associated with the ethics course shall be paid by the Respondent. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. Respondent shall submit to the Board the original transcripts or certificates of completion for the ethics course. The Board shall return the original documents to respondent after photocopying them for its records.

18. Respondent's probation is subject to revocation in that he failed to comply with Probation Condition 15, by failing to take the required continuing education course in ethics referenced above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking the probation in Case No. 2003-181 and imposing the disciplinary order that was stayed thereby revoking Certificate of Registration to Practice Optometry No. 9742 issued to Phillip McEldowney;

2. Revoking or suspending Certificate of Registration to Practice Optometry No. 9742, issued to Phillip McEldowney;

3. Taking such other and further action as deemed necessary and proper.

DATED: 5/20/10

Mona Maggio

MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

SD2010800631

Exhibit A

Decision and Order

State Board of Optometry Case No. 2003-181

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFARIS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: PHILLIP MC ELDOWNEY, O.D. 6420 East Oakview Lane Anaheim, CA 92807 Optometric Registration No. 9742 Respondent.	Case No. 2003-181 OAH No. 2006010729

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, as its Decision in this matter.

This Decision shall become effective on July 10, 2006.

It is so ORDERED June 8, 2006.

FOR THE STATE BOARD OF OPTOMETRY

BILL LOCKYER, Attorney General
of the State of California
SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2078
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: PHILLIP MC ELDOWNEY, O.D. 6420 East Oakview Lane Anaheim, CA 92807 Optometric Registration No. 9742 Respondent.	Case No. 2003-181 OAH No. 2006010729 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Taryn Smith, Complainant, is the Executive Officer of the Board of Optometry. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Sherry L. Ledakis, Deputy Attorney General.

2. Respondent Phillip Mc Eldowney, O.D., respondent, is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about September 6, 1991, the Board of Optometry issued Optometric Registration No. 9742 to Phillip Mc Eldowney, O.D. The Registration will expire on October 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2003-181 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on respondent on December 8, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2003-181 is attached as exhibit A, and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations contained in Accusation No. 2003-181. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2003-181.

9. Respondent agrees that his Optometric Registration is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

///

///

///

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometric Registration No. 9742 issued to Phillip Mc Eldowney, O.D. is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions.

SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) ACTUAL SUSPENSION OF LICENSE - Respondent is suspended from the practice of optometry for two (2) weeks to be served within thirty (30) days of the effective date of the decision..

During the suspension period, all probation conditions are in full force and effect except those relating to actual optometric practice. This period of suspension will not apply to the reduction of this probationary time period.

(2) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(3) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Respondent shall comply with the Board's probation surveillance program, including but not limited to, allowing access to respondent's optometric practice and patient records upon request of the Board or its agent. Upon successful completion of probation, respondent's license shall be fully restored.

(4) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

(5) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as an optometrist outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as an optometrist. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation.

///

Respondent shall inform the Board if he applies for or obtains a new optometry license during the term of probation.

(6) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all of the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the optometric regulatory agency in every state and territory in which he or she has an optometry license.

(7) FUNCTION AS AN OPTOMETRIST- Respondent, during the period of probation, shall engage in the practice of optometry in California for a minimum of 24 hours per week for 6 consecutive months, each year, for each year of probation..

For purposes of compliance with the section, "engage in the practice of optometry" may include, when approved by the Board, volunteer work as an optometrist, or work in any non-direct patient care position that requires licensure as an optometrist.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(8) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing the practice of optometry. Respondent shall cause to be submitted to the Board any available performance evaluations and other employment related reports as an optometrist upon request of the Board.

///

If working as an employee, respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of the practice of optometry.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any optometric employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any optometric employment with a full explanation of the circumstances surrounding the termination or separation.

(9) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing the practice of optometry.

Respondent shall practice only under the direct supervision of an optometrist in good standing (no current discipline) with the Board of Optometry, unless alternative methods of supervision and/or collaboration (e.g., with an ophthalmologist or other physician) are approved. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each work day.

(10) EMPLOYMENT LIMITATIONS - Respondent shall not work in any health care setting as a supervisor of optometrists. The Board may additionally restrict respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis. Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board approved continuing education program. Respondent shall work only on a regularly assigned, identified and predetermined worksite(s).

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3

in the amount of $8,492.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If respondent violates the conditions of his probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If, during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. An optometrist whose license

///

has been surrendered may petition the Board for reinstatement no sooner than one year from the effective date of the disciplinary decision.

(14) REEXAMINATION - Within 60 days of the effective date of this decision, or within some other time as prescribed in writing by the board, respondent shall take and pass the law portion of the licensing exam. If respondent fails this examination, respondent must take and pass a re-examination as approved by the board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. The respondent shall pay the cost of any such examination.

If respondent fails the first examination, respondent shall cease the practice of optometry until the re-examination has been successfully passed as evidenced by written notice to respondent from the board. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

(15) CONTINUING EDUCATION COURSE IN ETHICS. Within 90 days of the effective date of the Board's Decision and Order, respondent shall submit the name of a continuing education course in ethics for prior Board approval. Said course must be taken and completed within one year from the effective date of the Board's Decision and Order. The costs associated with the ethics course shall be paid by the respondent. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. Respondent shall submit to the Board the original transcripts or certificates of completion for the ethics course. The Board shall return the original documents to respondent after photocopying them for its records.

(16) PRACTICE BY LEGAL NAME. Respondent shall use his legal name in all his professional endeavors as an optometrist, including but limited to, any and all advertising, signage, business cards, letterhead, and name tags. He shall be known to clients and staff as Phillip McEldowney, O.D. Any use of any other name, including Dr. Bo, shall be a violation of probation.

///

///

(17) **HAVE NO BUSINESS RELATIONSHIP WITH A REGISTERED DISPENSING OPTICIAN.** Respondent shall have no membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with a registered dispensing optician. Any violation of this section constitutes a violation of respondent's probation.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Optometric Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Optometry.

DATED: 5/5/06.

PHILLIP MC ELDOWNEY, O.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry.

DATED: 5/8/06.

BILL LOCKYER, Attorney General
of the State of California

SHERRY L. LEDAKIS
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005700908
80071998.wpd