CALIFORNIA STATE BOARD OF OPTOMETRY

Public

Board Meeting

Friday, March 30, 2012

Southern California College of Optometry
Fullerton, CA

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

Governor Edmund G. Brown Jr.
State of California

Denise D. Brown, Director
Department of Consumer Affairs

CALIFORNIA STATE BOARD OF OPTOMETRY

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California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, Ca 95834
(916) 575-7170 Office
(916) 575-7292 Fax

California State Board of Optometry
Board Meeting Notice
Friday, March 30, 2012

Southern California College of Optometry
TVCI Conference Room
2575 Yorba Linda Boulevard
Fullerton, CA 92831-1699
(714) 870-7226

and via Teleconference at the

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
916-575-7170

10:00 a.m.

FULL BOARD OPEN SESSION

1. **Call to Order** – Roll Call – Establishment of a Quorum

2. **Petition for Reinstatement of License**
   A. Dr. Larry Franklin Thornton, O.D.
   B. Dr. Lawrence Edwin Young, O.D.

3. **Petition for Reduction of Penalty and Early Termination of Probation**
   A. Dr. Edward Rabb Nell, O.D., License Number OPT 6522

FULL BOARD CLOSED SESSION

4. **Pursuant to Government Code Section 11126(c) (3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters**

FULL BOARD OPEN SESSION

5. Discussion and Possible Action Pertaining to California Code of Regulations §1513, §1514, and §1525.1.

6. Adjournment

Public comments will be taken on agenda items at the time the specific item is raised. *Time limitations will be determined by the Chairperson*. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Krista Eklund at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry 2450 Del Paso Road, Suite 105, Sacramento, CA 95834**.** Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** March 30, 2012

From: Dr. Lee Goldstein, O.D.
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 1 – Call to Order**

Dr. Lee Goldstein, O.D., MPA, Board President, will call the meeting to order and will call roll to establish a quorum of the Board.

Dr. Lee Goldstein, O.D. MPA, Board President

Alejandro Arredondo, O.D., Board Vice President

Monica Johnson, Board Secretary

Donna Burke

Alexander Kim, MBA

Kenneth Lawenda, O.D.

Fred Naranjo, MBA

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** March 30, 2012

From: Jessica Sieferman **Telephone:** (916) 575-7170

Subject: **Agenda Item 2A. In the Matter of the Petition for Reinstatement of Revoked License No. OPT 6369 – Larry Franklin Thornton**

Dr. Larry Franklin Thornton, Petitioner, was issued Optometrist License Number 6369 by the Board on October 3, 1977. On December 31, 2002, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on disciplinary action taken against Petitioner by the Kentucky Board of Optometric Examiners. Petitioner did not file a Notice of Defense and his license was revoked by a Default Decision on July 14, 2003.

This is Petitioner's third Petition for Reinstatement of his revoked license. The first was filed in 2006. On February 17, 2007, the Board denied his Petition for Reinstatement after a hearing before the Board on November 16, 2006. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The second Petition for Reinstatement was filed in 2008. On October 10, 2008, the Board denied his Petition for Reinstatement after a hearing before the Board on September 3, 2008. The denial was based upon the Board's finding that Petitioner failed to establish cause for the Board to grant the Petition for Reinstatement of his revoked license.

The Petitioner is requesting the Board to reinstate his Optometrist License. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reinstatement with Attachments
2. Copies of Decisions and Orders, Default Decision and Accusation
3. California Codes and Regulations Section 1516 – Criteria for Rehabilitation
4. Standards for Reinstatement or Reduction of Penalty
5. Certification of Non-Licensure

STATE AND CONSUMER SERVICES AGENCY — EDMUND G. BROWN JR., GOVERNOR

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov

CALIFORNIA STATE BOARD OF OPTOMETRY

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2011 DEC 20 AM 7:40

PETITION FOR REINSTATEMENT

A person whose certificate of registration has been revoked or suspended for more than one year may petition the Board to reinstate the certificate of registration after a period of not less than one year has elapsed from the date of the revocation or suspension. In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, which should be imposed if the disciplinary penalty is set aside, the Board may investigate and consider all activities of the petitioner since the disciplinary action was taken, the offense for which discipline was imposed, activity during the time the certificate of registration was in good standing and the petitioner's general reputation for truth, professional ability and good character.

PLEASE TYPE OR PRINT LIGIBLY

1. NAME (FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO.
LARRY	FRANKLIN	THORNTON	6369
2. ADDRESS (NUMBER)	(STREET)		DATE OF BIRTH
1023 S.	BONNIE BRAE	STREET	6-20-53
(CITY) (STATE)	(ZIP CODE)		TELEPHONE - CELL
LOS ANGELES, CA.	90006		(310) 650-5463
3. PHYSICAL DESCRIPTION (HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
5'9"	169 LBS	BROWN	DARK BROWN

4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGES) OF OPTOMETRY ATTENDED

NAME OF SCHOOL
INDIANA UNIVERSITY SCHOOL OF OPTOMETRY
ADDRESS (NUMBER) (STREET)
BLOOMINGTON, INDIANA 47401
(CITY) (STATE) (ZIP CODE)

5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? (YES) NO

STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS
KENTUCKY	860 07	1977-FEB		INACTIVE

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.
* PRACTICE LOCATIONS N/A LICENSED REVOKED SINCE 2002 *

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE

39M-13

7. Are you or have you ever been addicted to the use of narcotics or alcohol? YES NO

8. Are you or have you ever suffered from a contagious disease? YES NO

9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? YES NO

10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) YES NO

11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) YES NO

12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? YES NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action. 2002 - WORKED WITH OPTICIAN - [illegible] EVERY TWO WKS. LICENSED REVOKED FOR 10 YRS !!

14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced. HAVE ABIDED BY DEMANDS BY THE BOARD & ALL C.E. REQUIREMENTS

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations. OCCUPATIONS: GENERAL RELIEF, DESIGNER FRAME SALES WITH OPTICIAN FROM HIS RESIDENTS IN THE FIELD, HOME-CARE OF A PERSONAL FRIEND.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition. SEE PREVIOUS APPLICATION COMMUNITY SERVICE MANY HOURS.

17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined. SEE ATTACHED PRINT-OUT OF NO C.E. HOURS & TRANSCRIPTS

18. List all optometric literature you have studied during the last year.
OPTOMETRIC JOURNALS 2 SEE ATTACHED C.E.

19. List all continuing education courses you have completed since your license was disciplined.

20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date 12-14-2011 **Signature** [signature] #6769

* MAY I PLEASE HAVE MY LICENSE REINSTATED !?

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

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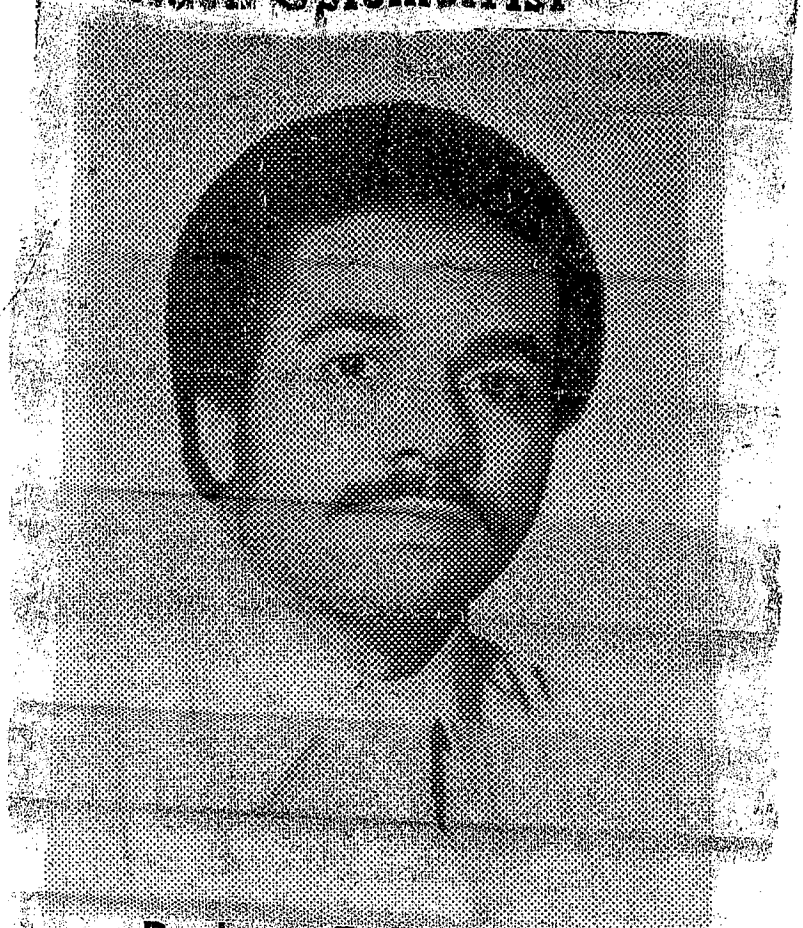
STATE BOARD OF OPTOMETRY

2011 NOV 21 AM 11:47

Kentucky ... Black Optometrist



Dr. Larry Franklin Thornton

Dr. Larry Franklin Thornton, the son of Rev. and Mrs. George Washington Thorntor, Jr. is being acknowledged for completing the study of optometry at Indiana University School of Optometry. He was anointed with a Doctor of Optometry degree May 9, 1976 at the age of 22. He is the youngest black optometrist to graduate in his class and in Kentucky, the only one of his race. He is the nation's youngest Doctor of Optometry.

Dr. Thornton's wife, Imogene Bankston Thornton, attended Eastern Kentucky University and is making plans to work with her husband in private practice in the near future.

RECEIVED BY
STATE BOARD OF OPTOMETRY
2011 NOV 21 AM 11:47

Attention: Director of Continuing Education
California Board of Optometry

RE: License No. 6369

It has been a while since I had a meeting with the California Board of Optometry. The last date was in June 2009.

I am a victim of a hit-and-run. It happened while I was riding my bicycle. The doctor told me I had less than a fifty percent chance to survive. I had severe head and body trauma. The neurologist suggested brain surgery but I refused.

It has taken a lot of physical and mental rehabilitation to regroup. I wanted to have a meeting with the Board approximately a year ago. I have $70,000.00 in hospital bills I wish to bring to the meeting to substantiate the accident.

I really need my license to exist in this rigid economy. My retirement funds are almost depleted. I want to attempt to back my bill I owe to California Hospital and UCLA, Los Angeles. The doctors at both hospitals saved my life!

I have done everything you demanded to have my license reinstated. Please understand I am a qualified optometrist with teaching experience and practical experience exceeding thirty-six years.

After ten years with a license revocation for a light penalty, I hope there are no additional demands or requirements to be reinstated.

Thank you.

Sincerely,

Larry Franklin Thornton
Optometrist
License No. 6369

Attachment

Ps: I would appreciate it if you would give me a letter showing the 100 hours I took at Pennsylvania College of Optometry. I need it to help count toward my certification when I take the exam for the Southern California Board of Optometry and to qualify me to use the therapeutic pharmaceuticals in the State of California.

HOURS	COURSE TITLE	DATE
1	Providing optimal optics for your astigmatic cataract patients	08/24/2010
2	Imaging and instrumentation in contact lens practice	10/27/2008
2	Preventing contact lens changes for presbyopes	12/01/2004
2	Prescribing soft contact lens (toxic)	03/31/2005
2	Examining the contact lens patient	01/20/2005
2	Current trends in daily disposable contact lens	09/28/2005
1	New approaches for reducing risk macular degeneration	05/05/2009
1	Concurrent treatment for glaucoma and ocular surface disease	05/28/2009
1	"Seizing Profitable Opportunities in the Treatment and Management of Ocular Allergy"	08/03/2009
1	Educating patients about ultraviolet radiation	04/06/2009
6	Ocular Disease – Part I	03/06/2006
1	"Successful Manager of Complicated Glaucoma Cases"	07/28/2009
7	Cornea and Cataract C.E. Program and Optometric Boot Camp	04/18/2010
7	Celebration of The Lifetime Achievements of Dr. Michael Rouse C.E. Program	02/14/2010
12	Current Concepts in Refractive Surgery	08/21/1994
3 Total Of 28 Hours	SCCC at South Bay (Torrance Marriott) (3 hours) SCCC (7 hours) SCCC (4 hours) SCCC (7 hours) SCCC (7 hours) SCCC	07/07/2005 05/10/2004 05/13/2004\ 05/14/2004 07/12/2004 08/2005
2	Lens Program – Look at the Lids	01/11/2009
2	A New Generation of Contact Lens Care	04/13/2004
2	Avoiding Contact Lens Dropouts	09/20/2004
1	Get the Full Picture With Ultra U. of E. Field Imaging	11/03/2004
2	Expanding Refractive Options	02/01/2005
7	Potpourri of C.E. With a Focus on Primary Care	08/22/2010
4	Ocular Disease – Part II	07/10/2011
Total 110 Hours	Dermatology: General and Neoplastic Disease – 2010-2011 V.A. Optical Grand Rounds Evaluation, management of patients with special needs, examining the pediatric population, low vision, rehabilitation modal contact lens update --- optical prescribing for pregnant or lactating patients, machetin techniques to boost practice during recession times.	

California State University
Los Angeles
College of Arts and Letters
Department of Philosophy
5151 State University Drive
Los Angeles, CA 90032-8114

March 12, 2009

Dr. Larry Franklin Thornton audited sessions of Philosophy Course 429, Section #1, Call #17507, Bio-Ethics class held on Tuesday and Thursday 9:50 – 11:30 a.m., Room #ET 126, Instructor Ann Gary.

Signature of Instructor
For verification:

Ann Gary

Phone Number: 323-343-4176

Student:

Larry F. Thornton

_____

Winter 2009 Class Schedule

Course	Sec#	Call #	Title	Day & Time	Room #	Instructor	Units	#ST	Miscellaneous Information
PHIL 151	1	10337	PHIL IDEA:Know+Real	MW 1:30-3:10	KH B2006	Kaiser	4	60	LL
PHIL 151	2	10338	PHIL IDEA:Know+Real	TR 1:30-3:10	KH B2006	Pitt	4	60	
PHIL 152	1	10339	PHIL IDEA:Human Values	MW 9:50-11:30	KH B2009	Albergate	4	35	Room change from KH B4019
PHIL 152	2	10340	PHIL IDEA:Human Values	MW 4:20-6:00	KH B4019	Tallfer	4	35	
PHIL 152	3	12071	PHIL IDEA: Human Values	TR 11:40-1:20	KH B2006	Price	4	35	
PHIL 160	1	10341	CRITICAL THINKING	MW 9:50-11:30	BIOS 144	Atta	4	150	LL
PHIL 160	2	10342	CRITICAL THINKING	MW 11:40-1:20	KH B2006	Kaiser	4	60	
PHIL 160	3	10343	CRITICAL THINKING	MW 1:30-3:10	KH B4019	Conway	4	35	
PHIL 160	4	10344	CRITICAL THINKING	MW 6:10-7:50	KH B2007	Atta	4	35	
PHIL 160	5	10345	CRITICAL THINKING	TR 9:50-11:30	KH LH1	Houts	4	150	LL
PHIL 160	6	10346	CRITICAL THINKING	TR 11:40-1:20	KH B4019	Levy	4	35	
PHIL 160	7	12072	CRITICAL THINKING	TR 1:30-3:10	KH B4019	Gomez	4	35	
PHIL 160	8	17292	CRITICAL THINKING	TR 4:20-6:00	KH B2006	Gomez	4	35	
PHIL 200	1	10347	Intro to Comparative Religions	TR 8:00-9:40	FA 244	Price	4	75	Crosslisted with RELS 200-1
PHIL 200	2	10348	Intro to Comparative Religions	TR 11:40-1:20	KH B4015	Faculty	4	10	RELS
PHIL 220	1	10349	Honors: Moral Social Issues Multicul Soc	MW 9:50-11:30	ET A126	Vernallis	4	35	Honors permit required
PHIL 220	2	10350	Moral Social Issues Multicul Soc	MW 11:40-1:20	ET A126	Vernallis	4	35	
PHIL 230	1	10351	Meaning of Human Life	TR 11:40-1:20	KH B2014	Jarrett	4	35	
PHIL 250	1	10353	Intro Symbolic Logic	MW 11:40-1:20	KH B3020	Houts	4	30	Room change from KH D3068
PHIL 250	2	10354	Intro Symbolic Logic	TR 9:50-11:30	KH B3020	Levy	4	30	Room change from KH B3007
PHIL 250	3	11838	Intro Symbolic Logic	TR 4:20-6:00	KH B4019	Levy	4	35	
PHIL 300	1	10417	Philosophical Research and Writing	TR 4:20-6:00	KH B2007	Bettcher	4	35	
PHIL 313	1	10355	History of Modern Philosophy	MW 4:20-6:00	KH B2006	Shim	4	35	
PHIL 321	1	10356	Ancient Thought & Mod Legacy	TR 11:40-1:20	KH B2007	Farner	4	35	
PHIL 323	1	10357	Human Diversity & Justice	MW 9:50-11:30	KH D2072	Tallfer	4	75	LL
PHIL 323	2	10418	Human Diversity & Justice	MW 4:20-6:00	KH B2007	Albergate	4	35	
PHIL 325	1	10358	Violence and Ethics	TR 11:40-1:20	ET A126	Abed	4	60	
PHIL 327	1	10359	Philosophy, Gender & Culture	MW 11:40-1:20	SH E184	Conway	4	150	
PHIL 327	2	10360	Philosophy, Gender, Culture	TR 4:20-6:00	SH E184	Conway	4	75	
PHIL 372	1	10361	Philosophy & the Emotions	TR 9:50-11:30	KH D2072	Farner	4	75	LL
PHIL 372	2	16115	Philosophy & the Emotions	TR 1:30-3:10	KH B2007	Jarrett	4	35	
PHIL 373	1	10362	Themes of Adult Life	MW 1:30-3:10	KH D2072	Munoz	4	75	LL
PHIL 380	1	10363	Ancient & Modern Science	MW 4:20-6:00	PS 155	Thomas	4	10	Cross w/Hist 280 & Chem 380N
PHIL 385	1	11843	Measurement of Human Difference	TR 11:40-1:20	KH D2072	Atta	4	75	LL. Crosslisted w/Anth 385-01.
PHIL 385	2	12089	Measurement of Human Difference	TR 1:30-3:10	SH C264	Faculty	4	10	
PHIL 395	1	17526	Phil in Practice: Interns & Serv Lrn	TBA			1	10	Dept. permit required
PHIL 395	2	17527	Phil in Practice: Interns & Serv Lrn	TBA			2	10	Dept. permit required
PHIL 395	3	17528	Phil in Practice: Interns & Serv Lrn	TBA			3	10	Dept. permit required
PHIL 410	1	16116	Social & Political Philosophy	MW 1:30-3:10	KH B2007	Bishop	4	30	
PHIL 413	1	17506	Issues in Feminist Philosophy	TR 1:30-3:10	ET A126	Garry	4	30	Crosslisted with WOMN 413-01
PHIL 429	1	17507	Bioethics	TR 9:50-11:30	ET A126	Garry	4	30	
PHIL 445	1	17840	Existentialism	MW 11:40-1:20	KH B4019	Shim	4	30	
PHIL 450	1	17530	Plato	MW 9:50-11:30	KH B2006	Mendell	4	30	
PHIL 470	1	12100	Theory of Knowledge	TR 11:40-1:20	KH B3020	Talbot	4	30	
PHIL 480	1	12108	Philosophy of Language	W 6:10-10:00	ET A126	Balaguer	4	30	
PHIL 495	1	17508	Special Topic: Film	M 6:10-10:00	ET A126	Vernallis	4	30	
PHIL 495	2	17529	Seminar: Philosophy of Mind	TR 4:20-6:00	SH C338	Pitt	4	30	PHIL533
PHIL 495	3	17880	ST: Ancient Greek: The Language	MW 4:20-6:00	ET C154	Mendell	4	15	
PHIL 499	1	16124	UNDERGRAD DIR STUDY	TBA			1	10	Dept. permit required
PHIL 499	2	17514	UNDERGRAD DIR STUDY	TBA			2	10	Dept. permit required
PHIL 499	3	17515	UNDERGRAD DIR STUDY	TBA			3	10	Dept. permit required
PHIL 499	4	17583	UNDERGRAD DIR STUDY	TBA			4	10	Dept. permit required
PHIL 525	1	16118	Seminar: Philosophy of Science	R 6:10-10:00	KH B2006	Gomez	4	20	
PHIL 533	*1*		*Philosophy of Mind*	*TR 4:20-6:00*	*SH C338*	*Pitt*	*4*	*15*	*Not yet on GET: Students should register for 495-2*
PHIL 544	1	17510	Sem: Anarchism & State Legitimacy	T 6:10-10:00	KH B2007	Abed	4	20	
PHIL 581	1	16120	Proj. in Teaching Philosophy	TBA			1	10	Dept. permit required
PHIL 581	2	17531	Proj. in Teaching Philosophy	TBA			2	10	Dept. permit required
PHIL 581	3	17532	Proj. in Teaching Philosophy	TBA			3	10	Dept. permit required
PHIL 581	4	17533	Proj. in Teaching Philosophy	TBA			4	10	Dept. permit required
PHIL 596	1	16125	Comprehensive Exam	TBA			0	10	Dept. permit required
PHIL 598	1	16121	Grad Direct Study	TBA			1	10	Dept. permit required
PHIL 598	2	10364	Grad Direct Study	TBA			2	10	Dept. permit required
PHIL 598	3	17536	Grad Direct Study	TBA			3	10	Dept. permit required
PHIL 598	4	17537	Grad Direct Study	TBA			4	10	Dept. permit required
PHIL 599	1	16122	Thesis	TBA			1	10	Dept. permit required
PHIL 599	2	16123	Thesis	TBA			2	10	Dept. permit required
PHIL 599	3	12107	Thesis	TBA			3	10	Dept. permit required
PHIL 599	4	17538	Thesis	TBA			4	10	Dept. permit required
PHIL 599	5	17539	Thesis	TBA			5	10	Dept. permit required
PHIL 599	6	17540	Thesis	TBA			6	10	Dept. permit required
PHIL 900	1	17541	Graduate Studies	TBA			0	10	Permission needed from Dept. for fee purposes only.
									Limited to Graduate students.

Revised 10-23-08

SUBJECT TO CHANGE!

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Larry Thornton, O.D.
4074 Leimert Blvd.
Los Angeles CA 90008

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: **Larry Thornton, O.D.** Opt. License No: 6369

Attended: Fall Optometry Update

Date: **Sunday, November 14, 2010**

Instructor(s) & Lecture Information:

Morning Presentations
The Older Driver - J. Lee, O.D.
Evaluation & Management of Patients with Special Needs - C. Heyman, O.D.
A Survival Handbook: Examining the Pediatric Population - R. Chu, O.D., M.S.

Afternoon Presentations
Highlights of the OD/OT Low Vision Rehabilitation Model - S. Dang, O.D. & R. Kammer, O.D.
Contact Lens Update - B. Larson, O.D.
Optometrist Prescribing for Pregnant or Lactating Patients - R. Jankowski, Pharm.D.
99 Marketing Ideas to Boost Your Practice in a Recession - P. Shaw-McMinn, O.D.

Sponsored and Administered by: The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned: 7

Susan Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY
Continuing Education Department
2575 Yorba Linda Boulevard
Fullerton, CA 92831-1699
714/449-7442 • FAX 714/992-7809
Email: satkinson@scco.edu

Larry Thornton, O.D.
4074 Leimert Blvd.
Los Angeles CA 90008

CE Registration Confirmation Receipt

Title:	Fall Optometry Update
Date & Time:	Sunday, November 14th, 2010 - 8:30 am - 5:00 pm
Location:	Southern California College of Optometry Richard L. Hopping Academic Center 2575 Yorba Linda Blvd Fullerton, CA 92831
CE Credit/s:	7
License #:	6369
Course Fee:	$87.50
Amount Rec'd:	$87.50
Balance Due:	$0.00

Thank you!

Please visit our website www.scco.edu/ce/ to view our CE Course Schedule

Society meeting

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Larry Thornton, O.D.
8920 Pico Blvd Suite B
Los Angeles CA 90035

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: Larry Thornton, O.D.

OPT. LICENSE NO: 6369

Attended: **SCCO at South Bay**

Instructor(s) George Comer, O.D., Long Tran, O.D., Loretta Ng, O.D., John Maher, O.D.
August 7, 2005
Torrance Marriott
3635 Fahsion Way
Torrance, CA 90503

Sponsored and Administered by:
The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned: **3**

Susan J. Atkinson

Sue Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

For those who are TPA certified optometrists, this program provides 5 hours in the diagnosis, treatment & managment of ocular disease, & 2 hours of Other as per AB2464 effective January 1, 2005

1904-2004: A PROUD PAST, A VISIONARY FUTURE

Susan J. Atkinson
Director, Continuing Education

714.449-7442
Fax 714.992-7809
satkinson@scco.edu

Southern California College of Optometry

August 18, 2005

Larry Thornton, O.D.
8920 Pico Blvd., Suite B
Los Angeles, Ca 90035

RE: CA License No. 6369 Credit for courses attended in 2004 and 2005

Dear Dr.Thornton:

You have attended 28 hours of continuing education hour here at SCCO in 2004 and 2005. We have received payment of $180.00 toward these course credits. In view of your special circumstances, and your desire to retain your license, the college is willing to take this into consideration and will waive the balance of fees. Please understand that if you attend any future courses, we will require full payment in order to give you credit and add to your transcript.

We have attached the credit letters for the courses that are supported by your signature on the daily roster. After we input this information into our transcription system, we will send you a current transcript at no charge.

If you have any questions, please do not hesitate to contact me.

Course Attendance

May 10, 2004	3 CE Credits
May 13, 2004	7 CE Credits
May 14, 2004	4 CE Credits
July 12, 2004	7 CE Credits
August 7, 2005	7 CE Credits

Sincerely,

Susan Atkinson
Director Continuing Education

Enclosures
Resent 2/1/06Also sent via fax (310) 276-6811

Pennsylvania College of Optometry

IRVING BENNETT BUSINESS & PRACTICE MANAGEMENT CENTER
8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
1555 W. Sepulifida Blvd #R-2
Torrance, CA 90501

To be completed by O.D.

O.D. License Number: #63697

If required by your appropriate State Agency, please fill out before mailing this certified form to your State to earn your CE credits. Feel free to make a copy for your records.

NOTE TO AGENCIES REQUIRING CERTIFICATION
THIS FORM IS NOT VALID UNLESS EMBOSSED OR STAMPED WITH THE OFFICIAL SEAL OF THE PENNSYLVANIA COLLEGE OF OPTOMETRY

To be completed by Bennett Center

This is to certify that the above-named individual has attained ***two (2)*** clock hoursof Continuing Education Course Work offered by the Center through the special supplement correspondence course in Optometric Management magazine.

Course Title: **"Lens Problem? Look at the Lids"**
(COPE ID #10884-CL
by Neil A. Pence, OD, FAAO and Dean A. VanNasdale, OD

OPTOMETRIC Management

Date: February 2004
Test Graded: November 11, 2004

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

Pennsylvania College of Optometry

IRVING BENNETT BUSINESS & PRACTICE MANAGEMENT CENTER
8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
1555 W. Sepulifida Blvd #R-2
Torrance, CA 90501

To be completed by O.D.

O.D. License Number: [illegible]

If required by your appropriate State Agency, please fill out before mailing this certified form to your State to earn your CE credits. Feel free to make a copy for your records.

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This is to certify that the above-named individual has attained **two** clock hours of Continuing Education Course Work offered by the Center through the correspondence course in Optometric Management magazine.

Course Title: **"A New Generation of Contact Lens Care."**
(COPE ID #13145-CL)
By Jennifer Smythe, OD, MS, FAAO

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

OPTOMETRIC Management

Date: March 2005 Issue (CIBA)
Test Graded: April 13, 2005

Pennsylvania College of Optometry

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton
1555 W. Sepulifida Blvd #R-2
Torrance, CA 90501

To be completed by O.D.

O.D. License Number: <#6369

If required by your appropriate State Agency, please fill out before mailing this certified form to your State to earn your CE credits. Feel free to make a copy for your records.

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Course Title: **"Avoiding Contact Lens Dropouts"**
By Heidi Wagner, OD
COPE ID #11158-CL

OPTOMETRIC Management

Date: **April 2004**
Test Graded: September 20, 2004

Pennsylvania College of Optometry

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton
1555 Sepulueda Blvd, R #2
Torrance, CA 90501

To be completed by O.D.

O.D. License Number: #6369

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To be completed by Bennett Center

This is to certify that the above-named individual has attained **one *(1)*** clock hours of Continuing Education Course Work offered by the Center through the special supplement correspondence course in Optometric Management magazine.

Course Title: **"Get the Full Picture With Ultra Widefield Imaging"**
By William L. Jones, OD, FAAO
COPE ID # 11534-GO

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

OPTOMETRIC Management

Date: **May 2004**
Test Graded: November 3, 2004

Pennsylvania College of Optometry

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
8920 W Pico Blvd, Ste. B
Los Angeles, CA 90035

To be completed by O.D.

O.D. License Number: #6369

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Course Title: **"Expanding Refractive Options"**
(COPE ID #13723-GO)
by Kirk L. Smick, OD, FAAO

OPTOMETRIC Management

Date: May 2005 (Advanced Medical Optics, Inc)
Test Graded: July 1, 2005

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O.

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Larry F. Thornton, O.D.
4074 Leimert Blvd.
Los Angeles CA 90008

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: **Larry F. Thornton, O.D.** Opt. License No: 6369

Attended: Potpourri of CE with A Focus on Primary Care

Date: **Sunday, August 22nd, 2010**

Instructor(s) & Lecture Information:

Morning Presentations
Innovations in Contact Lens Design and Prescribing - Mathew Lampa, O.D.
The Who, What, When, Where and Why of Custom Soft Contact Lens Prescribing - Mathew Lampa, O.D.
CL Compliance in the Primary Care Practice - Eunice Myung Lee, O.D.
Impact of Medications in Geriatric Eye Care - John Lee, O.D.

Afternoon Presentations
The Eye: The Good, the Bad and the Ugly from 0-100 "What It is and What to do With It" - Lance Siegel, M.D.
Corneal Dysgenesis and Degenerations - Franklin "Skip" Lusby, M.D.

Sponsored and Administered by: The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned: 7

Susan Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

Pennsylvania College of Optometry

at Salus University

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
4074 Leimert Blvd.
Los Angeles, CA 90008

To be completed by O.D.

O.D. License Number: _____

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To be completed by Bennett Center

This is to certify that the above-named individual has attained **One (1)** clock hour of Continuing Education Course Work offered by the Center through the correspondence course in Optometric Management magazine.

Course Title: **"New Approaches for Reducing Risk Macular Degeneration"**
(COPE #23778-PS)
By Lloyd I. Snider, OD

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

OPTOMETRIC Management

Date: November 2008 MARCO
Test Graded: May 5, 2009

Pennsylvania College of Optometry
at Salus University

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
4074 Leimert Blvd.
Los Angeles, CA 90008

To be completed by O.D.

O.D. License Number: _____

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To be completed by Bennett Center

This is to certify that the above-named individual has attained **One (1)** clock hour of Continuing Education Course Work offered by the Center through the correspondence course in Optometric Management magazine.

Course Title: **"Seizing Profitable Opportunities in the Treatment and Management of Ocular Allergy"**
(COPE #24362-AS)
By Arthur B. Epstein, OD, John M. B. Rumpakis, OD

OPTOMETRIC Management

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

Date: February 2009
Test Graded: August 3, 2009

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Larry F. Thornton, O.D.
4074 Leimert Blvd.
Los Angeles CA 90008

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: **Larry F. Thornton, O.D.** Opt. License No: 6369

Attended: Celebration of The Lifetime Achievements of Dr. Michael Rouse CE Program

Date: **Sunday, February 14th, 2010**

Instructor(s) & COPE Information:

R. London, M.A., O.D. - Functional Vision Loss – 22957-GO
R. London, M.A., O.D. - Binocular Vision for $200 Please! – 27612-FV
S. Cotter, O.D, M.S. - Evolving Eye Care for Children – 19765-NO
M. Scheiman, O.D. - Evidence-Based Treatment of Convergence Insufficiency – 27527-FV
L. Siegel, M.D. - Treating Common Eye Diseases in Children – 27524-FV
D. Sendrowski, O.D. - Rouse House Jeopardy – 21618-AS
T. Edrington, O.D., M.S. - Monovision Meets Binocular Vision – 27531-CL

Sponsored and Administered by: The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned: **7**

Susan Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Larry Thornton, O.D.
4074 Leimert Blvd.
Los Angeles CA 90008

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: **Larry Thornton, O.D.** Opt. License No: 6369

Attended: Cornea & Cataract CE Program and Optometric Boot Camp

Date: **Sunday, April 18th, 2010**

Instructor(s) & Lecture Information:

Drs. Pirnazar and D. Tran - Cataract Panel Discussion: What Every Commanding Officer Needs to Know About Cataracts!
Dr. L. Tran - Corneal Dystrophies and Degenerations
Drs. Carver & Hua - In the Trenches of Co-managing Cataracts
Dr. Kersten - ICL's and the Optometric Patient
Dr. Kao - Cataracts and Beyond: What You Need to Know AboutIOLs, Intacs and RLEs
Dr. Weissman - Corneal Infiltrates, the Soldiers in the Eye

Sponsored and Administered by: The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned: 7

Susan Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

Pennsylvania College of Optometry

at Salus University

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
4074 Leimert Blvd.
Los Angeles, CA 90008

To be completed by O.D.

O.D. License Number: _____

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To be completed by Bennett Center

This is to certify that the above-named individual has attained **One (1)** clock hour of Continuing Education Course Work offered by the Center through the correspondence course in Optometric Management magazine.

Course Title: **" Successful Management of Complicated Glaucoma Cases"**
(COPE #24760-GL)
By G. Richard Bennett, MS, OD, FAAO

OPTOMETRIC Management

DATE: **April 2009**
Test Graded: July 28, 2009

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

SOUTHERN CALIFORNIA COLLEGE OF OPTOMETRY

Office of Continuing Education
2575 Yorba Linda Boulevard • Fullerton, CA 92831-1699
714/449-7442 • Fax 714/992-7809 • email: satkinson@scco.edu

Larry Thornton, OD
8920 Pico Blvd
Los Angeles CA 90035

CERTIFICATION OF CONTINUING EDUCATION CREDIT

This will certify that: Larry Thornton, OD

OPT. LICENSE NO: 6369

Attended: **Ocular Disease, Part 1**

Instructor(s): **Drs. of Optometry:** S. Ferrucci, D. Sendrowski, M. Sawamura, J. Tong, R. Kammer, P. Kwok., and A. Pilon, with John Maher, M.D., Lesley L. Walls, O.D., M.D., Mark Sherman, M.D. and Bruce Onofrey, OD., R.Ph.
Saturday - Sunday, March 4 & 5, 2006
Southern California College of Optometry
Fullerton, California
Course No: COE 1831

Sponsored and Administered by:
The Department of Continuing Education
Southern California College of Optometry

Total Continuing Education Credits Earned:

6

Susan Atkinson
Director, Department of Continuing Education
Southern California College of Optometry

For those who are TPA certified optometrists, this program provides 17 hours in the diagnosis, treatment and management of ocular disease, as per AB 2464 effective January 1, 2005

Pennsylvania College of Optometry

at Salus University

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8360 OLD YORK ROAD • ELKINS PARK, PA 19027 • (215) 780-1235

Larry Thornton, OD
4074 Leimert Blvd.
Los Angeles, CA 90008

To be completed by O.D.

O.D. License Number: _____

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To be completed by Bennett Center

This is to certify that the above-named individual has attained **One (1)** clock hour of Continuing Education Course Work offered by the Center through the correspondence course in Optometric Management magazine.

Course Title: **"Concurrent Treatment for Glaucoma and Ocular Surface Disease"**
(COPE #23776-AS)
By Robert Wooldridge, OD, FAAO

OPTOMETRIC Management

Date: November 2008 ALCON
Test Graded: May 28, 2009

PENNSYLVANIA COLLEGE OF OPTOMETRY C.E.P.C.O. PHILADELPHIA, PA

Southern California College of Optometry
2575 Yorba Linda Boulevard
Fullerton, CA 92631-1699

Thornton Larry OD
2146 W Sunset Blvd
Los Angeles, CA 90026

License#: CA6369

Report date: 06-Jan-06

COURSE	DATE	TITLE	INSTRUCTOR	HOURS	GRADE	LOCATION
		Continuing Education 2004				
COE1805	16-May-04	Residents Case Presentation Forum	Shen,Tradup,etc	4.00	P	SCCO
Graduate	HOURS					
Current Term	4.00					
Cumulative	98.00					
		Continuing Education 2005				
COE1816	07-Aug-05	SCCO at South Bay Annual Forum	Comer,Tran,Ng,e	3.00	P	Torran
Graduate	HOURS					
Current Term	3.00					
Cumulative	101.00					
		END OF TRANSCRIPT				

Date

Registrar

University of Alabama School of Optometry
Office of Continuing Education
1716 University Boulevard
Birmingham, AL 35294-0010
(205) 934-5701

COPE approval is granted for this course. This course is COPE-qualified for 1.00 *hours of CE credit.*

This course is joint-sponsored by Review of Optometry, a publication of Jobson Publishing LLC.

Course Title: Providing Optimal Optics For Your Astigmatic Cataract Patients

COPE ID: 26852-PO

Date: 08/24/2010

Score: 100%

Your Answers: **CDADDDCCBDAAAAA**

Correct Answers: CDADDDCCBD***** (* = evaluation questions)

LARRY THORNTON
4074 LEIMERT BLVD
LOS ANGELES, CA 900008
USA

Tammy P. Than

Tammy P. Than, M.S., O.D.
Director, Continuing Education
UAB School of Optometry

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DUCATION

24 Beacon Street
oston, MA 02115
ww.ne-optometry.edu

cope

SHIPPED MAR 3 1 2005

Contact Lens Spectrum - February 2005
"Prescribing Soft Toric Contact Lenses"
Peter D. Bergenske, OD, FAAO
COPE: 13030-CL CE Credits: 2 Hours

Dear Doctor

This certifies that you have received the above continuing education credits.

Requests for additional copies of this continuing education credit slip must be in writing, and there is a $15.00 service charge per copy.

Thank you for your interest in the programs offered through the Center for Continuing Education.

Sincerely,

Clifford Scott, OD

Clifford Scott, OD, MPH
Interim Director, Continuing Education

Validation requires your signature: _____

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SHIPPED DEC 0 1 2004

Contact Lens Spectium - August 2004
Preventing Contact Lens Challenges For Presbyopes
Susan Gromacki, OD, MS, FAAO
COPE: 12009-CL CE Credits: 2 Hours

Dear Doctor

This certifies that you have received the above continuing education credits.

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Thank you for your interest in the programs offered through the Center for Continuing Education.

Sincerely,

Clifford Scott, OD

Clifford Scott, OD, MPH
Interim Director, Continuing Education

Validation requires your signature: _____

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NTINUING
CATION

Beacon Street
ton, MA 02115

Contact Lens Spectrum May 2008
Imaging and Instrumentation in Contact Lens Practic
David Berntsen, OD, MS, FAAO
COPE # 21936-CL 2 credit hours

SENT
OCT 27 2008

Dear Doctor

This certifies that you have received the above continuing education credits.

Requests for additional copies of this continuing education credit slip must be in writing, and there is a $15.00 service charge per copy.

Thank you for your interest in the programs offered through the Center for Continuing Education.

Sincerely,

Clifford Scott, OD

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4 Beacon Street
ston, MA 02115
ww.neco.edu

SENT
APR 06 2009

Contact Lens Spectrum August 2008
Educating Patients About Ultraviolet Radiation
Dr. Stephen Cohen
COPE # 22751-GD 2 Credit Hours

Dear Doctor

This certifies that you have received the above continuing education credits.

Requests for additional copies of this continuing education credit slip must be in writing, and there is a $15.00 service charge per copy.

Thank you for your interest in the programs offered through the Center for Continuing Education.

Sincerely,

Alan L. Lewis, O.D., Ph.D.
Director, Continuing Education

Validation requires
your signature:_____

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Beacon Street
ston, MA 02115
w.neco.edu

Optometric Management September 2008
Current Trends in Daily Disposable Contact Lenses
Dr. Carmen F. Castellano
COPE # 23117-CL 2 Credit Hours

Dear Doctor

This certifies that you have received the above continuing education credits.

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Thank you for your interest in the programs offered through the Center for Continuing Education.

Sincerely,

Alan L. Lewis, O.D., Ph.D.
Director, Continuing Education

Validation requires
your signature:_____

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4 Beacon Street
ston, MA 02115
ww.ne-optometry.edu

SHIPPED JAN 2 0 2005

Contact Lens Spectrum - November 2004
Examining the Contact Lens Patient
Douglas Benoit, OD, FAAO
COPE: 12412-CL CE Credits: 2 Hours

Dear Doctor

This certifies that you have received the above continuing education credits.

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Thank you for your interest in the programs offered through the Center for Continuing Education.

Sincerely,

Clifford Scott, OD, MPH

Validation requires

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

In the Matter of the Petition for Reinstatement Regarding: LARRY FRANKLIN THORNTON, Optometrist License No. OPT 6369, Petitioner.	OAH No. L2008080180

DECISION

A quorum of the Board of Optometry (the California Board) heard this matter on September 3, 2008, in Pomona, California. The members of the Board present were Lee A. Goldstein, O.D., President; Susy Yu, O.D., Vice President; Alex M. Arredondo, O.D.; Fred Naranjo; Richard K. Simonds, O.D.; Monica Johnson; Ken Lawenda, O.D.; Martha Burnett-Collins, O.D.; and Katrina Semmes.

Margie McGavin, the Board's Enforcement Manager, was also present during the proceedings.

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Larry Franklin Thornton (Petitioner) represented himself.

Char Sachson, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 3, 2008.

Certified to be a true and correct copy of the original on file with the Board.
Dated: 2/7/12

FACTUAL FINDINGS

1. On July 28, 2008, Petitioner filed the Petition for Reinstatement, his second such petition (Factual Finding 5 describes the first petition). Petitioner seeks the reinstatement of his revoked optometrist license; he contends it is appropriate to reinstate his license because he is sufficiently rehabilitated from earlier transgressions he committed in another state.

2. The California Attorney General contends the public would be unsafe if the Board were to reinstate Petitioner's license.

3. The California Board licensed Petitioner (optometrist license number OPT 6369) on October 3, 1977. At the time of his original licensure by the California Board, Petitioner already possessed an optometrist license, issued by the Kentucky Board of Optometric Examiners (the Kentucky Board), in February 1977.

4(a). On or about January 15, 2003, the California Board's then-Executive Officer filed an Accusation against Petitioner, alleging cause to revoke or otherwise discipline Petitioner's California optometrist license (*In the Matter of the Accusation Against Larry Franklin Thornton, O.D.*, case number CC 2001 142). The Complainant in that case alleged that Petitioner was subject to disciplinary action because, in March 2000, the Kentucky Board had suspended Petitioner's Kentucky optometrist license for six years.[1] The Kentucky Board took disciplinary action against Petitioner because it concluded that Petitioner had violated Kentucky statutes and administrative regulations, committing the following acts: "grossly unprofessional or dishonorable conduct;" "obtaining fees by fraud or misrepresentation;" "conduct likely to deceive or defraud the public;" receipt of fees for services not rendered;" "knowingly making a false statement regarding a prescription;" "presenting a prescription for a controlled substance in violation of the law;" "failing to give visual care to patients who sought care, paid for that care, and had every expectation of receiving that care;" and "associated or shared an office or fees with a person engaged in the unauthorized practice of optometry."

4(b) The Kentucky Board's findings were generally described in the underlying (California) Accusation as follows:

> [Petitioner's] clients came to him expecting to receive professional and fair treatment with resulting proper vision care. Instead [Petitioner] took their money and did nothing to improve or care for their vision . . . The failure to provide paid-for services deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. [Petitioner] took the money from

[1] Despite the six-year suspension ending in March 2006, Petitioner still does not have his Kentucky optometrist license reinstated; he believes he will be eligible for reinstatement in that state sometime in 2009.

too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. [¶] [¶] . . . [Petitioner] simply abandoned those patients who depended upon him.

4(c). Based on the Kentucky Board's conclusions and ultimate suspension, the Complainant in the California Board's underlying Accusation cited Business and Professions Code sections 3090, subdivision (b) and 141, subdivision (a) (unprofessional conduct and disciplinary action by another state) as the bases to discipline Petitioner's California optometrist license.

4(d). Petitioner failed to file a notice of defense within 15 days after service of the Accusation, and thus waived his right to a hearing on the merits. The Board issued a Default Decision and Order, effective July 14, 2003, revoking Petitioner's optometrist license.

5. On October 12, 2006, Petitioner filed an earlier Petition for Reinstatement (*In the Matter of the Petition for the Reinstatement of the Revoked License of Larry Franklin Thornton*, case number CC 2005 117). On November 16, 2006, a quorum of the Board convened to hear Petitioner's case. The Deputy Attorney General in the instant matter represented the Office of the Attorney General in the first petition for reinstatement. Neither Petitioner nor anyone representing Petitioner appeared at the hearing. Nevertheless, the Board heard the matter and denied the petition. Among other things, the Board noted a significant inconsistency in Petitioner's assertions. The Board cited Petitioner's denial of any drug or alcohol problems, on the one hand, but noted Petitioner's reference to having taken steps toward drug and alcohol rehabilitation, on the other hand. Additionally, the Board found that, in September 2006, Petitioner had been cited for practicing optometry without a license.

6. At the instant hearing, in response to a direct question from the Board, Petitioner asserted he did not have a drug or alcohol addiction or problem. However, as part of the Petition for Reinstatement, Petitioner submitted an informational document regarding the Crenshaw Christian Center Alcohol and Drug Abuse Program. He initially told the Board that he attended the program solely to attend a bible study component that is offered as a part of the rehabilitation program. However, upon further questioning by the Board, Petitioner admitted that he attends and intends on continuing to participate in the drug rehabilitation program and that he has taken drugs before.

7. In his Petition for Reinstatement, Petitioner described his optometric work as consisting of a solo practice from March 2001 to April 2002, and a group practice between June 2003 and approximately April 2004. He also admitted that since losing his license, he practiced optometry without a license for approximately one year (though the evidence did not conclusively establish the time period in which this occurred). In his Petition documents, he wrote, "[s]ince my license has been revoked, I worked at an optometry office at 8920 West Pico Boulevard, Los Angeles.

However, I was cited for practicing without a license." He acknowledged that his actions were contrary to the laws governing the practice of optometry.

8. Currently, according to Petitioner, he receives public assistance (welfare) in the form of subsistence level monthly monetary payments through the County General Relief program. He provided no evidence to support that assertion. Petitioner also claimed to be current in continuing education course requirements, but provided no evidence to support that assertion.

9. Petitioner completed 22 hours of community service time, working for the Salvation Army, between August 2007 and June 2008. He provided no evidence explaining any imposed community service requirement.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's Petition for Reinstatement, pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-9, and Legal Conclusions 2-6.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition for reinstatement. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

> A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[¶] . . . [¶]

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

5. Petitioner did not prove, by clear and convincing evidence to a reasonable certainty, that reinstatement of his license is warranted. Petitioner provided little, if any, evidence of rehabilitation. He failed to express genuine remorse for his earlier transgressions, transgressions that were serious in nature. Saliently, he was not forthright with the Board, first asserting no problems with drugs, then admitting to using drugs and participating in a rehabilitation program. Significantly, Petitioner provided similarly contradictory evidence at the last petition for reinstatement. (See Factual Finding 5.) This, together with his admitted unlicensed practice of optometry provided evidence of dishonesty and unprofessional behavior. There was no evidence establishing Petitioner's honesty or integrity, nor was there evidence of any effort by Petitioner to repair his tarnished professional reputation. Petitioner's overall fitness to practice optometry remains questionable; thus, the public's safety cannot be assured if the Board were to reinstate him.

6. In the future, if Petitioner chooses to seek reinstatement, the Board would likely require two psychological evaluations of Petitioner (by psychologists chosen by the Board), the completion of 100 hours of continuing education (completed within the last two years prior to a new petition), on-going drug testing, and the completion of an ethics course. Furthermore, to consider possible reinstatement in the future, the Board would expect to see no additional instances evidencing Petitioner's dishonesty, any violations of law, or a lack of professional judgment and discretion.

ORDER

Larry Franklin Thornton's Petition for Reinstatement of his optometrist license, number 6369, is denied.

Dated: 10/10/2008

Lee A. Goldstein, O.D., President
California Board of Optometry

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

In the Matter of the Petition for the Reinstatement of the Revoked License of:	Case No. CC 2005 117
	OAH No. L2006100659
LARRY FRANKLIN THORNTON, O.D. 4074 Leimert Blvd. Los Angeles, CA 90008	
Respondent.	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry as its Decision in the above-entitled matter.

This Decision shall become effective February 17, 2007.

It is so ORDERED January 17, 2007.

LEE GOLDSTEIN, O.D.
PRESIDENT
BOARD OF OPTOMETRY

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

In the Matter of the Petition for the Reinstatement of the Revoked License of:	Case No. CC 2005 117
LARRY FRANKLIN THORNTON,	OAH No. L2006100659
Petitioner.	

DECISION

On November 16, 2006, in San Diego, California, a quorum of the California Board of Optometry, Department of Consumer Affairs, State of California heard and decided the Petition for Reinstatement of the Revoked License of Larry Franklin Thornton.

Present at the hearing were Board President Lee Goldstein, O.D., Board Vice President Susy Yu, O.D., and Board Members Monica Johnson, Daniel Pollack, O.D., Mary Rosas, Richard Simonds, O.D., and Roberto Vallenowith.

Administrative Law Judge Donald P. Cole, Office of Administrative Hearings, State of California, conducted the administrative proceeding.

Deputy Attorney General Char Sachson appeared on behalf of the Office of the Attorney General, State of California.

Neither petitioner nor any individual representing petitioner appeared at the hearing.

Following the receipt into evidence of the petition for reinstatement and supporting documentation, the matter was submitted and decided by the Board in Executive Session.

FACTUAL FINDINGS

1. On or about October 3, 1977, the Board of Optometry issued Optometry License No. OPT 6369 to petitioner Larry Franklin Thornton. The license was in full force

and effect as of December 31, 2002, and was then due to expire on June 30, 2003, unless renewed.

2. On December 31, 2002, the accusation in Board Case No. CC 2001 142 was filed against petitioner. The accusation alleged unprofessional conduct, in connection with discipline that had been imposed by the Kentucky Board of Optometric Examiners in March 2000 against petitioner's Kentucky optometrist's license, based on the Kentucky Board's findings that respondent took money from clients "and did nothing to improve or care for their vision," and that his "failure to provide paid-for services . . . handicapped the clients in the conduct of their daily activities, deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. [Petitioner] took the money from too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. . . . [Petitioner] simply abandoned those patients who depended upon him."

3. Petitioner did not file a notice of defense within 15 days after service on him of the accusation. Accordingly, on June 14, 2003, the Board issued a default decision and order, which became effective July 14, 2003, in which, pursuant to Government Code section 11520, the Board found petitioner in default, deemed petitioner's default to constitute express admissions of the accusation's allegations, and revoked petitioner's license.

4. On October 12, 2006, petitioner filed with the Board under penalty of perjury a Petition for Reinstatement.

5. In the petition, petitioner responded to a number of questions that appeared on the petition form. Question 9 asked, "Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction?" Petitioner answered "no" to this question.

6. Petitioner submitted a one-page handwritten statement dated September 9, 2006, in support of the petition, in which he wrote that he had maintained professional skills and knowledge through continuing education, that he was "working within an optical establishment, if 'off limits' is understood," that beginning later that month, he planned to attend and complete a 40-hour Red Cross blood donor program and 20 hours of "alcohol and drug rehabilitative efforts," and that "unfortunately the petitioner did not comply with all law and regulations and was cited in September 2006 for filling in for an ill 80-year-old optometrist," who "returned the following week after I was cited."

7. The petition was accompanied by: an American Red Cross certificate, which stated that petitioner had completed the requirements of adult, infant and child CPR training on August 11, 2005; three reference letters (two from professional colleagues), recommending that petitioner's license be reinstated; continuing education course certificates and related documentation issued to petitioner by the Pennsylvania College of Optometry, the New England College of Optometry, the Southern California College of Optometry

reflecting course work undertaken between February 2004 and August 2005; and a criminal action report reflecting that petitioner received a citation on September 22, 2006 for the unlicensed practice of optometry.

LEGAL CONCLUSIONS

1. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

An individual seeking reinstatement must present strong proof of rehabilitation which must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d. 308, 315-316.)

2. Government Code section 11520 provides in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty."

3. California Code of Regulations, title 16, section 1516 provides in pertinent part:

"(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b)."

4. There are "[t]wo purposes for the Legislature mandating a statement of reasons for the decision of an agency proceeding under section 11522 . . . . *First*, a statement of reasons enables a reviewing court to determine *why* [it] did what it did and, in that light, examine the administrative record to ascertain whether there is substantial evidence to support the decision. *Second*, a statement of reasons advises the rejected petitioner for reinstatement what his deficiencies are and, therefore, tells him what he should do to make a subsequent petition meritorious." (*Crandell v. Fox* (1978) 86 Cal.App.3d 760, 765.)

5. Based on Factual Findings 1 through 7 and Legal Conclusions 1 through 4, cause was not established under the applicable burden and standard of proof to grant the petition to reinstate petitioner's license. In particular, petitioner's response to question nine of the petition that he had not been under observation or treatment for mental disorders, alcoholism, or narcotic addiction seemed inconsistent with the reference in his handwritten statement to drug and alcohol rehabilitative efforts. Further, petitioner was cited on September 22, 2006, for practicing without a license. Petitioner in fact admitted, in an apparent reference to this citation, that he "did not comply with all law and regulations." It is noted as well that petitioner's handwritten statement appears to end with a subheading (E)(1), which raises a question as to whether there were other matters that were intended to be part of the statement, but which for some reason were not submitted to the Board. Ultimately, the petition raises important questions as to petitioner's suitability for reinstatement. Yet, since petitioner neither appeared at the hearing nor notified the Board as to the reason for his non-appearance, these questions cannot be answered. In light of these factors, the letters of reference submitted in petitioner's behalf and the other documents submitted with the petition were insufficient to meet petitioner's burden of proof by clear and convincing evidence that his license should be reinstated.

ORDER

Petitioner Larry Franklin Thornton's Petition for Reinstatement of Revoked Optometry License No. OPT 6369 is denied.

Dated: January 17, 2007

LEE GOLDSTEIN, O.D., President
California Board of Optometry
Department of Consumer Affairs
State of California

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **LARRY FRANKLIN THORNTON, O.D.** 2146 W. Sunset Boulevard Los Angeles, California 90026 Optometrist License Number OPT 639 Respondent.	Case No. CC 2001 142 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 15, 2003, Complainant Lucinda Ehnes, in her official capacity as the Interim Executive Officer of the Board of Optometry, Department of Consumer Affairs, filed Accusation No. CC 2001 142 against Larry Franklin Thornton (Respondent) before the Board of Optometry.

2. On or about October 3, 1977, the Board of Optometry (Board) issued Optometrist License Number OPT 6369 to Respondent. The license was in full force and effect at all times relevant to the charges herein, and will expire on June 30, 2003, unless renewed.

3. On or about January 15, 2003, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. CC 2001 142, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 2146 W. Sunset Boulevard, Los Angeles, California 90026. A copy of the Accusation, the

related documents, and Declaration of Service are attached as Exhibit "A", and are incorporated herein by reference.

3. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

4. On or about February 2003, the aforementioned certified mailing documents were returned by the U.S. Postal Service marked "Undeliverable as Addressed. Forwarding Order Expired." A copy of the postal returned documents is attached hereto as exhibit B, and are incorporated herein by reference.

5. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. CC 2001 142.

7. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A and B finds that the allegations in Accusation No. CC 2001 142 are true.

9. The total costs for investigation and enforcement are $2,653.75 as of March 26, 2003.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Larry Franklin Thornton has subjected his Optometrist License Number OPT 6369 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Optometry is authorized to revoke Respondent's Optometrist License Number OPT 6369 based upon the following violations alleged in the Accusation:

a. Business and Professions Code sections 3090(b) and 141(a): Unprofessional conduct - disciplinary action by another state.

ORDER

IT IS SO ORDERED that Optometrist License Number OPT 6369, heretofore issued to Respondent Larry Franklin Thornton, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on July 14, 2003.

It is so ORDERED June 14, 2003.

FOR THE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

Exhibit A: Accusation No.CC 2001 142, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **LARRY FRANKLIN THORNTON, O.D.** 2146 W. Sunset Boulevard Los Angeles, California 90026 Optometrist License No. OPT 6369 Respondent.	Case No. CC 2001 142 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Karen L. Ollinger (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Optometry, Department of Consumer Affairs.

2. On or about October 3, 1977, the Board of Optometry issued Optometrist License No. OPT 6369 to Larry Franklin Thornton, O.D. (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2003, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Optometry (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 3090 of the Code states:

The certificate of registration of any person registered under this chapter, or any former act relating to the practice of optometry, may be revoked or suspended for a fixed period by the board for any of the following:

. . . .

"(b) Unprofessional conduct."

5. Section 141(a) of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein."

6. Section 118(b) of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Disciplinary Action by Another State)

8. Respondent is subject to disciplinary action under Code sections 3090(b) and 141(a) of the Code, on the grounds of unprofessional conduct, in that Respondent's Kentucky optometrist's license was disciplined by the Kentucky Board of Optometric Examiners (hereinafter "Kentucky Board"). On March 21, 2000, the Kentucky Board, in a case entitled, "Kentucky Board of Optometric Examiners v. Larry Thornton," Administrative Action No. 99-KBOE-0672, in its Findings of Fact, Conclusions of Law, Final Order, and Notice of Appeal Rights (hereinafter "Kentucky Findings of Fact"), suspended Respondent's Kentucky optometry license for six years (until March 21, 2006). The Kentucky Board found Respondent to be in violation of the following Kentucky Revised Statutes ("KRS") and Kentucky Administrative Regulation ("KAR"):

a. KRS 320.310(1)(f) (grossly unprofessional or dishonorable conduct);

b. KRS 320.310(1)(g) (obtaining fees by fraud or misrepresentation);

c. KRS 320.310(1)(n) (conduct likely to deceive or defraud the public);

d. KRS 320.310(1)(r) (receipt of fees for services not rendered);

e. KRS 218A.140 (1)(d) (knowingly making a false statement regarding a prescription);

f. KRS 218A.140(f) (presenting a prescription for a controlled substance in violation of the law);

g. 201 KAR 5:040, Section 5 (failing to give visual care to patients who sought care, paid for that care, and had every expectation of receiving that care); and

h. 201 KAR 5:040, Section 3(2) (associated or shared an office or fees with a person engaged in the unauthorized practice of optometry).

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The Kentucky Board made the following findings in support of the discipline:

> "Thornton's clients came to him expecting to receive professional and fair treatment with resulting proper vision care. Instead Thornton took their money and did nothing to improve or care for their vision. . . . The failure to provide paid-for services . . . handicapped the clients in the conduct of their daily activities, deceived the public who expected eyeglasses or contacts in exchange for the money they paid, and damaged the profession by smudging its reputation for honest service. Thornton took the money from too many patients without providing glasses or contacts for his malfeasance to be a mistake, negligence, or oversight. Further he has put himself outside the reach of these patients who have no means of being reimbursed. [¶] [¶] . . . Thornton simply abandoned those patients who depended upon him." (Kentucky Findings of Fact, p. 9.)

A copy of the Kentucky Board's Findings of Fact, Conclusions of Law, Final Order, and Notice of Appeal Rights is attached to this Accusation as exhibit A, and is incorporated herein by reference.

PRAYER

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

1. Revoking or suspending Optometrist License No. OPT 6369, issued to Larry Franklin Thornton, O.D.;

2. Ordering Larry Franklin Thornton, O.D. to pay the Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: December 31, 2002

KAREN L. OLLINGER
Executive Officer
Board of Optometry
Department of Consumer Affairs
State of California
Complainant

03581110-LA2002AD1481

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NEW ENGLAND
COLLEGE OF
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CENTER FOR
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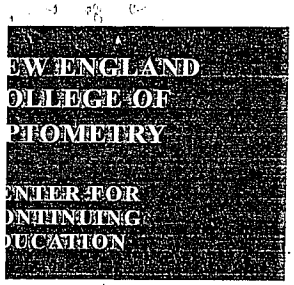
EDUCATION



Larry Thorton
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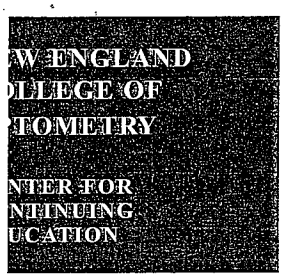

Dr. Larry Thornton
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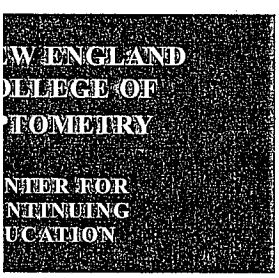

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CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
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§ 1516. Criteria for Rehabilitation.

(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.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

Note: Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code. Reference: Sections 475, 480, 481 and 482, Business and Professions Code; and Section 11522, Government Code.

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STANDARDS FOR REINSTATEMENT OR REDUCTION OF PENALTY

CALIFORNIA STATE BOARD OF OPTOMETRY

In petitioning for reinstatement or reduction of penalty under Government Code Section 11522, the petitioner has the burden of proof demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of optometry within the scope of Current law and accepted standards of practice. In reaching its determination the Board may, but is not limited to, consider the following:

A. The original violation(s) for which action was taken against the petitioner's license, including:

   1. The type, severity, number and length of violation(s).
   2. Whether the violation involved intent, negligent or other unprofessional conduct.
   3. Actual or potential harm to the public, patients or others.
   4. The length of time since the violation(s) was committed.
   5. Petitioner's cooperation or lack thereof in the investigation of the original offense.

B. Prior actions by the Board, any state, local or federal agency or court including:

   1. Compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.
   2. Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.
   3. The petitioner's legal and regulatory history prior to and since the violation(s).

C. The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.

D. The petitioner's documented rehabilitative efforts including:

   1. Efforts to maintain and/or update professional skills and knowledge through continuing education or other methods.
   2. Efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior applicable to the petitioner's optometric practice.
   3. Service to the community or charitable groups, non-profit organizations or public agencies.

4. Voluntary restitution to those affected by the original violation(s).
5. Use of appropriate professional medical or psychotherapeutic treatment.
6. Participation in appropriate self-help and/or rehabilitation groups.
7. Use of appropriate peer review mechanisms.
8. Participation in professional optometric organizations or associations.

E. Assessment of the petitioner's rehabilitative and corrective efforts including:

1. Whether the efforts relate to the original violation(s).
2. The date rehabilitative efforts were initiated.
3. The length, time and expense associated with rehabilitative efforts or corrective actions.
4. The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice optometry.
5. Whether the rehabilitative efforts were voluntary and self-motivated, or imposed by order of a government agency or court of competent jurisdiction and complied with as a condition or term of probation.
6. The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
7. The nature and status of ongoing and continuing rehabilitative efforts.
8. The petitioner's compliance or non-compliance with all laws and regulations since the date of the original violation(s).
9. The petitioner's cooperation or non-cooperation in the Board's investigation of petitioner's Petition for Reinstatement or Reduction of Penalty and the facts surrounding that petition.

Nothing in these guidelines shall be construed to prevent the Board from considering any other appropriate and relevant material not within these guidelines in order to assess the Petition for Reinstatement or Reduction of Penalty.

Any statement which petitioner intends to support his or her petition and all witness statements either party intends to introduce at hearing are preferred by the Board to be in the form of an affidavit or declaration rather than merely a letter or unsworn statement.

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

Certification of Non-Licensure

The undersigned, Mona Maggio, hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the Board of Optometry of the State of California, and that in such capacity she has custody of the official records of said board.

On this 8th day of March, 2012, the Executive Officer examined said official records of said Board of Optometry and found that **LARRY FRANKLIN THORNTON** graduated from the Indiana University College of Optometry in 1976, and was the holder of Certificate of Registration to Practice Optometry No. 6369 which was granted to him effective October 3, 1977.

Said records further reveal that, effective July 14, 2003, as the result of disciplinary action taken in Case number CC 2001-142, the Board of Optometry revoked Certificate of Registration to Practice Optometry No. 6369.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this 8th day of March, 2012.

Mona Maggio
Executive Officer

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** March 30, 2012

From: Jessica Sieferman **Telephone:** (916) 575-7170

Subject: **Agenda Item 2B. In the Matter of the Petition for Reinstatement of Revoked License No. OPT 8618 – Lawrence Edwin Young**

Dr. Lawrence Edwin Young, Petitioner, was issued Optometrist License Number 8618 by the Board on October 2, 1986. On March 26, 2007, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on allegations that Petitioner altered his certificate of registration to appear as if it had been renewed, and then presented this falsified certificate to an agency that he contracted with for services. In a stipulated settlement agreed to by Petitioner, on April 3, 2008, Petitioner's license was revoked, the revocation stayed and the license placed on probation for three (3) years, subject to certain terms and conditions.

On January 27, 2010, the Board filed an Accusation and Petition to Revoke Probation against Petitioner, charging him with violations of the terms and conditions of his probation. Petitioner's case was heard by Julie Cabos-Owen, Administrative Law Judge, on December 1, 2010, and on February 12, 2011, Petitioner's license was revoked as the result of said hearing.

The Petitioner is requesting the Board to reinstate his Optometrist License. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reinstatement with Attachments
2. Copies of Decision and Order, Accusation and Petition to Revoke Probation, Stipulated Settlement and Disciplinary Order, Accusation
3. California Codes and Regulations Section 1516 – Criteria for Rehabilitation
4. Standards for Reinstatement or Reduction of Penalty
5. Certification of Non-Licensure

RECEIVED BY
STATE BOARD OF OPTOMETRY

2012 FEB -3 PM 4:01

Lawrence E. Young, OD
13657 Palmetto Place
Chino Hills, CA 91709
February 2, 2012

Cailfornia State Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA, 95834

Dear Board Members,

On Feb. 12, 2011 my optometric license (8618T) was revoked as a result of my inability to properly comply with the probationary conditions that were imposed in June 2008. The probation requirements involved, following all laws, providing quarterly reports, participate in 120 hours of continuing education over the 3 year period, including an approved ethics course, a $10,000.00 cost recovery repayment, function as an optometrist, and provide 400 hours of non-optometric community service. I take full and unconditional responsibility for not fulfilling these requirements. The repercussion of my inaction was severe and profound. In the course of 3 months, Dec. 2010-Feb, 2011, I basically lost everything. I permanently closed my optometric practice located at 10004 Sierra Ave., Fontana, CA 92335. Two weeks later I lost my home to foreclosure. One month later I lost my optometric license. Finally, in November 2011 my wife and I were forced to file a Chapter 7 bankruptcy. I spent 9 months of 2011 unemployed. In spite of applying for 100's of jobs in a wide array of occupations, including opticianry and optometric assistant, I sadly found that I was perceived as "too old and too educated" and therefore over-qualified for just about any work at all. I considered a career change to the education field. I thought it would be fulfilling to teach math or science to middle school students. I did apply and was accepted to Cal Poly Pomona's Education/Credentialing program. However, I was unable to enroll in the first required set of courses as it was well past the annual deadline to file a FASFA form to become eligible for financial aid. I am filing that form this year. In the fall of 2011 I was hired by the Rowland USD as a substitute teacher. I passed the Live Scan fingerprinting and background check with both the FBI and the Department of Justice. In October I finally was hired at a local fast food restaurant at $10/hr. I have been working in that job since. It is incredibly humbling to go from Doctor of Optometry to cashier at Chick-fil-A. I have now had a full year to reflect upon my past shortcomings and the their effects. I fully realize that it is a privilege, not a right, to practice optometry.

During this past year, as a result of my obvious desperate financial condition, I was unable to take any continuing education classes, as I had no ability to pay for them. I did however, utilize the power of the Internet and subscribed to free sources of educational materials, which I have been reading continuously. These sources include, Vision Monday, Review of Optometry online, Optometric Physician, New England Journal of

Medicine, Eyefinity Advisor, Vmail and COAlists. In addition I have been studying my textbooks and my ample supply of back issues of journals.

During 2011 I did continue on with my commitments to community service. I successfully completed my second term as President of the Diamond Bar High School Boosters (a 501.c.3 non-profit) in June. This concluded 9 consecutive years of volunteer service to Diamond Bar High School. I also participated in coordinating and running two different fundraisers, one for the Diamond Bar High School football team and the other for Walnut High School. The two events collectively raised well over $40,000. I have been invited by both organizations to return for this year's events as well. In May of 2011 I finished my 9th year as a Mentor for the Pathways Communication Academy at Diamond Bar High School. The message here is that in spite of my personal crisis, I followed through with my commitments to the local community.

I desire to have my optometric license reinstated, even if it is under a continued probationary period with requirements set forth by the Board. I am submitting for approval from the Board a list of courses that I will be attending at the Optowest program in April. I expect to attend at least 15 hours of TPA approved courses. I will also be submitting for prior approval for additional continuing education courses that will be offered at Vision Expo in October. I will be reapplying for membership with the COA, AOA and my local optometric society so that I can participate in their monthly education programs as well. If it is permissible by the Board I will also sign up for and take online CE. I will proceed, with Board approval, in taking the Ethics course at SCCO. I will be submitting to the Board a request for approval of qualified community service that I can begin doing it immediately.

I do ask that the cost recovery assessment be set aside as I was required to list it as a debt in my Chapter 7 bankruptcy filing. The Bankruptcy discharge should take place in early March according to my attorney.

I will be able to provide whatever quarterly monitoring reports that the Board may require. Please do keep in mind that I will not be in a solo private practice during the extended time of probation. I wish to work in the capacity as an employed doctor in another OD's office or perhaps in an ophthalmology office. My forte has always been in patient care and not in the running of the business. I will avoid the mistakes of the past by working as an employed OD.

In summary, I fully regret my actions of the past, but I have learned valuable lessons from the consequences of those actions. I strive to rebuild trust and confidence with the Board and the public at large as a qualified and competent Optometrist. I am willing to do whatever is required of me by the Board to re-establish my place as a fully licensed Doctor of Optometry in the state of California. I eagerly look forward to returning to the exam room!

Sincerely,

Lawrence E. Young, OD

CALIFORNIA STATE BOARD OF OPTOMETRY
STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
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PETITION FOR REINSTATEMENT

A person whose certificate of registration has been revoked or suspended for more than one year may petition the Board to reinstate the certificate of registration after a period of not less than one year has elapsed from the date of the revocation or suspension. In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, which should be imposed if the disciplinary penalty is set aside, the Board may investigate and consider all activities of the petitioner since the disciplinary action was taken, the offense for which discipline was imposed, activity during the time the certificate of registration was in good standing and the petitioner's general reputation for truth, professional ability and good character.

PLEASE TYPE OR PRINT LIGIBLY

1. NAME (FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO.
Lawrence	Edwin	Young	86187
2. ADDRESS (NUMBER)	**(STREET)**		DATE OF BIRTH
13657	Palmetto Place		03-22-1959
(CITY)	(STATE)	(ZIP CODE)	TELEPHONE
Chino Hills	CA	91709	(909) 964-6956

3. PHYSICAL DESCRIPTION (HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
5'9½"	195	hazel	grey

4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGES) OF OPTOMETRY ATTENDED

NAME OF SCHOOL
University of Houston, College of Optometry

ADDRESS (NUMBER) (STREET)
4901 Calhoun Rd

(CITY) (STATE) (ZIP CODE)
Houston, TX 77204

5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? YES (NO)

STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
10004 Sierra Ave Fontana, CA 92335	01/1989 - [illegible]	12/2010	Solo private practice

39M-13

7. Are you or have you ever been addicted to the use of narcotics or alcohol? YES (NO)

8. Are you or have you ever suffered from a contagious disease? YES (NO)

9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? YES (NO)

10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) YES (NO)

11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) YES (NO)

12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? (YES) NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.

14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.

17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.

18. List all optometric literature you have studied during the last year.

19. List all continuing education courses you have completed since your license was disciplined.

20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date 02-02-2012
Signature Lawrence E [signature], OD

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

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

In the Matter of the Accusation/Petition to Revoke Probation Against: LAWRENCE EDWIN YOUNG, Respondent.	No. CC 2004-59 OAH No. 2010060231

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective **February 12, 2011**.

IT IS SO ORDERED **January 13, 2011**.

By _____

TR:

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

In the Matter of the Accusation and Petition to Revoke Probation Against: LAWRENCE EDWIN YOUNG, O.D. Optometrist Certificate No. OPT 8618, Respondent.	Case No. CC 2004-59 OAH No. 2010060231

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on December 1, 2010, in Los Angeles, California. Complainant was represented by Randy Mailman, Deputy Attorney General. Lawrence Edwin Young, O.D. (Respondent), was present and represented himself.

At the hearing, the Administrative Law Judge (ALJ) was provided with Respondent's Exhibit D, which contained the names of numerous patients and was too lengthy to redact. On her own motion, the ALJ ordered that, following the use of the document in preparation of the Proposed Decision, Respondent's Exhibit D would be placed under seal. Exhibit D shall remain under seal and shall not be opened, except by order of the Office of Administrative Hearings, the Board of Optometry or by a reviewing court.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 1, 2010.

FACTUAL FINDINGS

1. On January 27, 2010, Complainant Mona Maggio filed the Accusation and Petition to Revoke Probation while acting in her official capacity as the Executive Officer of the State Board of Optometry (Board), Department of Consumer Affairs, State of California. On February 10, 2010, the Accusation and Petition to Revoke Probation was served on Respondent.

2. On October 2, 1986, the Board issued Optometrist Certificate Number OPT 8618 to Respondent. That certificate is in full force and effect and will expire on March 31, 2012, unless renewed.

3. In a Decision and Order, effective April 3, 2008, in Case No. CC 2004-59 (Prior Decision) adopting a Stipulated Settlement and Disciplinary Order, the Board revoked Respondent's certificate, stayed the revocation and placed Respondent on probation for three years on specified terms and conditions, which included the following:

[¶] . . . [¶]

2. **Obey all Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

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, at his own expense, report in person to the Board's headquarters in Sacramento within three (3) months of the effective date of the Board's decision, and as the Board deems necessary if it is determined that Respondent may not be compliant with any of the terms or conditions of his probation.

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 the probationer's optometric practice(s) and patient records upon request of the Board or its agent.

Respondent shall pay the monitoring cost associated with the Board's probation surveillance program each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

[¶] . . . [¶]

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 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.

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 or as determined by the Board. For the purposes of compliance with this 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 Respondent has presented sufficient documentation of his 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.

[¶] . . . [¶]

11. **Complete Optometry Course.** Respondent, at his own expense, shall enroll and successfully complete courses relevant to the practice of optometry, including, but not limited to, a course in ethics. Respondent shall obtain approval from the Board before enrolling in the ethics course. These courses shall be in addition to the courses required for license renewal. Respondent shall complete forty (40) hours of course work per year for each year of probation.

12. **Community Services – Free Services.** Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a community service program in which Respondent shall provide free non-optometric services on a regular basis to a community or charitable facility or agency for at least 400 hours over the course of the period of probation.

13. **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 $10,000. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six 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.

[¶] . . . [¶]

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

4(a). When Respondent was placed on probation in April 2008, he was required to meet in person with a Board representative in Sacramento to go over the terms and conditions of his probation. However, due to his medical issues, the Board allowed him to conduct his initial probation interview by phone. In July 2008, Respondent and a Board representative spoke by telephone and discussed all of the terms and conditions of his probation.

4(b). On that date, Respondent signed a written acknowledgment indicating that he understood and would abide by the terms of his probation. This acknowledgment was forwarded to the Board.

4(c). On that date, Respondent also signed a Cost Recovery Payment Plan, wherein he agreed to pay the $10,000 in costs in monthly payments as follows: one payment of $357.22 by July 30, 2008, and 27 payments $357.14 on the 30th of each month thereafter, until paid in full. The executed Cost Recovery Payment Plan was forwarded to the Board.

5. In August 2009, the Board received a complaint from one of Respondent's patients. On August 25, 2009, the Board sent a letter to Respondent requesting that, within 14 days, he provide the Board with a copy of the patient's records. The Board's request was

accompanied by the patient's written authorization for release of records to the Board. Respondent received the request, but did not send a reply.

6. On September 25, 2009, the Board sent Respondent another letter, requesting that, within 14 days, he provide the Board with a copy of the patient's records. Respondent received the request, but did not send a reply.

7. To date, Respondent has failed to provide the Board with the requested patient records. This is a violation of Business and Professions Code section 3110, subdivision (x).

8. Respondent's violation of Business and Professions Code section 3110 constitutes a violation of his probationary term number 2 (Obey all Laws).

9. To date, Respondent has failed to submit any written quarterly probation reports. This constitutes a violation of his probationary term number 6 (Submit Written Reports).

10(a). To date, Respondent has failed to provide evidence to the Board that he has functioned as an optometrist for a minimum of 24 hours per week for six consecutive months.

10(b). At the administrative hearing, Respondent attempted to establish that he had functioned as an optometrist as required. However, despite his assertions that he had been seeing patients regularly, the totality of the evidence failed to demonstrate that Respondent's practice had been operating at the number of hours required. Respondent acknowledged that, due to the probation, he "lost numerous vision care contracts . . . for a majority of programs that provide [his] livelihood." He also admitted that his office telephone line had been disconnected for an unspecified period of time, and that it had been difficult for patients to call in to make appointments. However, he "was able to scrape together enough money to reconnect [the phone line] in January 2010." He also admitted that the office electricity had been turned off for "at least 24 hours." Furthermore, at one point, he had to layoff all of his employees, and it took some time to settle all payroll amounts in arrears.

10(c). Respondent has failed to establish that he functioned as an optometrist for a minimum of 24 hours per week for six consecutive months. This constitutes a violation of his probationary term number 7 (Function as an Optometrist).

11. Respondent failed to complete 40 hours per year of optometry courses, in addition to the courses required for license renewal. This constitutes a violation of his probationary term number 11 (Complete Optometry Course).

12(a). Respondent has failed to obtain prior approval for any community service program providing 400 hours of non-optometric services.

12(b). Respondent did inform the Board that he volunteers for a high school booster club. He was instructed by the Board to submit confirmation from the booster club's program coordinator in order to obtain Board pre-approval. Respondent agreed several times to do so, but failed to submit confirmation from the program coordinator for pre-approval.

12(c). Respondent's failure to obtain pre-approval for his community service program constitutes a violation of probationary term number 12 (Community Service).

13. Respondent has failed to pay any portion of the cost recovery, and has made no effort to do so. This is a violation of probationary term number 13 (Cost Recovery).

14. On August 28, 2009, the Board sent Respondent a Notification of Non-Compliance of Terms and Conditions of Probation, informing him of his failure to comply with probationary terms numbers 3, 6, 7, 11, 12 and 13. The Board enclosed a blank copy of a Quarterly Report of Compliance for him to complete and submit. Respondent did not respond to the letter or submit any quarterly report.

15. At the administrative hearing, Respondent stated that he understood everything that was addressed at the hearing and apologized for the time and effort expended by the Board. Although he blamed the failure to pay costs or complete coursework on financial woes, he had no explanation for his failure to submit quarterly reports or failure to provide requested patient records. He stated, "You have gotten my attention. These things will never happen again." However, this assertion was implausible, given Respondent's failure to attempt any compliance during his two years, eight months of probation, particularly after written requests for compliance and the service of an Accusation 10 months ago.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent's Optometrist Certificate, pursuant to Business and Professions Code sections 3090 and 3110, subdivision (x), for unprofessional conduct in failing to comply with the Board's requests for patient records, as set forth in Factual Findings 5 through 7.

2. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 2 of his probation, by failing to obey all laws, specifically by reason of his violation of Business and Professions Code section 3110, subdivision (x), as set forth in Factual Findings 3 through 8.

3. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 6 of his probation, by failing to provide written quarterly reports, as set forth in Factual Findings 3, 4 and 9.

4. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 7 of his probation, by failing to function as an optometrist for the minimum required hours, as set forth in Factual Findings 3, 4 and 10.

5. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 11 of his probation, by failing to complete the required 40 hours of optometry courses per year, as set forth in Factual Findings 3, 4 and 11.

6. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 12 of his probation, by failing to obtain Board pre-approval for community service, as set forth in Factual Findings 3, 4 and 12.

7. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's Optometrist Certificate for failure to comply with Condition 13 of his probation, by failing to pay any costs, as set forth in Factual Findings 3, 4 and 13.

8. Respondent knowingly stipulated to the discipline imposed on his optometrist certificate. He again agreed to abide by the probationary terms and conditions when they were explained to him in July 2008. Nevertheless, Respondent unreasonably failed to comply with numerous probationary terms for over two years, eight months of his three year probation. This failure to comply persisted, despite written requests for compliance and the service of an Accusation 10 months ago. Although Respondent now insists he will comply with his probationary terms, his past actions bode poorly for the likelihood of his future compliance. Furthermore, other than this hollow assurance, Respondent has failed to take any action which would demonstrate his willingness to begin complying with his probationary terms. Respondent has been given more than ample time and opportunities to demonstrate that he was serious about compliance, but has made no effort to do so. Given the foregoing, the public health, safety and welfare cannot be protected by any discipline short of revocation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is made:

Optometrist Certificate Number OPT 8618, issued to Respondent, Lawrence Edwin Young, is hereby revoked.

DATED: December 22, 2010

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against, **LAWRENCE EDWIN YOUNG** 10004 Sierra Avenue Fontana, CA 92335 Optometrist Certificate No. OPT 8618 Respondent.	Case No. CC 2004-59 **ACCUSATION** **AND** **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On or about October 2, 1986, the Board issued Optometrist Certificate No. OPT 8618 to Lawrence Edwin Young (Respondent). The Optometrist Certificate was in effect at all times relevant to the charges brought herein and will expire on March 31, 2010, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Lawrence Edwin Young," Case No. CC 2004-59, the Board issued a decision, effective April 3, 2008, in which Respondent's Optometrist Certificate was revoked. However, the revocation was stayed

and Respondent was placed on probation for a period of three (3) years with certain terms and conditions, as more fully outlined below. A copy of the Board's Decision and Order in Case No. CC 2004-59 is attached as Exhibit A and incorporated herein by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation are brought before the 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.

STATUTORY PROVISIONS

5. Section 3070, subdivision (a), states:

"Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of optometry and, also, of any changes in his or her place of practice. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041."

6.Section 3090 states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

7. Section 3110 states, in pertinent part:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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"(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

. . . .

"(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause."

COST RECOVERY

8. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(Failure to Provide Patient Records to the Board)

9. Respondent is subject to discipline pursuant to Code sections 3090 and 3110, subdivision (x), on the grounds of unprofessional conduct, in that Respondent failed to comply with the Board's August 25, 2009, and/or, September 25, 2009, request for clinical records of a patient in regard to Complaint No. CC 2009-11. The Board's requests were accompanied by the patient's written authorization for release of records to the board.

PETITION TO REVOKE PROBATION

10. Effective April 3, 2009, pursuant to the Board's Decision and Order in Case No. CC 2004-59, Respondent was placed on three (3) years probation, and subject to terms and conditions of probation, including, but not limited to the following:

2. Obey All Laws. Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

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, at his own expense, report in person to the Board's headquarters in Sacramento within three (3) months of the effective date of the Board's decision, and as the Board deems necessary if it is determined that Respondent may not be compliant with any of the terms or conditions of his probation.

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 the probationer's optometric practice(s) and patient records upon request of the board or its agent.

Respondent shall pay the monitoring cost associated with the Board's probation surveillance program each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Optometry and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

Upon successful completion of probation, respondent's license shall be fully restored.

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 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.

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 or as determined by the Board. 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 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.

11. **Complete Optometry Course.** Respondent, at his own expense, shall enroll and successfully complete courses relevant to the practice of optometry, including, but not limited to, a course in ethics. Respondent shall obtain approval from the Board before enrolling in the ethics course. These courses shall be in addition to the courses

required for license renewal. Respondent shall complete forty (40) hours of course work per year for each year of probation.

12. **Community Services - Free Services.** Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a community service program in which Respondent shall provide free non-optometric services on a regular basis to a community or charitable facility or agency for at least 400 hours over the course of the period of probation.

13. **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 $10,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six 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.

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

11. Respondent's probation is subject to revocation pursuant to Probation Condition No. 2 (Obey All Laws), in that Respondent failed to obey all laws by violating provisions of the Optometry Practice Act, as more fully discussed in paragraph 9, above, which is herein incorporated by reference as set forth in whole.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Provide Written Quarterly Reports)

12. Respondent's probation is subject to revocation pursuant to Probation Conditions No. 3 (Comply with Probation Program), and No. 6 (Submit Written Reports), in that during the course of his probation, Respondent has failed to provide Quarterly Compliance Reports to the Board.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Function as an Optometrist)

13. Respondent's probation is subject to revocation under Probation Conditions No. 3 (Comply with Probation Program), and No. 7 (Function as an Optometrist), in that Respondent has failed to evidence a minimum of twenty-four (24) practice hours per week during a six (6) consecutive month period. On or about August 28, 2009, the Board sent Respondent a letter regarding his non-compliance with probation, requesting that he provide the Board with evidence of his practice hours. Respondent has failed to provide any patient records or other documentation to support the requirements of his minimum practice hours.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Complete Optometry Course)

14. Respondent's probation is subject to revocation under Probation Conditions No. 3 (Comply with Probation Program), and No. 11 (Complete Optometry Course), in that Respondent failed to complete forty (40) hours of optometry courses, in addition to courses required for license renewal, in or between April 3, 2008 and April 3, 2009. In addition, Respondent has failed to provide evidence of enrollment and successful completion of any of the forty (40) hours of education courses related to the practice of optometry for the April 3, 2009 to April 3, 2010 probation year, and/or, a Board pre-approved ethics course.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Community Services' Provision)

15. Respondent's probation is subject to revocation under Probation Conditions No. 3 (Comply with Probation Program), and No. 12 (Community Services - Free Services), in that Respondent failed to submit a community service program and Community Service Verification Form to the Board for pre-approval, and has not evidenced completion of any hours of Community Service – Free Services to the Board during the course of his probation.

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SIXTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Cost Recovery Agreement)

16. Respondent's probation is subject to revocation under Probation Conditions No. 3 (Comply with Probation Program), and No. 13 (Cost Recovery), in that Respondent has failed to pay any of the $10,000 cost recovery ordered by the Board. Respondent signed an agreement for a payment plan, consisting of an initial month's payment of $357.22, due July 30, 2008, and 27 subsequent monthly payments of $357.14. Respondent failed to make his initial payment and all other payments thereafter.

PRAYER

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

1. Revoking the probation that was granted by the Board in Case No. CC 2004-59 and imposing the disciplinary order that was stayed, thereby revoking Optometrist Certificate No. OPT 8618, issued to Respondent Lawrence Edwin Young;

2. Revoking or suspending Optometrist Certificate No. OPT 8618, issued to Respondent Lawrence Edwin Young;

3. Ordering Respondent Lawrence Edwin Young to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case pursuant to section 125.3; and

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

DATED: 01/27/2010

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

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

In the Matter of the Accusation Against: LAWRENCE EDWIN YOUNG 10004 Sierra Avenue Fontana, CA 92335 Optometrist Certificate No. OPT 8618 Branch Office License No. 6397 Respondent.	Case No. CC 2004-59

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 April 3, 2008.

It is so ORDERED March 3, 2008.

FOR THE STATE BOARD OF OPTOMETRY

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STATE BOARD OF OPTOMETRY
2008 FEB 28 PM 4:25

EDMUND G. BROWN JR., Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: LAWRENCE EDWIN YOUNG 10004 Sierra Avenue Fontana, CA 92335 Optometrist Certificate No. OPT 8618 Branch Office License No. 6397 Respondent.	Case No. CC 2004-59 **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 (Board) 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 Accusation.

PARTIES

1. Taryn Smith (Complainant) is the Executive Officer of the Board. 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 Scott J. Harris, Deputy Attorney General.

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2. Respondent Lawrence Edwin Young is represented in this proceeding by attorney Steven J. Cote, whose address is 19138 Walnut Drive, Suite 100, Rowland Heights, California, 91748.

3. On or about October 2, 1986, the Board issued Optometrist Certificate Number OPT 8618 (Certificate) to Respondent. The Certificate expired on or about March 31, 2004. On or about June 2, 2004 the Certificate was renewed. The Certificate will expire on March 31, 2008, unless renewed.

4. On or about February 17, 2004, the Board issued Branch Office License No. 6397 to Respondent. The License expired on February 1, 2006, and has not been renewed.

JURISDICTION

5. Accusation No. CC 2004-59 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 April 12, 2007. Respondent was found to be in default by the Board on or about May 17, 2007, for failure to timely file a Notice of Defense, which was to become effective on or about June 18, 2007. On or about August 17, 2007, the Board issued an Order Vacating Default Decision after Respondent submitted a motion seeking to vacate the original Default Decision and Order and a Notice of Defense contesting the Accusation. A copy of Accusation No. CC 2004-59 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. CC 2004-59. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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.

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. CC 2004-59, except for the allegation and charge of his unlicenced practice of optometry between June 25, 2004 and December 17, 2004, as more fully discussed in paragraph 18, lines 22-23, on page 6 of Accusation No. CC 2004-59, which herein is withdrawn by the Board.

10. Respondent agrees that his Optometrist Certificate 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

11. 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 from this 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, and, 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.

12. 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.

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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 Optometrist Certificate No. OPT 8618, issued to Respondent Lawrence Edwin Young, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years pursuant to the terms and conditions of probation contained below.

SEVERABILITY CLAUSE. East 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.** Optometrist Certificate No. OPT 8618, issued to Respondent Lawrence Edwin Young, is suspended for a period of fifteen (15) days.

2. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

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, at his own expense, report in person to the Board's headquarters in Sacramento within three (3) months of the effective date of the Board's decision, and as the Board deems necessary if it is determined that Respondent may not be compliant with any of the terms or conditions of his probation.

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 the probationer's optometric practice(s) and patient records upon request of the board or its agent.

Respondent shall pay the monitoring cost associated with the Board's probation surveillance program each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Optometry and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

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 Outside of State.** Any period of residency or practice as an optometrist outside of the State of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled any time he resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside California, and within 30 days prior to re-establishing residency or returning to practice in California. Respondent shall provide a list of all states and territories where he 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. Within 30 days of the Board's Decision, Respondent shall provide a copy of the Board's Decision and Order to the Optometry Board of any other state where he is currently licensed or becomes licensed to practice optometry.

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 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.

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 or as determined by the Board. 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 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 any employment, paid or voluntary, as an optometrist. Respondent shall cause to be submitted to the Board all 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 employer and immediate supervisors prior to commencement of any optometric or other health care related employment. In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any optometric or other health care related 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, or other health care

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related employment with a full explanation of the circumstances surrounding the termination or separation.

9. **Supervised Environment.** Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent's practice would be supervised. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor. The plan of supervision shall be general and not require the physical presence of the supervising optometrist during the time optometric procedures are performed, but does require an occasional random check of the work performed on the patient. Additionally, the supervisor shall have full and random access to all patient records of Respondent. Each proposed supervisor shall be a California licensed optometrist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, (including independent contractor) partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by the Respondent.

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 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.

11. **Complete Optometry Course.** Respondent, at his own expense, shall enroll and successfully complete courses relevant to the practice of optometry, including, but not limited to, a course in ethics. Respondent shall obtain approval from the Board before enrolling in the ethics course. These courses shall be in addition to the courses required for license renewal. Respondent shall complete forty (40) hours of course work per year for each year of probation.

12. **Community Services - Free Services.** Within 60 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval a community service program in which Respondent shall provide free **non-optometric services** on a regular basis to a community or charitable facility or agency for at least 400 hours over the course of the period of probation.

13. **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 $10,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six 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.

14. **License Surrender.** During Respondent's term of probation, if Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not 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, except he may be subject to reimbursing the Board for its costs of investigation and prosecution upon a petition for reinstatement.

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Steven J. Cote. I understand the stipulation and the effect it will have on my Optometrist Certificate. 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: 2-8-08

LAWRENCE EDWIN YOUNG
Respondent

I have read and fully discussed with Respondent Lawrence Edwin Young the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2-18-08

STEVEN J. COTE
Attorney for Respondent

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ENDORSEMENT

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

DATED: 2/22/08

EDMUND G. BROWN JR., Attorney General
of the State of California

GLORIA A. BARRIOS
Supervising Deputy Attorney General

SCOTT J. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2007600189
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Exhibit A

Accusation No. CC 2004-59

EDMUND G. BROWN JR., Attorney General
of the State of California
GLORIA A. BARRIOS
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SCOTT J. HARRIS, State Bar No. 238437
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Attorneys for Complainant

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

In the Matter of the Accusation Against: LAWRENCE EDWIN YOUNG 10004 Sierra Avenue Fontana, CA 92335 Optometrist Certificate No. OPT 8618 Branch Office License No. 6397 Respondent.	Case No. CC 2004-59 **ACCUSATION**

Complainant alleges:

PARTIES

1. Taryn Smith (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Optometry (Board).

2. On or about October 2, 1986, the Board issued Optometrist Certificate Number OPT 8618 (Certificate) to Lawrence Edwin Young (Respondent). The Certificate expired on or about March 31, 2004. On or about June 2, 2004 the Certificate was renewed. On or about June 25, 2004, the Board deemed the renewal invalid. On or about December 17, 2004, the Board renewed the Certificate. The Certificate will expire on March 31, 2008, unless renewed.

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3. On or about February 17, 2004, the Board issued Branch Office License Number 6397 to Respondent. The Branch Office License expired on February 1, 2006, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3090[1/] of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to license holders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

6. Section 3078 of the Code states, in pertinent part:

...

"(c) A permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit.

"(d) If the board revokes or suspends the license to practice optometry of an individual optometrist...to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit."

7. Code section 119, subdivision (a)(2), states, in pertinent part,

"Any person who does any of the following is guilty of a misdemeanor:

"(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

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1. Code section 3090 was repealed and [re]added by Stats.2005, c. 393 (A.B.488), § 4.

...

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license."

8. Section 3040 of the Code states:

"It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained a certificate of registration from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. "

9. Code section 3106[2/] states that, "knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

10. Code section 3107[3/] states: "It is unlawful to use or attempt to use any license issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license."

11. Code section 3110[4/] states, in pertinent part: "The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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2. Former Code section 9096.6 was renumbered Code section 3106 and amended by Stats.2005, c. 393 (A.B.488). §12.

3. Former Code section 3124 was renumbered Code section 3107 and amended by Stats.2005, c. 393 (A.B.488), § 30. Former Code section 3124 stated that is was unlawful to use any certificate that was *materially altered.*

4. Former Code section 3090, subdivision (b), was renumbered Code section 3110 and amended by Stats.2005, c. 393 (A.B.488), § 28. Former Code section 3090, subdivision (b), allowed the Board to discipline a licensee for *general unprofessional conduct.*

"(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist;

"(f) Any action or conduct which would have warranted the denial of a license.

...

"(s) The practice of optometry without a valid, unrevoked, unexpired license[5];

...

"(v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.[6]"

12. Code section 480, states, in pertinent part:

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

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

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

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

14. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration, or forfeiture by operation of law, of a license issued by a board...or its surrender without the written consent of the board, shall not, during any period in which it may be renewed,

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5. Code section 3127 was repealed by Stats.2005, c. 393 (A.B.488), § 33, and renumbered Code section 3110, subdivision (s).

6. Code section 3123 was repealed by Stats.2005, c. 393 (A.B.488), § 29, and renumbered Code section 3110, subdivision (v). Former Code section 3123 required that the alteration be *material*, but did not require fraudulent intent.

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.

FIRST CAUSE FOR DISCIPLINE

(Material Alteration of Certificate of Registration)

15. Respondent's Optometrist Registration and Branch Office License are subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090, 3106, 3110, subdivisions (e) and (f), and 480, (a)(2) and (a)(3), in that Respondent committed unprofessional conduct by knowingly altering a certificate of registration issued by the Board in a material respect. The circumstances are as follows:

a. On or about March 31, 2004, Respondent's Certificate of Registration, with Receipt No. 07400002 expired. On or about December 1, 2004, a complaint was filed with the Board by Med Advantage/Epic Management, which is affiliated with Pinnacle Medical Group, with whom Respondent once provided contracted optometry services. On or about April 27, 2004, Epic Management's Credentialing Department received a facsimile from Respondent for credentialing purposes containing a falsified certificate of registration. The certificate of registration contained the following information: Respondent's License No. OPT 8618; Respondent's name and address of record; an expiration date of March 31, 2006; and, Receipt No. 07401882.

b. A review of the Board's records indicated that Respondent was never issued a Certificate of Registration with Receipt No. 07401882; and, in fact, no such receipt number exists. A further review of the Board's records indicated that the Respondent was not validly licensed in the State of California in or between March 31, 2004 and June 10, 2004, and June 25, 2004 and December 17, 2004, as more fully discussed in paragraph 18, below.

c. On or about January 31, 2005, a Senior Investigator with the Department of Consumer Affairs (Investigator) interviewed the Respondent regarding the allegations that he had fraudulently altered the renewal certificate and submitted it to a health care provider as proof

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of active status. Respondent stated that, "I may have done something for insurance company purposes, pending my license renewal. I had a lot of problems during this period of time."

SECOND CAUSE FOR DISCIPLINE

(Use of Counterfeited of Materially Altered Certificate of Registration)

16. Respondent's Optometrist Registration and Branch Office License are subject to discipline pursuant to Code sections 119, subdivision (a)(2), 3078, subdivisions (c) and (d), 3090, 3110, subdivision (e) and (f), 3107 and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed unprofessional conduct by using and submitting a materially altered certificate of registration to Epic Management's Credentialing Department, as more fully discussed in paragraph 15, above.

THIRD CAUSE FOR DISCIPLINE

(Acts of Dishonesty)

17. Respondent's Optometrist Registration and Branch Office License are subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090, 3110, subdivision (e) and (f), and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed unprofessional conduct and acts of dishonesty, as more fully discussed in paragraph 15, above.

FOURTH CAUSE FOR DISCIPLINE

(Unlicenced Practice of Optometry)

18. Respondent's Optometrist Registration and Branch Office License are subject to discipline pursuant to Code sections 3078, subdivision (c) and (d), 3090 and 3110, subdivision (s), and 3040, in that Respondent committed unprofessional conduct by engaging in the unlawful practice of optometry in or between March 31, 2004 and June 10, 2004; and, in or between June 25, 2004 and December 17, 2004. The circumstances are as follows:

a. On or about March 31, 2004, Respondent's Certificate of Registration expired. On or about June 2, 2004, Respondent's renewal payment was received, and was processed by the Board on or about June 10, 2004, on which date the Board issued Respondent Renewal Certificate Receipt No. 00001425. However, on or about June 24, 2005, Respondent's renewal payment check was dishonored. On or about June 25, 2004, the Board notified

Respondent that Renewal Certificate Receipt No. 00001425 was no longer valid. On or about October 27, 2004 the Board sent a cease and desist letter to Respondent as a result of Respondent's failure to pay renewal fees, and his failure to prove completion of his continuing education requirements. On or about November 22, 2004, the Board received a cashiers check from Respondent for his renewal fees. On or about December 17, 2004, the Board reinstated Respondent's Certificate of Registration with Receipt No. 00000533.

FIFTH CAUSE FOR DISCIPLINE

(Act of Dishonesty, Misrepresentation - Continuing Education)

19. Respondent's Optometrist Registration and Branch Office License are subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090, 3106, 3110, subdivisions (e) and (f), and 480, subdivisions (a)(2) and (a)(3), in that Respondent committed unprofessional conduct and an act of dishonesty by knowingly misrepresenting and submitting a forged letter to the Board in connection with the certification of his continuing education requirements. The circumstances are as follows:

a. On or about December 13, 2004, the Board received a letter dated December 10, 2004, via facsimile from the Respondent, indicating that he had met all of his continuing education requirements. Included in the facsimile was a letter from Dr. Curtis Hog[g]arth, President of the Inland Empire Optometric Society, which certified that Respondent had completed twenty-eight hours of continuing education.

b. On or about February 8, 2005, the Investigator interviewed Dr. Curtis Hoggarth. Dr. Hoggarth indicated that he had not drafted or signed the letter in question. Dr. Hoggarth further stated that he signs his name with his middle initial 'C' and, that his last name is spelled with two 'G's.' The signature on the December 10, 2004 letter submitted by Respondent does not include a middle initial 'C', and, Dr. Hoggarth's last name is incorrectly spelled with only one 'G'.

c. On or about February 25, 2005, the Investigator interviewed Respondent. Respondent admitted that Dr. Hoggarth provided him with a list of continuing education courses he had completed. Respondent further admitted that he had, in fact, drafted and signed the

December 10, 2004 letter; and, that he had not obtained permission from Dr. Hoggarth to draft, and/or, sign a letter addressed to the Board. At that time, the Investigator had Respondent initial and date the December 10, 2004 letter next to the signature in order to verify that Respondent had prepared and signed the letter without Dr. Hoggarth's approval.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent's Optometrist Registration and Branch Office License are subject to discipline pursuant to Code sections 3078, subdivisions (c) and (d), 3090 and 3110, in that Respondent committed unprofessional conduct through his acts as more fully discussed in paragraphs 15, 18 and 19, above.

PRAYER

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

1. Revoking or suspending Optometrist Certificate Number OPT 8618, issued to Respondent Lawrence Edwin Young.

2. Revoking or suspending Branch Office License Number 6397, issued to Respondent Lawrence Edwin Young.

3. Ordering Respondent Lawrence Edwin Young to pay the Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 3/24/07

TARYN SMITH
Executive Officer
Board of Optometry
State of California
Complainant

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

§ 1516. Criteria for Rehabilitation.

(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.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

Note: Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code. Reference: Sections 475, 480, 481 and 482, Business and Professions Code; and Section 11522, Government Code.

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STANDARDS FOR REINSTATEMENT OR REDUCTION OF PENALTY

CALIFORNIA STATE BOARD OF OPTOMETRY

In petitioning for reinstatement or reduction of penalty under Government Code Section 11522, the petitioner has the burden of proof demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of optometry within the scope of Current law and accepted standards of practice. In reaching its determination the Board may, but is not limited to, consider the following:

A. The original violation(s) for which action was taken against the petitioner's license, including:

   1. The type, severity, number and length of violation(s).
   2. Whether the violation involved intent, negligent or other unprofessional conduct.
   3. Actual or potential harm to the public, patients or others.
   4. The length of time since the violation(s) was committed.
   5. Petitioner's cooperation or lack thereof in the investigation of the original offense.

B. Prior actions by the Board, any state, local or federal agency or court including:

   1. Compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.
   2. Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.
   3. The petitioner's legal and regulatory history prior to and since the violation(s).

C. The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.

D. The petitioner's documented rehabilitative efforts including:

   1. Efforts to maintain and/or update professional skills and knowledge through continuing education or other methods.
   2. Efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior applicable to the petitioner's optometric practice.
   3. Service to the community or charitable groups, non-profit organizations or public agencies.

4. Voluntary restitution to those affected by the original violation(s).
5. Use of appropriate professional medical or psychotherapeutic treatment.
6. Participation in appropriate self-help and/or rehabilitation groups.
7. Use of appropriate peer review mechanisms.
8. Participation in professional optometric organizations or associations.

E. Assessment of the petitioner's rehabilitative and corrective efforts including:

1. Whether the efforts relate to the original violation(s).
2. The date rehabilitative efforts were initiated.
3. The length, time and expense associated with rehabilitative efforts or corrective actions.
4. The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice optometry.
5. Whether the rehabilitative efforts were voluntary and self-motivated, or imposed by order of a government agency or court of competent jurisdiction and complied with as a condition or term of probation.
6. The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
7. The nature and status of ongoing and continuing rehabilitative efforts.
8. The petitioner's compliance or non-compliance with all laws and regulations since the date of the original violation(s).
9. The petitioner's cooperation or non-cooperation in the Board's investigation of petitioner's Petition for Reinstatement or Reduction of Penalty and the facts surrounding that petition.

Nothing in these guidelines shall be construed to prevent the Board from considering any other appropriate and relevant material not within these guidelines in order to assess the Petition for Reinstatement or Reduction of Penalty.

Any statement which petitioner intends to support his or her petition and all witness statements either party intends to introduce at hearing are preferred by the Board to be in the form of an affidavit or declaration rather than merely a letter or unsworn statement.

CALIFORNIA STATE BOARD OF OPTOMETRY

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Certification of Non-Licensure

The undersigned, Mona Maggio, hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the Board of Optometry of the State of California, and that in such capacity she has custody of the official records of said board.

On this 8th day of March, 2012, the Executive Officer examined said official records of said Board of Optometry and found that that **LAWRENCE EDWIN YOUNG** graduated from the University of Houston, School of Optometry in 1986, and is the holder of Certificate of Registration to Practice Optometry No. 8618, which was granted to him effective October 2, 1986.

Said records further reveal that, effective February 12, 2011, as the result of disciplinary action taken in Case number CC 2004-59, the Board of Optometry revoked Certificate of Registration to Practice Optometry No. 8618.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this 8th day of March, 2012.

Mona Maggio
Executive Officer

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** March 30, 2012

From: Jessica Sieferman **Telephone:** (916) 575-7170

Subject: **Agenda Item 3A. In the Matter of the Petition for Reduction of Penalty and Early Termination of Probation**

Dr. Edward Rabb Nell, Petitioner, was issued Optometrist License Number 6522 by the Board on September 11, 1978. On August 11, 2010, the Board filed an Accusation against Petitioner charging him with violations of laws and regulations based on allegations of criminal convictions based on alcohol use. In a stipulated settlement agreed to by Petitioner, on February 18, 2011, Petitioner's license was revoked, the revocation stayed and the license placed on probation for five (5) years, subject to certain terms and conditions.

The Petitioner is requesting the Board to grant his Petition for Reduction of Penalty and Early Termination of Probation. He is not represented by an attorney.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Copies of Stipulated Settlement and Disciplinary Order, Accusation
3. Probation Compliance Report
4. California Codes and Regulations Section 1516 – Criteria for Rehabilitation
5. Standards for Reinstatement or Reduction of Penalty
6. Certification of Licensure

Edward R. Nell, O.D.
179 Burns Avenue
Atherton, CA 94027

January 11, 2012

State Board of Optometry
2450 Del Paso Road Suite 105
Sacramento, CA 95834

Dear State Board.

I formally request an opportunity to appear before you at your earliest convenience. I have included the required documents for your review. I will be submitting letters of recommendation in the next few weeks. Please let me know if you have any questions or need any further documentation.

Thanks you for your consideration.

Sincerely,

Edward R. Nell O.D.

Edward R. Nell, O.D.

Edward R. Nell, O.D.
179 Burns Avenue
Atherton, CA 94027
408 489 7400

State Board of Optometry
2450 Del Paso Road Suite 105
Sacramento, CA 95834

February 15, 2012

Dear State Board:

I look forward to having a conversation with you on March 2, 2012 regarding a possible modification and reduction of my probationary status.

I have undergone 14 months of inpatient treatment and 24 months of outpatient treatment for my alcoholism since December, 2008. Included in my treatment for alcoholism are cognitive behavioral therapy (CBT) and mindfulness therapy. As a result I'm much more in control of my emotions and behavior. My communication skills are much improved as is my ability to problem solve and deal with stress. I have been sober since October, 2009.

Doing non professional service work has taught me humility and gratitude. My letters of recommendation will describe what I've done so far.

In the future, I plan to stay connected to Veterans Mental Health Services where I receive individual and group counseling, I would like to join Doctors Without Borders and volunteer at the Redwood City Free Clinic, once my license is unencumbered. I would like to resume practicing Optometry, probably in a VA or Civil Service Hospital setting. I believe I'm better equipped to be a first rate clinician than ever before.

Thanks you for your consideration.

Edward R. Nell O.D.

Edward R. Nell, O.D.

State of California Department of Consumer Affairs

Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170/(866) 585-2666
www.optometry.ca.gov

PETITION FOR REDUCTION OF PENALTY OR EARLY TERMINATION OF PROBATION

No petition for reduction of penalty or early termination of probation will be entertained until one year after the effective date of the Board's disciplinary action. The decision of the petition will be made by the full Board and in accordance with the attached standards for reinstatement or reduction of penalty. Early release from probation or a modification of the terms of probation will be provided only in exceptional circumstances, such as when the Board determines that the penalty or probationary terms imposed have been excessive, considering both the violation of law charged and the supporting evidence, or when there is substantive evidence that there is no more need for the degree of probationary supervision as set forth in the original terms and conditions. As a rule, no reduction of penalty or early termination of probation will be granted unless the probationer has at all times been in compliance with the terms of probation.

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST)	(MIDDLE)	(LAST)	CERTIFICATE OF REGISTRATION NO.
Edward	Rabb	Nell	OPC6522T
2. ADDRESS (NUMBER)	**(STREET)**		**DATE OF BIRTH**
179	Burns Ave.		03-07-1948
(CITY) (STATE)	**(ZIP CODE)**		**TELEPHONE**
Atherton CA	94027		408 489 7400

3. PHYSICAL DESCRIPTION	(HEIGHT)	(WEIGHT)	(EYE COLOR)	(HAIR COLOR)
Average	6'1"	200 lbs.	Brn.	Grey

4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED

NAME OF SCHOOL: University of California

ADDRESS (NUMBER) (STREET): School of Optometry

(CITY) (STATE) (ZIP CODE): Berkeley CA 94720

5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? ☐ YES ☒ NO

STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS

6. List locations, dates, and types of practice for 5 years prior to discipline of your California license.

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
110 Boyer Ln. Los Gatos CA 95030	January 2006	February 2010	private practice / leave of absence
2603 S. Park Ln Santa Clara CA 95051	March 2010	February 2011	leave of absence
179 Burns Avenue Atherton, CA 94027	February 2011	present	leave of absence

7. Are you or have you ever been addicted to the use of narcotics or alcohol? ☒YES ☐NO

8. Are you or have you ever suffered from a contagious disease? ☐YES ☒NO

9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? ☒YES ☐NO

10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) ☒YES ☐NO

11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) ☒YES ☐NO

12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? Only this action. EW 1/11/2012 ☐YES ☒NO

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU MUST ATTACHMENT A STATEMENT OF EXPLANATION GIVING FULL DETAILS.

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.

14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.

15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.

16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.

17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.

18. List all optometric literature you have studied during the last year.

19. List all continuing education courses you have completed since your license was disciplined.

20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

I declare under penalty of perjury under the laws of the State of California that the answers and information given by me in completing this petition, and any attachments, are true and I understand and agree that any misstatements of material facts will be cause for the rejection of this petition.

Date January 11, 2012 Signature Edward Labb Pell O.D.

All items of information requested in this petition are mandatory. Failure to provide any of the requested information will result in the petition being rejected as incomplete. The information will be used to determine qualifications for reinstatement, reduction of penalty or early termination of probation. The person responsible for information maintenance is the Executive Officer of the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California, 95834. This information may be transferred to another governmental agency such as a law enforcement agency, if necessary to perform its duties. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified confidential information and exempted by Section 1798.3 of the Civil Code.

ANSWERS TO QUESTIONS AND REQUESTS 7 – 20.

7. In June of 2008 it became clear to me that I was abusing alcohol. I started drinking heavily almost every day and became very reclusive. I took a leave of absence from private practice at that time. My drinking continued until December 2008 when I entered treatment, which continues to present. I have been sober since October 2009.

9. My inpatient treatment for alcoholism and PTSD are as follows:

.I completed The Camp (Scotts Valley, Ca) drug and alcohol rehabilitation program January 16, 2009. At the VA, Menlo Park, Ca, I completed Foundation of Recovery Program, April 27, 2009, First Step Residential Rehabilitation Program, December 22, 2009, The Homeless Veterans Rehabilitation Program, November 8, 2010 and The National Center for the Treatment of PTSD, December 22, 2010.

My outpatient treatment is ongoing at the Mental Health Facility, Menlo Park VA.

10. My convictions/no contest pleas are as follows:

Santa Clara County Superior, Court Case No. CC930791
April 16, 2009

San Mateo County Superior Court, Case No. SM363900A
January 13, 2010

Santa Cruz County Superior Court, Docket N. W901090
June 15, 2000

11. I'm on court probation in Santa Clara County until April 16, 1012 and San Mateo County until January 13, 2013. I am in good standing in both cases. Both are documented in:

Case No. CC-2008-116
Mater of Accusation
State Board of Optometry/DCA vs. Edward Nell
August 11, 2010

13. Disciplinary action was initiated against my license on August 11, 2010. A Settlement and Disciplinary Order was ordered January 19, 2011 and became effective February 18, 2011.

The action was taken in response to DUI misdemeanor convictions for two incidents. The first incident was December 17, 2008, the second, May 1, 2009. The first conviction date was April 16, 2009 and the second January 13, 2010.

In both cases, I was a grave danger to the public and to myself. Fortunately, I caused no harm to people or property.

I was guilty of unprofessional conduct and was a danger to the public in both of these instances. I was a potential danger to the public, had I been drinking or intoxicated while practicing Optometry. By my own admission, I was unfit to practice Optometry six months before the first incident and took a leave of absence from private practice.

14. I believe that I am no longer a danger to the public and fit to resume practicing Optometry without probationary restrictions. I have undergone 14 months of Inpatient treatment and 23 months of Outpatient treatment in the 37 months since the 12/17/08 DUI incident. I have been provably sober from alcohol and controlled substances since October 2009. I have undergone 37 months of individual and group counseling and taken hundreds of hours of classes regarding substance abuse and behavior modification. My individual work has centered on CBT (Cognitive Behavioral Therapy) and Mindfulness Treatment and Training. I will continue to attend support groups in the future and have access to individual counseling as needed.

15. Since the Disciplinary Action was effective (February 18, 2011), I have been doing volunteer work at the VA Menlo Park and the VA Palo Alto. I have assisted patients in the Long Term Care Facility with chaperoning to Hospital appointments, church activities and personal activities (reading, computer, movies, etc.). I assist current Inpatients at the HVRP (Homeless Veterans Rehabilitation Program) Facility regarding finding jobs, housing and benefits to help them transition back into mainstream life. I belong to the Menlo Park Mental Health Veterans Advisory Committee, the HVRP Alumni Association and am a founding member of the Peninsula Veterans Lions Club. I also belong to the Menlo Park Presbyterian Church where I volunteer and attend support groups.

16. I completed The Camp (Scotts Valley, Ca) drug and alcohol rehabilitation program January 16, 2009. At the VA Menlo Park, Ca, I completed Foundation of Recovery Program, April 27, 2009, First Step Residential Rehabilitation Program, December 22, 2009, The Homeless Veterans Rehabilitation Program, November 8, 2010 and The National Center for the Treatment of PTSD, December 22, 2010.

17/19. I have attended the following symposia/continuing education courses:

Berkeley Practicum, January 8 – 10, 2011 20 Hrs
Double Tree Hotel
Berkeley Marina
200 Marina Boulevard
Berkeley, Ca

Differential Diagnosis of Eyelid Lesions
Robert Kersten, MD

Research in Wellness and Longevity
John Swartzberg, MD

Making the Correct Diagnosis in Glaucoma
Joseph Sowka, OD

Glaucoma Grand Rounds
Joseph Sowka, OD

Glaucoma Treatment Decisions and Medication Considerations
Ben Gaddie, OD

Retina Grand Rounds
Arthur Fu, MD

Diagnosing and Treating Red Eye
Lee Schwartz, MD

Uveitis, Episcleritis and Systemic Diseases
Brian Kaye, MD

Diabetes and Ocular Complication
Bernard Dolan, OD, MS

Morgan/Sarver Symposium, April 29 – May 1, 2011 20 Hrs
Double Tree Hotel
Berkeley Marina
200 Marina Boulevard
Berkeley, Ca

Glaucoma Updates and Cases
Ron Melton, OD and Randall Thomas, OD, MPH

E.N.T. and the Eye
Lorre Henderson, OD, MD

Glaucoma Treatment and Cases
Todd Severin, MD

Systemic and Ocular Allergies
Harry Green, OD, PhD
Optic Nerve Head Evaluation
Ronald Guiley, OD, MPH

Normal Tension Glaucoma
Ronald Guiley, OD, MPH

Intriguing Ocular Diseases and New Treatments
Harvey Fishman, MD, PhD

Brain Plasticity
Michael Merzenich, PhD

Familial Exudative Vitreoretinopathy
Tuschar Ranchod, MD

Berkeley Practicum, January 7 – 9, 2012 · 20 Hrs
Double Tree Hotel
Berkeley Marina
200 Marina Boulevard
Berkeley, Ca

Advances in Cateract and Corneal Surgeries
Bernd Kutzscher, MD

The Optic Nerve in Glaucoma
Douglas Anderson, MD

Most Challenging Cases
Les Walls, OD, MD, DOS

Age Related Macular Degeneration
Jay Haynie, OD

Glaucoma Updates
Richard Lewis, MD

Corneal Ulcers
Nisha Acharya, MD, MS

Retinal Diseases and OTC
Brandon Lujan, MD

Pain Management
Mika Moy, OD
Cristina Wilmer, OD

18. Literature as follows:

Journal of the American Optometric Association

2011 Clinical Guide to Ophthalmic Drugs
Drs. Melton and Thomas

Review of Optometry

Scientific American

Journal of Clinical Optometry

Journal of the American Academy of Optometry

20. Recommendations:

Susan Anderson, PhD
Clinical Psychologist
Homeless Veterans Rehabilitation Program
VA Palo Alto Health Care System
Menlo Park Division
795 Willow Road
Menlo Park, Ca 94025
650 493 5000

Ed Bridges
Chairperson: Menlo Park VA Mental Health Volunteer Committee
1496 West Bayshore Road Ste 3
East Palo alto, Ca 94303
650 630 0978

Al Russell
Past District President
Lions Club International
Address to come
650 2082648

Rose Marie Geiser, RN, MSN
VA Palo Alto Health Care System
Menlo Park Division
Mental Health Clinic
795 Willow Road
Menlo Park, Ca 94025
650 493 5000

Department of Veterans Affairs

Palo Alto Health Care System
3801 Miranda Avenue
Palo Alto, California 94304

In Reply Refer to: 640/180D

February 9, 2012

California State Board of Optometry
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

Members of the Board:

This letter is to confirm Mr. Edward Rabb Nell's participation in the Homeless Veterans Rehabilitation Program (HVRP) at the Menlo Park Domiciliary. He was admitted to the program on June 7, 2010, and remained here as an inpatient until November 8, 2010, when he transferred to the National Center for the Treatment of PTSD for additional therapy. Inpatient treatment at HVRP consists of three phases, with skills-based advancement between phases. Completion of the entire inpatient program typically takes 6 months. Based on his efforts and resultant progress in treatment, Mr. Nell advanced to Phase 3 of treatment prior to his transfer.

After completing his treatment at the National Center, Mr. Nell spent time in Sacramento and then in Scottsdale, Arizona, assisting his aging mother, after which he returned to this area to pursue HVRP "graduate" status. He completed requirements to graduate from HVRP -- which includes over 3 months of group attendance, plus weekly drug-free urine tests – and was honored in a ceremony on September 14, 2011. This veteran continues to maintain regular contact with the program, including serving as a tent manager at the South Bay Stand Down in support of currently homeless veterans, serving on the Veterans Mental Health Advisory Board for this VA health care system, being a founding member of the Peninsula Veterans Lions' Club, as well as engaging in other activities in support of HVRP projects and events .

HVRP is a substance-free program that provides training in communications skills, problem-solving, management of dysfunctional behaviors, and recovery from substance abuse -- in addition to addressing other contributors to homelessness and unemployment. All residents of the program are required to attend two 12-step meetings per week. Residents also are required to submit urine samples weekly for drug testing, with additional possible random urine and/or breathalyzer tests. During Mr. Nell's stay at HVRP, he consistently tested negative for amphetamines, marijuana, barbiturates, cocaine, and opiates, and showed no evidence of having relapsed to alcohol. During his aftercare (from April 20, 2011 to the present), he consistently tested negative for amphetamines, marijuana, barbiturates, cocaine, and opiates, with the exception of testing positive for opiates on June 8, 15, and 22, 2011, consistent with invasive dental surgery he underwent. Of note, urine drug screens for Mr. Nell also were negative during his stay at the National Center (November 8 to December 29, 2010.

Sincerely,

Susan G. Anderson, PhD.
Clinical Psychologist
Homeless Veterans Rehabilitation Program
Veterans Affairs Palo Alto Health Care System
Menlo Park Division
795 Willow Road
Menlo Park, California 94025

DEPARTMENT OF VETERANS AFFAIRS
Palo Alto Health Care System
3801 Miranda Avenue
Palo Alto CA 94304

February 8, 2012

State Board Of Optometry

2450 Del Paso Road, Suite 105

Sacramento, CA

To Whom It May Concern:

Dr. Edward Nell has been followed in the Mental Health Clinic of the Palo Alto Veteran Health Care System for approximately one year now. During that time he has received care management services, individual therapy and various group therapies. He also regularly attends after care groups provided for veterans completing inpatient programs. He also regularly participated in various types of volunteer work at the medical center: he escorted elderly veterans to church from the nursing home, he worked in the patient resource library and he attended a stand down event for veterans last fall.

In treatment meetings I had with Dr. Nell as his care manager, we discussed his goals, his progress and problem solved when concerns arose.

Dr. Nell has been conscientious in fulfilling his designated therapy/treatment obligations for the State Board of Optometry. He has not missed appointments. He has maintained sobriety since his initial hospitalization in October, 2009.

Dr. Nell has sincerely conveyed his commitment to returning to his professional role as an optometrist in the time I have met with him from January 29, 2011 to the present date. I recommend he be allowed to return to his professional status when he completes all the mental health requirements made by the State Optometry Board.

If there are any questions regarding the above comments, I can be reached at the following number.

Sincerely,

Rosemarie Geiser

Rosemarie Geiser, RN, MSN

Treatment Coordinator

Mental Health Clinic

Palo Alto Veteran Health Care System

650-493-5000 X 27330

Department of Veterans Affairs
VA Palo Alto Health Care System
Veterans Consumer-Advocacy Council
Assisting veterans & their families with healthy resources

February 5th, 2012

Re: Ed Nell
Letter of Volunteer work

To Whom it may concern,

I'm writing you to into inform you of the excellent volunteer work, contributions and hours donated by Ed Nell while working as a volunteer at the Veterans Administration's Palo Alto Health Care System for the Veteran's Mental Health Advocacy Council. From September 1st, 2011 through January 2012, Mr. Nell has worked as our Public Relations Coordinator for the Council. Mr. Nell has logged many volunteer hours working with Veterans with mental health and/or substance abuse issues since his completion of the HVRP Veterans program. These Veterans are either in patients or out patients here requiring assistance with their benefits or medical attention for PTSD, Depression, Physical or Mental health issues and Medical attention due to Drug and Alcohol substance abuse. Mr. Nell has been reliable, professional and ethical with respect to his role and has been a key contributor to our council. I hope this letter goes a long way towards addressing the improvements, commitment to his program, while being an inpatient in HVRP treatment program for Alcohol, Drugs, Depression, and Cognitive Behavioral Therapy during the last six months. Please feel free to call or email me if you have any questions.

Edmund Bridges (Chairperson)

Veterans Mental Health Advocacy Council, Palo Alto, Ca. Menlo Park Division, 795 Willow Rd Building 321 Room B112 Menlo Park,Ca 94025 chaircac@gmail.com 650-630-0978

THE INTERNATIONAL ASSOCIATION OF

LIONS CLUBS

(Lions Clubs International®)

February 5, 2012

State Board of Optometry
2450 Del Paso Road Ste 105
Sacramento, CA 95834

Dear State Board

Dr. Ed Nell is a founding member of the soon to be chartered Peninsula Veterans Lions Club. This club, based in Menlo Park, will be dedicated to assisting veterans of all ages transition from active duty, homelessness or disability into treatment, housing and jobs. This club will work together with local Lions Clubs and Lions Clubs International to provide community support in the areas of visual impairment, fund raising and any other areas of need or focus.

He has worked tirelessly to attract the new members necessary to charter a new club, and also help shape the direction of this new club. His commitment, enthusiasm and hard work have been invaluable in the formation of this new and ground-breaking Lions Club.(The first club in this district which consists entirely of military veterans).

In working with Ed these last six months, I have found him to be thoughtful, dependable and an articulate advocate for Lions Clubs International, I am truly grateful for his service and friendship.

Sincerely,

Al Russell
Club Organizer
Past District Governor
District 4-C4 (San Francisco to Palo Alto)
2006-2007

AL RUSSELL, Past District Governor • District 4-C4 • California 2006-2007
1452 Kentfield Avenue, Redwood City, California 94061
Cell (650) 208-2648 • Res (650) 364-1318 • arussell@cashin.com

Ashley Nell
2200 Monroe #803
Santa Clara, CA 95050

February 10, 2012

State Board of Optometry
2450 Del Paso Rd. Suite 105
Sacramento, CA 95834

Dear State Board.

Throughout the past two years, my father Edward Nell has jumped leaps and bounds through his sobriety and has proven to be the man and father I always knew he was capable of becoming. As a family, my father and I have been through a lot of highs and lows, just as any family would. His sobriety over the past two years has brought us much closer as he is able to be there for guidance and support through my schooling and parenting. I have a three year old son and am currently attending the University of California Santa Cruz as a Pre Med student. My father has been an inspiration and tremendous support, as I have had to juggle college and motherhood. Before my father got sober, I did not know if I would have this support; however with his sobriety and tremendous courage he has been one of the major reasons I have chosen Medical School as my future.

My father has always been a major part of my life. When I was younger he coached my basketball teams and was always someone I looked up to as a mentor and a provider. My dad is very driven and taught me the importance of leadership as well as ethics, morals and independence. While he has provided me with these qualities at a young age, his sobriety has given him the strength and the clarity to teach me even more now. I am thankful to have a father like him in my life as well as my son's life. He is the most intelligent person I know and I am so grateful that he is in my life, sober and healthy.

Sincerely,

Ashley Nell

RECEIVED BY
STATE BOARD OF OPTOMETRY
2012 FEB -1 PM 2:32

Edward R, Nell, O.D.
179 Burns Avenue
Atherton, CA 94027

January 30, 2012

Ms. Mona Maggio
State Board of Optometry
2450 Del Paso Road Suite 105
Sacramento, CA 95834

Dear Ms. Maggio.

Per our conversation of Friday, January 27, 2012, I'm enclosing a letter from Susan Anderson, PhD, Clinical Director of the Inpatient and Outpatient Program I referenced in our conversation. She has provided a summary of my history with these programs at the Menlo Park VA, as well as describing my current commitment to weekly and random tox screens and breath tests. As I mentioned in my conversation with you last Friday, I will continue with this commitment until the Board releases me from this part of my probation. If I fail a tox screen or breath test, or fail to show up for either, I will notify the Board within 24 hours and desist from practicing Optometry immediately, should I be practicing. As we discussed, this will be considered a violation of my probation and grounds for suspension or revocation of my license to practice Optometry.

I have enclosed a copy of a records release form I have submitted to VA Palo Alto Health Care Systems for yourself and Jessica Sieferman, my Probation Monitor. You will both have free access to all of my laboratory tests at the VA Menlo Park and the VA Palo Alto Health Care System, until I am relieved from drug and alcohol screening by the Board or my probation expires February 18, 2016.

Please let me know if you have any further concerns or questions regarding this matter.

Sincerely,

Edward Nell O.D.

Edward Nell, O.D.

Department of Veterans Affairs
Palo Alto Health Care System
3801 Miranda Avenue
Palo Alto, California 94304

In Reply Refer to: 640/180D

January 27, 2012

California State Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA 95834

To whom it may concern:

This letter is to confirm Mr. Edward Nell's participation in the Homeless Veterans Rehabilitation Program (HVRP) at the Menlo Park Domiciliary. HVRP is a substance-free program that provides training in communications skills, problem-solving, management of dysfunctional behaviors, and recovery from substance abuse -- in addition to addressing other contributors to homelessness and unemployment.

Mr. Nell was admitted to HVRP on June 7, 2010, and resided here as an inpatient until November 8, 2010, at which point he was transferred directly to the National Center for the Treatment of Post Traumatic Stress Disorder on this campus. Treatment at HVRP consists of three phases, with skills-based advancement between phases. Completion of the entire inpatient program typically takes 6 months, and is followed by optional aftercare. Based on his efforts and resultant progress in treatment, Mr. Nell completed all three phases of the inpatient program. After completing his treatment at the National Center, Mr. Nell spent time in Sacramento and then in Scottsdale, Arizona, assisting his aging mother, after which he returned to this area in April of 2011 to pursue graduation status, which requires consistent attendance at outpatient groups in addition to maintaining sobriety. Mr. Nell followed through with this plan, and was honored at a graduation ceremony on September 14, 2011.

Consistent with the relapse prevention classes taught at HVRP, all residents of the program are required to attend two 12-step meetings per week. Residents also are required to submit urine samples weekly for drug testing, with additional possible random urine and/or breathalyzer tests. During Mr. Nell's stay at HVRP, he regularly tested negative for amphetamines, marijuana, barbiturates, cocaine, and opiates. He showed no evidence of having relapsed to alcohol. Of note, urine drug screens for Mr. Nell also were negative during his stay at the National Center (November 8 to December 29, 2010) and during his stay at First Step Program (October 20 to December 24, 2009). Veterans in aftercare at HVRP are required to provide urine for weekly drug screens, and are subject to breathalyzer tests and/or additional urine drug screens upon demand. While in aftercare, and on a voluntary basis since graduation, Mr. Nell has consistently tested negative for the abovementioned drugs, with the exception of being positive for opiates on June 8, 15, and 22, 2011, when he underwent invasive dental surgery. There has been no evidence of his relapsing to alcohol use.

Sincerely,

Susan G. Anderson, PhD.
Clinical Psychologist
Homeless Veterans Rehabilitation Program
Veterans Affairs Palo Alto Health Care System
Menlo Park Division
795 Willow Road
Menlo Park, California 94025

OMB Number: 2900-0260
Estimated Burden: 2 minutes

Department of Veterans Affairs

REQUEST FOR AND AUTHORIZATION TO RELEASE MEDICAL RECORDS OR HEALTH INFORMATION

Privacy Act and Paperwork Reduction Act Information: The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38, U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164, 5 U.S.C. 552a, and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including Social Security Number (SSN) (the SSN will be used to locate records for release) is not furnished completely and accurately, Department of Veterans Affairs will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices identified as 24VA19 "Patient Medical Record - VA" and in accordance with the VHA Notice of Privacy Practices. You do not have to provide the information to VA, but if you don't, VA will be unable to process your request and serve your medical needs. Failure to furnish the information will not have any affect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law. The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.

ENTER BELOW THE PATIENT'S NAME AND SOCIAL SECURITY NUMBER IF THE PATIENT DATA CARD IMPRINT IS NOT USED.

TO: DEPARTMENT OF VETERANS AFFAIRS (Print or type name and address of health care facility)

VA Palo Alto Health Care System
3801 Miranda Ave, Palo Alto 94304

PATIENT NAME (Last, First, Middle Initial)

NELL, Edward R.

SOCIAL SECURITY NUMBER

[redacted]

NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

Mona Maggio and/or Jessica Sieferman 2450 Del Paso Rd. Suite 105
State Board of Optometry Sacramento, CA 95834

VETERAN'S REQUEST: I request and authorize Department of Veterans Affairs to release the information specified below to the organization, or individual named on this request. I understand that the information to be released includes information regarding the following condition(s):

☒ DRUG ABUSE ☒ ALCOHOLISM OR ALCOHOL ABUSE ☐ TESTING FOR OR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV) ☐ SICKLE CELL ANEMIA

INFORMATION REQUESTED (Check applicable box(es) and state the extent or nature of the information to be disclosed, giving the dates or approximate dates covered by each)

☐ COPY OF HOSPITAL SUMMARY ☐ COPY OF OUTPATIENT TREATMENT NOTE(S) ☐ OTHER (Specify)

All Laboratory Test Results

PURPOSE(S) OR NEED FOR WHICH THE INFORMATION IS TO BE USED BY INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

Providing information to my state licensing Board

NOTE: ADDITIONAL ITEMS OF INFORMATION DESIRED MAY BE LISTED ON THE BACK OF THIS FORM

AUTHORIZATION: I certify that this request has been made freely, voluntarily and without coercion and that the information given above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I may revoke this authorization, in writing, at any time except to the extent that action has already been taken to comply with it. Written revocation is effective upon receipt by the Release of Information Unit at the facility housing the records. Redisclosure of my medical records by those receiving the above authorized information may be accomplished without my further written authorization and may no longer be protected. Without my express revocation, the authorization will automatically expire: (1) upon satisfaction of the need for disclosure; (2) on 2/18/2016 (date supplied by patient); (3) under the following condition(s):

I understand that the VA health care practitioner's opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.

DATE: 1-30-2012

SIGNATURE OF PATIENT OR PERSON AUTHORIZED TO SIGN FOR PATIENT (Attach authority to sign, e.g., POA)

Edward R. Nell

FOR VA USE ONLY

IMPRINT PATIENT DATA CARD (or enter Name, Address, Social Security Number)

TYPE AND EXTENT OF MATERIAL RELEASED

DATE RELEASED

RELEASED BY

VA FORM MAY 2005 **10-5345** USE EXISTING STOCK OF VA FORM 10-5345, DATED NOV 2004.

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

In the Matter of the Accusation Against: EDWARD RABB NELL 2603 South Park Lane Santa Clara, CA 95051 Optometrist License No. 6522 Respondent.	Case No. CC-2008-116 OAH No. N2010080852

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

Certified to be a true and correct copy of the original on file with this Board.

Dated 2/7/12

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General
CHAR SACHSON
Deputy Attorney General
State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5558
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: EDWARD RABB NELL 2603 South Park Lane Santa Clara, CA 95051 Optometrist License No. 6522 Respondent.	Case No. CC-2008-116 OAH No. N2010080852 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 Accusation.

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 Char Sachson, Deputy Attorney General.

2. Respondent Edward Rabb Nell (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 22, 1978, the State Board of Optometry issued Optometrist License No. 6522 to Respondent. The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. CC-2008-116 and will expire on March 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. CC-2008-116 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 13, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. CC-2008-116 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 Accusation No. CC-2008-116. 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. CC-2008-116.

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

CIRCUMSTANCES IN MITIGATION

10. Respondent Edward Rabb Nell has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

11. 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.

12. 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.

13. 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.

14. 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 6522 issued to Respondent Edward Rabb Nell is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

2. **Cooperate with Probation Surveillance.** Respondent shall comply with the board's probation surveillance program; including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.

3. **Tolling of Probation If Respondent Moves Out-of-State.** The period of probation shall not run during the time Respondent is residing or practicing outside the jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, Respondent is required to immediately notify the board in writing of the date of departure, and the date of return, if any.

4. **Completion of Probation.** Upon successful completion of probation, Respondent's certificate will be fully restored.

5. **Violation of Probation.** If Respondent violates probation in any respect, the board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

6. **Drugs - Abstain From Use.** Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription.

7. **Drugs - Exception for Personal Illness.** Orders forbidding Respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to Respondent for a bona fide illness or condition by a licensed

physician.

8. **Lens Prescriptions - Maintain Records.** Respondent shall maintain a record of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

9. **Alcohol - Abstain From Use.** Respondent shall abstain completely from the use of alcoholic beverages.

10. **Biological Fluid Testing.** Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon the request of the board or its designee.

11. **Community Services - Free Services.** Within 60 days of the effective date of this decision, Respondent shall submit to the board for its prior approval a community service program in which Respondent shall provide free **non-optometric services** on a regular basis to a community or charitable facility or agency for at least twenty (20) hours a month for the first twelve (12) months of probation.

12. **Education Course.** Within 90 days of the effective date of this decision, Respondent shall submit to the board for its prior approval an educational program or course(s) to be designated by the board, which shall not be less than 40 hours, and shall be in the areas of alcohol and substance abuse. The coursework shall be completed within 24 months of the effective date of this decision. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure, and shall be obtained with all costs being paid by Respondent. Following the completion of each course, the board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

13. **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 California

Laws and Regulations Examination (CLRE) administered by Psychological Services, LLC PSI. If Respondent fails this examination, Respondent must re-take and pass the examination. 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.

14. **Psychiatric or Psychological Evaluation.** Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, Respondent shall undergo a psychiatric or psychological evaluation (and psychological testing, if deemed necessary) by a board-appointed psychiatrist or psychologist, at Respondent's cost, who shall furnish a psychiatric or psychological report to the board or its designee.

If Respondent is required by the board or its designee to undergo psychiatric or psychological treatment, Respondent shall within 30 days of the requirement notice submit to the board for its prior approval the name and qualifications of a psychiatrist or psychologist of Respondent's choice. Upon approval of the treating psychiatrist or psychologist, Respondent shall undergo and continue psychiatric or psychological treatment, at Respondent's cost, until further notice from the board. Respondent shall have the treating psychiatrist or psychologist submit quarterly status reports to the board.

15. **Psychotherapy.** Within 60 days of the effective date of this decision, Respondent shall submit to the board for its prior approval the name and qualifications of a psychotherapist of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until the board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the board. The board may require Respondent to undergo psychiatric or psychological evaluations by a board-appointed psychiatrist or psychologist. Respondent shall be allowed to continue psychotherapy with his current treating provider as long as the treating psychotherapist agrees to submit quarterly status

reports to the Board.

16. **Monitoring.** Within 30 days of the effective date of this decision, Respondent shall submit to the board for its prior approval a plan of practice in which Respondent's practice shall be monitored by another optometrist, who shall provide periodic reports to the board. Any cost for such monitoring shall be paid by Respondent.

17. **Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment.** Within 15 days of the effective date of this decision, Respondent shall submit to the Board the name, business address, business telephone number and name of the director(s) or chief of staff of any and all Chemical Abuse Counseling and Treatment Programs he has successfully completed. The Board may consider completion of said programs as meeting this requirement. However, if the Board deems Respondent must participate in additional programs, Respondent shall be required to submit to the Board the name, business address, and business telephone number of three persons who are professionally qualified to provide counseling and treatment for drug, alcohol or other chemical abuse appropriate to the case. Thereafter the board through its staff shall select one of these persons to provide the necessary counseling and treatment. Within 30 days of written notification of this selection to the Respondent the Respondent shall, in consultation with this counselor and treating professional, prepare and submit to the board for its approval, a counseling and treatment program all costs of which shall be paid by the Respondent. Respondent shall successfully complete this counseling and treatment program as a condition of probation.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Optometrist 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: 11.15.2010 Edward Rabb Nell

EDWARD RABB NELL
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: 12/8/10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

CHAR SACHSON
Deputy Attorney General
Attorneys for Complainant

SF2010201431
Stipulation.rtf

Exhibit A

Accusation No. CC-2008-116

EDMUND G. BROWN JR.
Attorney General of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **EDWARD RABB NELL** **2603 South Drive** **Santa Clara, CA 95051** **Optometrist License No. 6522** Respondent.	Case No. CC-2008-116 ACCUSATION

Complainant alleges:

PARTIES

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

2. On or about September 11, 1978, the State Board of Optometry issued Optometrist License Number 6522 to Edward Rabb Nell (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

JURISDICTION

3. This Accusation 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.

4. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

. . .

"(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.

"(l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self administration of any of the substances referred to in this subdivision, or any combination thereof.

. . ."

5. California Code of Regulations, title 16, section 1517 states:

"For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions, and duties of an optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist to perform the functions authorized by his/her certificate of registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

"(a) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code (Sections 525 et seq. of the Code).

"(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

"(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540 et seq. of the Code).

"(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et seq. of the Code)."

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(CRIMINAL CONVICTIONS)

9. Respondent is subject to disciplinary action under sections 490 and/or 3110(k) in that on or about April 16, 2009, in a criminal proceeding entitled *People v. Edward Rabb Nell*, in Santa Clara County Superior Court, Case No. CC930791 Respondent pled guilty to violating Vehicle Code section 23152(b) (driving with blood alcohol of over .08%). Respondent was sentenced to serve 15 days in jail, three years court probation, ordered to enroll in a first offender program and to pay fines and fees in the amount of $665.00. The circumstances of the conviction are that on or about December 17, 2008, Respondent was arrested for driving under the influence of alcohol after being seen filling his car with gasoline while apparently intoxicated at a Chevron

station located at 200 Los Gatos Saratoga Road, Los Gatos, California. Respondent's blood alcohol level was .29%.

10. Respondent is further subject to disciplinary action under sections 490 and/or 3110(k) in that on or about January 13, 2010, in a criminal proceeding entitled *People v. Edward Rabb Nell*, in San Mateo County Superior Court, Case No. SM363900A Respondent pled nolo contendere to violating Vehicle Code section 23152(a) (driving while under the influence of alcohol). Respondent was sentenced to serve six months in jail (or residential rehabilitation center), probation for three years, to complete a residential treatment program, complete a multiple offender program, and to pay fines and fees as ordered by the court's probation department. The circumstances of the conviction are that on or about May 1, 2009, Respondent was arrested for driving under the influence of alcohol on the grounds of the Veterans' Administration hospital in Palo Alto, California.

SECOND CAUSE FOR DISCIPLINE

(USING ALCOHOL IN A MANNER DANGEROUS TO ONESELF OR OTHERS)

11. Respondent is subject to disciplinary action under section 3110(l) in that he administered alcohol to himself in a manner dangerous to himself or others, as alleged above in paragraphs 9 and 10.

MATTERS IN AGGRAVATION

12. As relevant to penalty, if any, Complainant alleges that on or about June 15, 2000, in a criminal proceeding entitled *People v. Edward Rabb Nell*, in Santa Cruz County Superior Court, Docket No. W901090, Respondent was convicted of violating Vehicle Code section 23152 (driving while under the influence of alcohol).

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 or suspending Optometrist License Number 6522, issued to Edward Rabb Nell;

2. Ordering Edward Rabb Nell to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: August 11, 2010

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

SF2010201431

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

PROBATION COMPLIANCE REPORT

Name of Optometrist: Dr. Edward Nell, O.D.
Case #: CC 2008-116
OPT License: #6522

Probation Monitor: Jessica Sieferman

Jurisdictional Document: Stipulated Settlement and Disciplinary Order

Term of Probation: February 18, 2011 – February 18, 2016

Disclaimer: This report was prepared on February 8, 2012 and reflects compliance up to this date. Compliance is based upon documentation contained in Dr. Nell's complete probation file. The complete probation file (100+ pages) can be made available to Board members upon request.

1. Obey All Laws
Compliant. The Board has not received any subsequent arrest notifications or any indication of breaking any federal, state, or local laws. In addition, Dr. Nell has been compliant with all rules governing the practice of optometry.

2. Cooperate with Probation Surveillance
Compliant. Dr. Nell has been fully cooperative and compliant with the probation program.

3. Tolling of Probation if Respondent Moves Out-of-State.
Compliant. Dr. Nell has not reported ever moving out of state during his probation.

4. Completion of Probation
Upon successful completion of Probation, Dr. Nell's license will be fully restored.

5. Violation of Probation
The Board has not filed any Accusations or a Petition to Revoke Probation during Dr. Nell's probation. Should the Board file an Accusation or Petition to Revoke during Dr. Nell's probationary term, the Board shall have continuing jurisdiction or the period of probation shall be extended until the matter is final.

6. Drugs – Abstain From Use
Compliant. Dr. Nell has abstained from all controlled substances, except when legally prescribed by a licensed health care professional.

7. Drugs – Exception for Personal Illness
Exception Used. Dr. Nell provided the Board with a list of lawfully prescribed medications at the commencement of his probation and continually updates his list for the Board. The medications can be

made available to Board members upon request. Two medications are listed as part of Dr. Joyce Nash's report in Attachment #1 described under condition #14.

8. Lens Prescriptions – Maintain Records
Currently Not Applicable. Dr. Nell has not practiced optometry since the commencement of his probation. Therefore, he has no medical records to maintain.

9. Alcohol – Abstain From Use
Compliant. As indicated by random drug testing through Phamatech, Dr. Nell has fully abstained from alcohol consumption.

10. Biological Fluid Testing
Compliant. Dr. Nell has submitted to biological fluid testing since the commencement of his probation. He has not tested positive for any alcohol or drugs that were not prescribed by a health care professional.

11. Community Services – Free Services
Compliant. Dr. Nell provides free non-optometric services to the Menlo Park VA. Dr. Nell's community service coordinator has provided the Board with quarterly Verification of Community Service reports verifying Dr. Nell has consistently volunteered over the 20 hours per month required by his Order.

12. Education Course (in the areas of alcohol and substance abuse)
Compliant. Dr. Nell has completed several alcohol and substance abuse courses through the VA.

13. Reexamination
Compliant. Dr. Nell passed the California Laws and Regulations Exam on his second attempt.

14. Psychiatric or Psychological Evaluation
Compliant. While his Order required Dr. Nell to complete his evaluation within 30 days, the Board agreed to let Dr. Nell undergo his evaluation when he starts considering returning to practice and/or before he petitions for modification or early termination of probation. Dr. Nell completed a psychiatric evaluation on January 5, 2012. Dr. Joyce D. Nash, Ph.D. provided her evaluation report for the Board members; the evaluation of Dr. Nell is not included in the public portion of this report **(Attachment #1)**.

15. Psychotherapy
Compliant. Dr. Nell continues to attend psychotherapeutic sessions at the Palo Alto VA. The Board receives periodic reports on Dr. Nell's therapy sessions from the VA. The reports are included for the Board members **(Attachment #2).**

16. Monitoring
Currently Not Applicable. As previously stated under Condition #8, Dr. Nell has not practiced optometry since the commencement of his probation. In a letter from Dr. Nell, dated March 12, 2011, Dr. Nell stated he will continue to take a leave of absence from optometry "until at least March 7, 2011." Until Dr. Nell returns to practice, he will not have a practice to monitor.

17. Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment
Compliant. Dr. Nell has completed the following counseling and treatment programs through the VA:

- Foundations of Recovery (3/30/09-4/27/09)
- First Step (10/20/09-12/24/09)
- The Camp Recovery Center (12/18/09-1/17/09) **(Attachment #3)**

- Homeless Veterans Rehabilitation Program (6/7/10-11/08/10) **(Attachment #4)**
- Men's Trauma Recovery Program (11/08/10-12/29/10)

RECEIVED BY
STATE BOARD OF OPTOMETRY
2012 JAN 24 PM 6:31

Joyce D. Nash, Ph.D.
Clinical Psychologist – PSY 14097
E-mail: drjnash@comcast.net
www.drjoycenash.com
(Tax ID: 74-3032723)
Nat'l Provider #: 1649406844

1220 University Drive, Suite 202
Menlo Park, CA 94025

Phone: 650-329-1000 – FAX 650-851-0103

January 18, 2012

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

Attention: Jessica Sieferman

Re: Mental Health Evaluation of Edward R. Nell O.D.

Dear Ms. Sieferman,

Enclosed is the completed narrative report for Edward R. Nell and a copy of my Curriculum Vitae.

Yours truly,

Joyce D. Nash, Ph.D.

Cc: Edward R. Nell, O.D.

Joyce D. Nash, Ph.D.
Clinical Psychologist – PSY 14097
E-mail: drjnash@comcast.net
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Phone: 650-329-1000 – FAX 650-851-0103

MENTAL HEALTH EVALUATION

Optometrist Name: Edward Rabb Nell **License #:** 6522

1. I, **Joyce D. Nash, Ph.D.**, reviewed the Board Decision or Stipulated Settlement and the Accusation or Statement of Issues on January 5 through 12, 2012.

2. **Diagnosis:**

Axis I:	303.90 Alcohol Dependence by History
	300.4 Dysthymic Disorder
Axis II:	V71.09 No Diagnosis
Axis III:	None
Axis IV:	Occupational problems
Axis V:	GAF = 75 (current)

3. **Description of Methods used in Evaluation:**

Clinical Interview
Review of relevant documents
Beck Depression Inventory II
Coping Response Inventory
Inventory of Interpersonal Problems (IIP-64)

4. **Background and current mental health status of optometrist:**

Background:

Dr. Edward R. Nell is a 63 year old divorced white male, a veteran of the Viet Nam war, who at this time has nearly 2.5 years of sobriety. The first incident in question was a DUI in December 2008, subsequent to the departure of his daughter for college and financial reversals. At this point he entered The Camp, which is a residential substance abuse treatment facility in Scotts Valley, CA. Although he received treatment for his drinking at that time, he relapsed and had another DUI in May 2009.

Prior to the first incident mentioned above, Dr. Nell voluntarily ceased practicing optometry in June 2008, realizing that his drinking made continuing to practice unviable. Dr. Nell has a strong history of alcoholism in his family.

Dr. Nell currently volunteers to help other veterans with addiction issues. He is also active in his church, Menlo Park Presbyterian.

Current mental health status:

On January 5, 2012, Dr. Edward Nell was oriented times 5. He presented casually dressed in warm-ups and athletic shoes. His behavior and speech were within normal limits. Although somewhat reserved, he was cooperative with the examiner, exhibiting normal and appropriate affect. His thought process and form was intact with no disturbance of Sensorium or cognition. He reported some difficulties on occasion with short-term memory; however this would be consistent with his age. He appeared to be a man of high intelligence and with good insight into his situation.

5. **Description of optometrist's ability and methods of dealing with stress:**

Dr. Nell's treatment with Cognitive Behavior Therapy (CBT) has provided him with a number of strategies for managing stress. One of these includes mindfulness, which is an attitude of openness, receptivity, non-judgmentalness, and an acceptance of moment-to-moment experience. Research has shown this is helpful in overcoming substance abuse. Dr. Nell reinforces this with a regular practice of meditation, which has also been demonstrated empirically to be helpful for stress. He is now better able to catch criticism of self and others and utilize acceptance cognitions to reduce anger and anxiety.

6. **Description of symptoms or characteristics of sociopathic or violent behavior:**

No symptoms or characteristics of sociopathic or violent behavior were found in Dr. Nell's history or current presentation.

7. **Description of any restrictions you recommend in the optometrists' work environment:**

None.

8. **Description of my prognosis and treatment, including medications:**

Prognosis:

Dr. Nell has successfully completed an extensive course of treatment for alcohol abuse and dependence, as well as for depression. Through treatment he has shown improvements in mood and interpersonal relatedness, decreases in distress, and an improved social support network. Given the extensive treatment Dr. Nell has completed

to date, he may choose to continue individual therapy, and it is my opinion that he would do well to continue to attend support groups. The VA Outpatient Mental Health Clinic has groups that are open for veterans to attend and Dr. Nell has already chosen to attend these groups. He is active in his Church and community, and I believe he is committed to long-term sobriety.

Treatment:

Dr Nell sought treatment for alcoholism and attended various residential programs within the Veterans Administration Palo Alto Health Care System including: Foundations of Recovery (3/30/09-4/27/09), First Step (10/20/09-12/24/09), Homeless Veteran's Rehabilitation Program (6/7/10-11/08/10), and Men's Trauma Recovery Program (11/08/10-12/29/10). He has been in individual therapy with Erin Scrollin, B.A., twice weekly from 5/31/11 to 6/30/11, and with Nadeem Hasan, B.A., under the supervision of Robert Halloway, Ph.D., for treatment of depression from 7/29/11 to 11/8/11. Dr. Nell's treatment has consisted of Cognitive Behavior Therapy (CBT), mindfulness work, art therapy, and relationship work. He reports currently practicing daily meditation and attending AA and church support groups.

Current Psychotropic Medications:

Sertraline (Zoloft), 200 mg qd
Mirtazapine (Remeron) 15 mg qd

9. **Evaluation of the capability of performing the functions of an optometrist in a safe and competent manner:**

Based on my evaluation, I believe Dr. Edward R. Nell is fully capable of performing the functions of an optometrist in a safe and competent manner. The results of the tests administered suggest that Dr. Nell is ready to return to his duties as an optometrist.

Evaluator's Name: Joyce D. Nash, Ph.D. **License #:** PSY14097

Specialty: Clinical Psychologist

Address: 1220 University Drive, Suite 202
Menlo Park, CA 94025

Phone: (650) 329-1000

E-mail: drjnash@comcast.net

Signature: Joyce D Nash **Date:** 1/18/2012

Joyce D. Nash, Ph.D.

1220 University Drive, #202, Menlo Park, CA 94025, (650) 329-1000
e-mail: drjnash@comcast.net; fax: (650) 851-0103
Web site: www.drjoycenash.com

Clinical Psychologist - PSY 14097 *Adults, Couples*

CURRICULUM VITAE

Education:

B.S., Communication, Southern Illinois University, 1972
A.M., Communication, Stanford University, 1975
Ph.D., Communication, Stanford University, 1977
Postdoctoral work in nutrition and epidemiology (NIH grant), Stanford University School of Medicine, Stanford Heart Disease Prevention Program, 1977-1978
M.S., Clinical Psychology, Pacific Graduate School of Psychology, Palo Alto, CA, 1991
Ph.D., Clinical Psychology, Pacific Graduate School of Psychology, 1993 (APA accredited)

Experience:

3/95 to Present: *Licensed clinical psychologist* in private practice in Menlo Park, CA.

7/94 to 8/95: *On duty supervisor* at Westside Community Crisis Clinic (formerly Mt. Zion Crisis), San Francisco, in charge of clinic operation and supervision of interns while on shift.

8/93 to 3/95: *Registered psychological assistant* to Harris Monosoff, Ph.D. offering psychotherapy to, adults and couples.

1975 to Present: *Author, lecturer*. Nine books, several book chapters, academic journal articles, articles for popular magazines, lectures, and continuing education programs on psychological and behavioral medicine topics, including body weight, body image, and eating disorders.

7/92 to 7/94: *Registered psychologist* and *psychological intern*, Westside Crisis Clinic (formerly Mt. Zion Crisis Clinic), San Francisco. Providing crisis intervention, assessment, diagnosis, and therapy to adults. Serving primarily the seriously mentally ill, patients with severe personality disorders, and dual diagnosis outpatients, many of whom are minorities. Supervisor: Robert Hausner, M.D.

9/92 to 9/93: *Registered psychological assistant*, Kaiser Permanente, Redwood City. Provided time-limited psychotherapy to adults, children, and couples, presenting primarily with problems of living, especially marital problems, parent-child problems, eating disorders, and sexual dysfunction. Supervisor: John Peters, Ph.D.

7/91 to 7/92: *Psychological intern*, Mt. Zion Crisis Clinic, San Francisco. Supervisor: Carole Lewis, Ph.D.

9/91 to 9/92: *Psychological intern*, Haight-Ashbury Psychological Services, San Francisco. Specialized in brief therapy for relatively high-functioning individuals, couples, and families, presenting primarily with personality disorders, eating disorders, and mood disorders. Supervisor: Matthew McKay, Ph.D.

1991: *Psychological report writer* for Doris Nameth, Ph.D. Integrated data from various tests, including the Wechsler, Rorschach, MAPI, Bender, TAT, and others, and created written reports for referral sources.

1/89 to 6/90: *Student therapist* at PGSP Clinic, Pacific Graduate School of Psychology, Palo Alto, CA. Provided individual psychotherapy to adults.

1988 to 1989: *Student therapist* at Foothill College, Los Altos, CA. Provided counseling and therapy to Foothill students ranging in age from 16 to 53.

1975 to 1988: *Health promotion consultant.* Provided assistance in program development, implementation, and evaluation; trained paraprofessionals to conduct programs in weight management, smoking cessation, stress management, and physical fitness. Clients included Johnson & Johnson, Control Data, and National YMCA.

1981 to 1982: *Consultant* to Lifespring, Inc. Designed and facilitated human potential programs for large groups. Conducted trainer training programs. Coordinated research on program effectiveness with Lee Ross, Ph.D. and Mort Lieberman, Ph.D. Worked with attorneys to facilitate full disclosure to prospective trainees. Assisted organization to revise corporate image.

1978 to 1981: *Director of Program and Training*, Weight Watchers. Trained group leaders in use of behavioral techniques. Counseled staff regarding maintenance of weight loss and conducted staff development groups. Assisted in management of West Coast franchises.

1976 to 1978: *Founder and Director*, Diet and Weight Control Clinic at Stanford University. Founded clinic, which was sponsored by the Stanford Heart Disease Prevention Program. Established and conducted a group program for behavioral weight control. Trained additional staff to conduct the program and developed one of the first treatment manuals in the treatment of obesity.

1973 to 1976: *Research assistant*, Stanford Heart Disease Prevention Program (now the Stanford Center for Disease Prevention), Stanford University. Participated in proposal writing, research design, implementation of research procedures, data analysis, write-up and publication of results for the "Three Community Study" and the "Five Cities Project."

1970 to 1972: *Resident adviser* and *peer counselor*, Southern Illinois University. Supervised and counseled young men and women living in a co-ed dorm; served as a resident adviser for women of the Sigma Kappa Sorority.

1968 to 1970: *Student*, University of Pittsburgh.

1960 to 1968: *Administrative Assistant*, Aluminum Company of America, Pittsburgh, PA.

Publications:

Books

Nash, J. D., & Ormiston, L. (1978). *Taking charge of your weight and well being.* (Student and therapist manuals). Palo Alto, CA: Bull Publishing Company.

Nash, J. D. (1981). *Taking charge of your smoking.* (Student and therapist manuals). Palo Alto, CA: Bull Publishing Company.

Nash, J. D. (1986). *Maximize your body potential.* (Winner of American Medical Writers Association award 1987.) Palo Alto, CA: Bull Publishing Company.

Nash, J. D. (1992). *Now that you've lost it.* Palo Alto, CA: Bull Publishing Company

Nash, J. D. (1995). *What your doctor can't tell you about cosmetic surgery.* Oakland, CA: New Harbinger Publications.

Nash, J. D. (1997). *The new maximize your body potential.* Palo Alto, CA: Bull Publishing Company.

Nash, J. D. (1999). *Binge no more: Your guide to overcoming disordered eating.* Oakland, CA: New Harbinger Publications.

Nash, J.D. (2003). *Maximize your body potential, Ed. 3.* Boulder, CO: Bull Publishing Company.

Nash, J. D. (2011). *Lose Weight, Live Healthy; A Comprehensive Guide to Designing Your Own Weight Loss Program.* Boulder, CO: Bull Publishing Company.

Journal Articles

Nash, J. D. (1977). Frontiers in the communication curriculum: Health communication. *Association for Communication Administration, 21*, 69-75.

Farquhar, J. W., et al. (1977). Community education for cardiovascular health. *Lancet*, June 4.

Meyer, A. J., Nash, J. D., McAlister, A. L., Maccoby, N., & Farquhar, J. W. (1978). Skills training in a cardiovascular health education campaign. *Journal of Consulting and Clinical Psychology, 48.*

Nash, J. D. (1987). Eating behavior and body weight: Physiological influences. *American Journal of Health Promotion. 1*(3), 5-15.

Nash, J. D. (1987). Eating behavior and body weight: Psychosocial influences. *American Journal of Health Promotion. 2*(1), 5-13.

Book Chapters

Nash, J. D., & Farquhar, J. W. (1978). Community approaches to dietary modification and obesity. In A. J. Stunkard (Ed.), *Obesity: Psychiatric clinics of North America, 1*, 3. Philadelphia: W. B. Saunders.

Nash, J. D. & Farquhar, J. W. (1981). Applications of behavioral medicine to disease prevention in a total community setting: A review of the three-community study. In J. Ferguson & C. B. Taylor (Eds.), *A comprehensive handbook of behavioral medicine, Vol. 3*. Jamaica, NY: Spectrum Publications.

Nash, J. D. (1991). Weight control. In P. M. Insel & W. T. Roth, *Core concepts in health, Sixth edition.* Mountain View, CA: Mayfield Publishing Company.

Nash, J. D. (1992). Weight control. In P. M. Insel & W. T. Roth, *Core concepts in health, Seventh edition.* Mountain View, CA: Mayfield Publishing Company.

Nash, J. D. (1995). Weight control. In P. M. Insel & W. T. Roth, *Core concepts in health, Eighth edition.* Mountain View, CA: Mayfield Publishing Company.

Nash, J. D. (1998). Weight control. In P. M. Insel & W. T. Roth, *Core concepts in health, Ninth edition.* Mountain View, CA: Mayfield Publishing Company.

Other

Nash, J. D. (1977). The problem of dropout from treatment for obesity. (Doctoral dissertation, Stanford University, 1977). *Dissertation Abstracts International, 37.* (University Microfilms No. 77-12,674)

Nash, J. D. (1983). *Taking charge of your body, your health, your stress, and your life.* (Audiocassette album). Woodside, CA: Taking Charge Programs.

Nash, J. D. (April, 1988). *Cognition and addictive behavior: How does "self-talk" mediate smoking, drug use, and alcohol abuse?* Paper presented at the Conference on Advances in the Cognitive Therapies, San Francisco.

Nash, J. D. (1993). Self-talk of dieters and maintainers: States-of-mind, stimulus situations, binge eating, weight cycling, and severity of weight problem. (Doctoral dissertation, Pacific Graduate School of Psychology). *Dissertation Abstracts International.*

Nash, J. D. (September, 1997). Binge eating: The newest eating disorder. *Healthline*, 16, 6-7.

Nash, J. D. (November, 1997). When healers fail to seek healing, Part I. *The California Psychologist, 30*, 22.

Nash, J. D. (December, 1997). When healers fail to seek healing, Part II. *The California Psychologist, 30*, 26.

Nash, J. D. (October, 1999). Ways to intervene with a distressed or impaired colleague. *The California Psychologist, 32*, 10.

Professional Memberships:

American Psychological Association, 1973 to 2008.
California Psychological Association, 1993 to 2008, (Member, CLASP Executive Committee, 1996-1999)
San Francisco Psychological Association, 1995 to 2000, (Membership Chair, 1997-1998)
San Mateo County Psychological Association, 1995 to 2000, (I&R Chair, 1998-1999)
Santa Clara County Psychological Association, 1995 to present
Association for the Advancement of Behavior Therapy (AABT, now ABCT), 1973 to present.
Society for Behavioral Medicine, 1975 to 2000.
American Anorexia Bulimia Association (AABA), referrals list, 1997 to 2000.
National Association of Anorexia Nervosa and Associated Disorders (ANED), referrals list, 1997 to present
Academy for Eating Disorders (AED), 2000 to 2008.
Association of Professionals Treating Eating Disorders (APTED), 1997 to 2005.
International Association of Eating Disorders Professionals (IAEDP), 2000 to 2003.
American Academy of Pain Management, 2001 to 2005.
Anxiety Disorders Association of American (ADAA), 2002 to present.
American Bariatric Surgery Association, 2006-2008

Other Activities:

Student council representative and president of student body at Pacific Graduate School of Psychology, 1989-1990.

Teaching assistant at Pacific Graduate School of Psychology in "Rorschach" and "Use of Test Batteries" courses, 1991.

Intern representative on the Board of Directors for Haight-Ashbury Psychological Services, 1991-1992.

Vice-president, PGSP Alumni Association, Pacific Graduate School of Psychology, Palo Alto, CA, 1993-present. Participated on committees creating response to APA and conducted 1993 alumni survey that was included as part of response to APA.

1994 Alumnus of the Year Award, Pacific Graduate School of Psychology, Palo Alto, CA.

Dissertation committee member for two Ph.D. dissertations (Fielding Institute & California School of Professional Psychology, Alameda [now Alliant University}).

Member of California Psychological Association's Colleague Assistance and Support Program (CLASP) Task Force (1996-2000).

Board of Trustees, Pacific Graduate School of Psychology, 1999 - 2004.

Presenter to Long-Term, Bariatric Support Group, Mills-Peninsula Hospital, Burlingame, CA. four times a year, 2001-2007.

Provided pre-bariatric surgery evaluations, 2001-2008.

Selected Professional Presentations:

Presenter, *Understanding and Treating Binge Eating Disorder*. California Psychological Association, Annual Convention, March 29, 1998.

Presenter, *CLASP: Intervening with Distressed or Impaired Colleagues*. California Psychological Association, Annual Convention, March 28, 1998.

Speaker, *What's New in Weight Control?* 1989 Writers Conference, "Food: A Consuming Interest," sponsored by the St. Louis Dairy Council, St. Louis, MO, May 11-12, 1989.

Speaker, *Helping Clients Change Their Self-Talk and Beliefs for Better Weight Control*, California Dietetic Association., May 14, 1989.

Workshop Presenter, *Treating Addictions: Cognitive Strategies That Work.* Sponsored by Institute for the Advancement of Human Behavior, San Francisco, April 22-24, 1988.

Speaker and Workshop Presenter, *Beyond Behavior Modification: Providing Better Weight Management Interventions*, and *Cognition Modification and Maintenance of Success*. Sponsored by the Cleveland Clinic Foundation, Cleveland, OH, September 1987.

Program Presenter, *Factors Influencing Body Weight* and *Weight Control for Profit*. Invited presentations made at the 1986 Annual Convention of the California Dietetic Association, Oakland, CA, 1986.

Program Presenter, *Wholistic Living*. Three-day program for 100 nuns on stress management

and healthy living, sponsored by the Sisters of the Order of St. Dominic, Grand Rapids, MI, June 25-28, 1986.

Workshop Presenter, *Motivating the Noncompliant Patient*. One-day program sponsored by the American Association of Diabetes Educators of Northern California, Santa Clara, CA, 1984.

Workshop Presenter, *Use of Guided Imagery and Structured Exercises for Promoting Cognitive Restructuring and Improved Behavior Change*. Eight-hour workshop sponsored by the American Dietetic Association, Anaheim, CA, 1983.

Workshop Presenter, *Using Mindfulness- and Acceptance-based Therapy for Treating Binge Eating Disorder*. Ninety minute presentation for the 2011 ANAD Mid-West Conference, May 2011.

Workshop Presenter, *Using Mindfulness and Acceptance and Commitment Therapy for Treating Binge Eating Disorder*. Seventy-five minute presentation for 2011 NEDA Conference, October 2011.

Workshop Presenter, *Using Mindfulness and Acceptance and Commitment Therapy for Treating Binge Eating Disorder*. Three hour presentation for 2011 Renfrew Conference, Philadelphia, November 2011.

(Updated 01/18/12)

Attachment 2

RECEIVED BY
STATE BOARD OF OPTOMETRY

2011 JUN 30 AM 11:27

Department of Veterans Affairs
Palo Alto Health Care System
3801 Miranda Avenue
Palo Alto, CA 94304

In Reply Refer To:
640/170A-MP
RE: Veteran

June 21, 2011

Jessica Sierferman
State Board of Optometry
2420 Del Paso Rd. Ste 255
Sacramento, Ca 95834

Dear Jessica Sieferman,

Below you will find a quarterly update on Dr. Veteran's participation in psychotherapeutic services.

Dr. Nell attends psychotherapeutic sessions at the Palo Alto VA HCS, Menlo Park Division, where he is seen twice weekly by this writer, Erin Scollin, who is working under the direct supervision of Dr. Robert Holaway.

Dr. Nell regularly attends sessions. He is engaged during each session and appears to be forthcoming about the psychological issues that have brought about this process of a licensing board review. He reports maintaining sobriety since his first residential treatment program; this writer has no reason to believe his report is not accurate. He also displays a high level of motivation for sustained sobriety. He willingly collaborates with this writer to identify both immediate goals for session and long-term goals for his life. He is also active in completing homework assignments between therapy sessions.

Due to the nature of the training program at the VA, Dr. Nell will be transferred to a new student-therapist on July 1st, as this writer will be ending her rotation on June 30th.

Sincerely,

Erin Scollin, M.S.
Psy.D. Practicum Student

Robert Holaway, Ph.D.
WOC Staff Psychologist, Palo Alto VA HCS
and Supervising Clinical Psychologist
Robert.Holaway@va.gov

RECEIVED OCT 2011 CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2420 DEL PASO ROAD, SUITE 255, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

ON – GOING TREATMENT VERIFICATION

Name of Probationer: Dr. Edward Nell License No. OPT 14075

The probationary optometrist named above, is serving a probation term with this Board and has chosen you to provide mandatory on-going psychotherapy treatment. The optometrist must continue in treatment until you recommend that the treatment be modified or discontinued and the Board deems psychotherapy is no longer necessary.

As required by the conditions of probation, the optometrist must have the treating professional send a progress summary to the Board's Probation Monitor upon request. The summary is necessary to determine if the optometrist is in compliance with her probation requirements, and is capable of safe and competent optometric practice. As such, please provide your responses to the questions below on a quarterly basis. The quarterly reports should correspond with Dr. Nell's quarterly report schedule.

1. What is this optometrist seeing you for? (Provide specifics)
   Dr. Nell has been working with this writer to treat his depression & learn relapse prevention skills in an attempt to thwart future episodes (mindfulness-based cognitive therapy).
2. How many treatment sessions does this optometrist attend on a regular basis?
   Weekly individual psychotherapy.
3. How long will the treatment plan for this optometrist last?
   5 more weeks.
4. Has the optometrist regularly attended all treatment appointments?

   (Yes:) Dr. Nell has attended each session.

   No:(Explain)

5. Has the optometrist shown improvement as a result of your sessions?

✓ Yes: Dr. Nell has repeated referral to using his mindfulness skills to disengage when desired & help facilitate his relationships as well as reduce his ruminative thought patterns.
____ No:(Explain)____

6. Have you prescribed any medication for this optometrist?

____ Yes: (Identify the medication, when & why prescribed, and how long it is needed)

✓ No:

7. Do you believe this optometrist is capable of safely performing the functions of a licensed optometrist?

✓ Yes:
____ No:(Explain)____

8. What is your current prognosis or recommendation for this optometrist? (Please attach your current diagnosis for this optometrist using DSM criteria).
Dr. Nell has been treated for depression by this writer. Continued use of cognitive-behavioral skills to improve mood & mindfulness training to lessen rumination provide a foundation for him to improve & maintain a positive mood.

9. Has the optometrist completed your recommended treatment plan?

✓ Yes:
____ No:(Explain)____

10. Comments:
None.

Your Name: Nadeem Hasan Title: Psychology Practicum Student

Address: 795 Willow Rd Telephone: (650) 914-9997 x Thx 26236
Menlo Park, CA 94025-2539

Signature:

Nadeem Hasan Date: 10/5/11

PhD 10/5/11

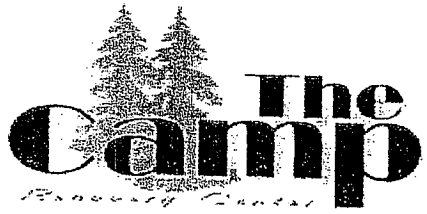
RETURN THE COMPLETED FORM TO:

Board of Optometry
Probation Program
2420 Del Paso Rd., Suite 255
Sacramento, CA 95834

DIAGNOSTIC IMPRESSION

Axis I: Major Depressive Disorder
Alcohol dependence, in full sustained remission
Rule Out: Posttraumatic Stress Disorder

The Camp
Recovery Center



Certificate of Completion

Presented To:

Randy Nell

Date:

January 17, 2009

For Successfully Completing Treatment At
The Camp Recovery Center

Leslie Shinsky, CADC-II
Adult Case Manager

Attachment 3

Department of Veterans Affairs

Palo Alto Health Care System
3801 Miranda Avenue
Palo Alto, California 94304

In Reply Refer to: 640/180D

October 5, 2011

Ms. Jessica Seiferman
Probation Monitor
California State Board of Optometry
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

Dear Ms. Seiferman:

This letter is to confirm Mr. Edward Rabb Nell's participation in the Homeless Veterans Rehabilitation Program (HVRP) at the Menlo Park Domiciliary. He was admitted to the program on June 7, 2010, and remained here as an inpatient until November 8, 2010, when he transferred to the National Center for the Treatment of PTSD for additional therapy. Inpatient treatment at HVRP consists of three phases, with skills-based advancement between phases. Completion of the entire inpatient program typically takes 6 months. Based on his efforts and resultant progress in treatment, Mr. Nell advanced to Phase 3 of treatment prior to his transfer.

After completing his treatment at the National Center, Mr. Nell spent time in Sacramento and then in Scottsdale, Arizona, assisting his aging mother, after which he returned to this area to pursue HVRP "graduate" status. He has now completed aftercare requirements needed to graduate from HVRP, which include over 3 months of group attendance, plus weekly drug-free urine tests. This veteran continues to maintain regular contact with the program, including serving as a tent manager at the South Bay Stand Down in support of currently homeless veterans.

HVRP is a substance-free program that provides training in communications skills, problem-solving, management of dysfunctional behaviors, and recovery from substance abuse -- in addition to addressing other contributors to homelessness and unemployment. All residents of the program are required to attend two 12-step meetings per week. Residents also are required to submit urine samples weekly for drug testing, with additional possible random urine and/or breathalyzer tests. During Mr. Nell's stay at HVRP, he consistently tested negative for amphetamines, marijuana, barbiturates, cocaine, and opiates, and showed no evidence of having relapsed to alcohol. During his aftercare (from April 20, 2011 to the present), he consistently tested negative for amphetamines, marijuana, barbiturates, cocaine, and opiates, with the exception of testing positive for opiates on June 8, 15, and 22, 2011, consistent with invasive dental surgery he underwent. Of note, urine drug screens for Mr. Nell also were negative during his stay at the National Center (November 8 to December 29, 2010

Sincerely,

Susan G. Anderson, PhD.
Clinical Psychologist
Homeless Veterans Rehabilitation Program
Veterans Affairs Palo Alto Health Care System
Menlo Park Division
795 Willow Road
Menlo Park, California 94025

Homeless Veterans Rehabilitation Program

Domiciliary Service

Hereby confers this

Certificate of Graduation

upon

Ed Nell

Who has embarked on the path of recovery through
the acceptance of personal responsibility, commitment to
change, and the development of positive relationships and play.

September 14th, 2011

Kate Severin, LCSW
Domiciliary Chief

Bethany Ketchen, Ph.D.
Assistant Domiciliary Chief

John Sirley
Supervisory Social Worker

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
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§ 1516. Criteria for Rehabilitation.

(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.

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

Note: Authority cited: Sections 3023, 3023.1 and 3025, Business and Professions Code. Reference: Sections 475, 480, 481 and 482, Business and Professions Code; and Section 11522, Government Code.

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STANDARDS FOR REINSTATEMENT OR REDUCTION OF PENALTY

CALIFORNIA STATE BOARD OF OPTOMETRY

In petitioning for reinstatement or reduction of penalty under Government Code Section 11522, the petitioner has the burden of proof demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of optometry within the scope of Current law and accepted standards of practice. In reaching its determination the Board may, but is not limited to, consider the following:

A. The original violation(s) for which action was taken against the petitioner's license, including:

   1. The type, severity, number and length of violation(s).
   2. Whether the violation involved intent, negligent or other unprofessional conduct.
   3. Actual or potential harm to the public, patients or others.
   4. The length of time since the violation(s) was committed.
   5. Petitioner's cooperation or lack thereof in the investigation of the original offense.

B. Prior actions by the Board, any state, local or federal agency or court including:

   1. Compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.
   2. Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.
   3. The petitioner's legal and regulatory history prior to and since the violation(s).

C. The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.

D. The petitioner's documented rehabilitative efforts including:

   1. Efforts to maintain and/or update professional skills and knowledge through continuing education or other methods.
   2. Efforts to establish safeguards to prevent repetition of the original violation(s) including changes or modifications in policies, structure, systems, or methods of behavior applicable to the petitioner's optometric practice.
   3. Service to the community or charitable groups, non-profit organizations or public agencies.

4. Voluntary restitution to those affected by the original violation(s).
5. Use of appropriate professional medical or psychotherapeutic treatment.
6. Participation in appropriate self-help and/or rehabilitation groups.
7. Use of appropriate peer review mechanisms.
8. Participation in professional optometric organizations or associations.

E. Assessment of the petitioner's rehabilitative and corrective efforts including:

1. Whether the efforts relate to the original violation(s).
2. The date rehabilitative efforts were initiated.
3. The length, time and expense associated with rehabilitative efforts or corrective actions.
4. The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice optometry.
5. Whether the rehabilitative efforts were voluntary and self-motivated, or imposed by order of a government agency or court of competent jurisdiction and complied with as a condition or term of probation.
6. The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
7. The nature and status of ongoing and continuing rehabilitative efforts.
8. The petitioner's compliance or non-compliance with all laws and regulations since the date of the original violation(s).
9. The petitioner's cooperation or non-cooperation in the Board's investigation of petitioner's Petition for Reinstatement or Reduction of Penalty and the facts surrounding that petition.

Nothing in these guidelines shall be construed to prevent the Board from considering any other appropriate and relevant material not within these guidelines in order to assess the Petition for Reinstatement or Reduction of Penalty.

Any statement which petitioner intends to support his or her petition and all witness statements either party intends to introduce at hearing are preferred by the Board to be in the form of an affidavit or declaration rather than merely a letter or unsworn statement.

CALIFORNIA STATE BOARD OF OPTOMETRY

STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

Certification of Licensure

The undersigned, Mona Maggio, hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the Board of Optometry of the State of California, and that in such capacity she has custody of the official records of said board.

On this 8th day of March, 2012, the Executive Officer examined said official records of said Board of Optometry and found that **Edward Rabb Nell** graduated from the University of California, School of Optometry in 1978, and is the holder of Certificate of Registration to Practice Optometry No. 6522, which was granted to him effective September 22, 1978. Said Certificate of Registration is currently in full force and effect and will expire on March 31, 2012 unless renewed. The current address of record for said Certificate of Registration is 179 Burns Ave, Atherton CA 94027.

Said records further reveal that, effective February 18, 2011, as the result of disciplinary action taken in Case number CC 2008-116, the Board of Optometry revoked Certificate of Registration to Practice Optometry No. 6522. However, the revocation was stayed and the Certificate was placed on probation for a period of five (5) years.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this 8th day of March, 2012.

Mona Maggio
Executive Officer

Exhibit A

Accusation No. CC-2009-146

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

In the Matter of the Accusation Against: **ROBERT DAVERN ARMSTRONG** **5601 De Soto Avenue** **Woodland Hills, CA 91365** **Optometry Certificate of Registration No. 4890** Respondent.	Case No. CC-2009-146 OAH No. 2011080850

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 _____.

It is so ORDERED _____.

_____

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
GEOFFREY WARD
Deputy Attorney General
State Bar No. 246437
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2660
Facsimile: (213) 897-2804
E-mail: Geoffrey.Ward@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **ROBERT DAVERN ARMSTRONG** **5601 De Soto Avenue** **Woodland Hills, CA 91365** **Optometry Certificate of Registration No. 4890** Respondent.	Case No. CC-2009-146 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about September 14, 1967, the State Board of Optometry issued Optometry Certificate of Registration Number 4890 to Robert Davern Armstrong (Respondent). The Optometry Certificate of Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

///

///

///

JURISDICTION

3. This Accusation 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.

4. Section 3024 of the Code provides authority for the Board to revoke or suspend an optometrist's certificate of registration:

> "The board may grant or refuse to grant certificates of registration as provided in this chapter and may revoke or suspend the certificate of registration of any optometrist for any of the causes specified in this chapter. It shall have the power to administer oaths and to take testimony in the exercise of these functions."

5. Section 3090 of the Code also provides authority for the Board to take disciplinary action:

> "Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

STATUTES

6. Section 3110 of the Code in relevant part provides grounds for discipline:

> "The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.
>
> (b) Gross negligence.
>
> . . . .
>
> (y) Failure to refer a patient to an appropriate physician in either of the following circumstances:
>
> (1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.
>
> (2) As required by subdivision (c) of Section 3041."

7. Section 3041.1 of the Code provides that optometrists' standard of care for certain diagnostic and treatment practices is the same as for other medical professionals: "[w]ith respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held."

8. Section 3041 subdivision (d) of the Code provides:

> "(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist."

9. Gross negligence is defined as "a lack of even scant care or an extreme departure from the ordinary standard of conduct." *See, e.g. Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052 (physician's license suspended for gross negligence and incompetence).

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

11. Respondent is subject to disciplinary action under section 3110 subdivision (b) of the Code because he failed to provide even scant care or engaged in an extreme departure from the ordinary standard of care by failing to properly examine, diagnose, and recommend treatment for a patient with symptoms of a detached retina. The circumstances are as follows:

///

///

///

12. On or about June 20, 2008, patient W. P.[1] visited Respondent at the optometry department at Kaiser Permanente Woodland Hills. The patient had symptoms of a detached retina in his left eye. Respondent misdiagnosed the potentially detached retina, believing it to be a cataract. He referred the patient to an ophthalmologist, who the patient was scheduled to see on July 3, 2008, almost two weeks later.

13. After visiting Respondent, the patient's vision in his left eye rapidly deteriorated. The patient went for a second opinion on June 30, 2008. At that appointment, an ophthalmologist diagnosed the patient as having a detached retina in the left eye, and scheduled immediate surgery. After multiple surgeries, the patient's vision remained permanently reduced in that eye.

14. Respondent's failure to properly diagnose, examine, and recommend treatment for patient W. P. was gross negligence under section 3110 of the Code, because he failed to provide scant care to the patient and his conduct was an extreme departure from the ordinary standard of care that an optometrist would have provided.

SECOND CAUSE FOR DISCIPLINE

(Failing to Refer Patient to a Physician)

15. By committing the acts set forth in paragraphs 11-14, above, Respondent is subject to discipline under Section 3110 subdivision (y) of the Code because he failed to immediately refer patient W. P. to a physician when an examination of W. P.'s left eye should have indicated a substantial likelihood of a detached retina, a pathology requiring the immediate attention of a physician.

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, suspending Optometry Certificate of Registration Number 4890, issued to Robert Davern Armstrong;

[1] The patient's name will be abbreviated in this accusation to preserve patient privacy.

2. Ordering Robert Davern Armstrong to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: January 31, 2011

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

LA2010601039
60595220_2.docx

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

In the Matter of the Accusation Against: **ROBERT DAVERN ARMSTRONG** **5601 De Soto Avenue** **Woodland Hills, CA 91365** **Optometry Certificate of Registration No. 4890** Respondent.	Case No. CC-2009-146 OAH No. 2011080850

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 _____.

It is so ORDERED _____.

_____
FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

RONALD REAGAN BUILDING
300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 620-3005
Facsimile: (213) 897-2804
E-Mail: Helene.Swanson@doj.ca.gov

March 7, 2012

VIA E-MAIL ONLY

Jessica Sieferman
State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

Re: **RECOMMENDATION TO ADOPT STIPULATED SETTLEMENT**
In the Matter of the Accusation Against:
SVETLANA FISHER
OAH Case No. L-2010080070
State Board of Optometry Case No. CC 2007-79

Dear Ms. Seiferman:

Attached for consideration by the State Board of Optometry are the Stipulated Settlement and Disciplinary Order in this matter. For the reasons stated below, our office recommends without reservation that the Board adopt the agreement and issue the enclosed Decision and Order. As you know, the terms and conditions contained in the stipulation were coordinated with you, prior to being offered to Respondent.

PERSONAL INFORMATION

Svetlana Fisher (Respondent) is fifty-five years of age and was issued Optometrist License No. 9936 on September 8, 1992. Ms. Fisher attended the University of California, Los Angeles, and graduated in 1992 from the Southern California College of Optometry. She is a single mother of a nine-year-old son and her eldest son is attending California State University Northridge. Respondent also provides care to her elderly mother.

CHARGES AND ADMISSIONS

The Accusation against Respondent was filed on January 1, 2010, and a First Amended Accusation was filed on March 1, 2011. The First Amended Accusation alleges that in 2005, Respondent provided grossly negligent and/or incompetent care and treatment to nine patients in Board & Care facilities, and failed to keep adequate patient records, in violation of Business &

Professions Code section 3110, subdivisions (a), (b), (d) and (q)[1]. It is alleged that Respondent failed to do comprehensive eye examinations, in that she did not complete adequate medical histories for some of the patients, failed to dilate one of the patients, and failed to perform and/or improperly performed some routine tests, such as tonometry and ophthalmoscopy, on some of the patients. Respondent admits that she violated Section 3110, subdivision (q), in failing to keep adequate patient records.

PROPOSED SETTLEMENT CONTRASTED WITH PENALTY GUIDELINES

Suspension of license stayed, three (3) years probation, and full payment of Board's investigation and enforcement costs in the amount of $21,869.75. Respondent has also agreed to a billing audit of 20 randomly selected client billing and patient records, to be reviewed per quarter during the course of probation.

In addition to the Board's standard published terms and conditions of probation, Respondent has agreed to a restricted optometry practice. She will not treat patients residing in nursing homes, assisted living homes, skilled nursing facilities, or Board & Care facilities. The latter condition is not part of probation, and if she desires to restore her privilege to treat such patients in the future, Respondent must petition the Board to do so. The proposed settlement is within the Board's disciplinary guidelines.

MITIGATING OR AGGRAVATING CIRCUMSTANCES

This is the first time Respondent has been before the Board in a disciplinary matter. The case is based upon her provision of mobile optometric services to nine patients who were living in Board & Care facilities in 2005. As stated herein, she has stopped providing mobile optometric services to patients in Board & Care facilities, and has agreed in the stipulation that she will not provide such care in the future. Respondent has been cooperative in these proceedings. This appears to be an appropriate case for probation.

EVIDENTIARY PROBLEMS WITH CASE

1. Lack of Investigation Regarding Standard of Care Issues

There are some significant evidentiary problems with this case, which were previously communicated to you. These issues have a high probability of preventing us from meeting our burden of proof in this case, which is clear and convincing evidence.

This case was referred to the Board by the Department of Healthcare Services (DHCS), which performed a review and audit of 20 billing and examination records of patients whom Respondent treated at Board & Care facilities. The DHCS nurse evaluators who conducted the

[1] These facilities provide non-institutional home-based services to dependent care groups such as the elderly, persons with HIV/AIDS, and those suffering from drug/alcohol addiction, or developmental and/or mental disabilities.

audit were unable to determine who had performed the examinations on the patients which are at issue in this case, and did not investigate the standard of care issues which are set forth in the Accusation.

The Board did not conduct its own investigation to prove the causes for discipline which allege that the mobile optometric examinations were performed in a grossly negligent and/or incompetent manner. Thus, no statements were taken from the nine patients whose eye examinations are at issue in this case, and we also do not have these patients' contact information. Moreover, statements were not obtained from the administrators at the Board and Care facilities where the nine patients were examined by Dr. Fisher and/or one of her employees. We do not have all of the administrators' names, nor do we have their contact information.

The Board did not subpoena the documents concerning the billing audit which was performed by nurse evaluators for the DHCS, and the nurse evaluators would not release copies of their records to me. This would have presented problems at the hearing, because the nurse evaluators needed their file materials to refresh their recollection about events, some of which occurred five years ago, and could not testify without them.

An issue in the case is who actually performed the eye examinations, because Dr. Fisher and her office manager told the nurse evaluators that they did not know whose signatures were on the PIA (Prison Industry Authority) eyeglass order forms (there were no signatures on the eye examination notes). As you may recall, the Board brought an accusation against Dr. Fisher's attorney, Craig Steinberg, O.D., J.D., and the accusation was dismissed because the Administrative Law Judge did not find there was sufficient evidence to hold Dr. Steinberg liable for eye examinations which were performed by his brother, who was not licensed as an optometrist. In this case, the nurse evaluators stated that they were told by administrators at the Board and Care facilities that a woman accompanied Dr. Fisher to perform the eye examinations on the Board & Care patients, and it is believed that Dr. Fisher's sister, who is also unlicensed, might have performed some or all of the examinations. Therefore, there was a high probability that this case might also be dismissed for a lack of evidence concerning who actually performed the examinations.

Furthermore, Complainant's expert witness, Dr. Vu, left his position with the DHCS before the hearing, and can no longer access or rely upon records regarding the audit performed by the DHCS for his expert opinions. This is a problem from the standpoint that the DHCS records are necessary to establish that Respondent was performing comprehensive eye examinations, which was assumed by Dr. Vu when he prepared his expert opinions. Consequently, there is a high probability that the Accusation would be dismissed if this case were tried, due to inadequate evidence to support the causes for discipline and foundational facts necessary to prove them.

2. Patient Records

Although counsel for Complainant entered into a stipulation to admit the patient records into evidence, opposing counsel indicated he was withdrawing his consent to the stipulation.

Also, the nine patients whose records are at issue in this matter did not provide written releases to authorize Complainant or my office to use their patient records, and we were therefore not released from potential liability and sanctions, had we presented their records at the hearing without their consent.

If an administrative law judge refused to admit the nine patient records for any of the foregoing reasons, the case would have been dismissed, and no discipline would be imposed upon Respondent's optometry license.

REASONS FOR RECOMMENDATION

Based on the evidence in this case, this stipulation provides for meaningful discipline and a fair resolution of the charges in the Accusation for the following reasons.

As set forth above, the settlement is a beneficial compromise, particularly in light of the high probability that no discipline would have been imposed at all if this case went to hearing. Also, this settlement protects the public because Respondent will not perform any more eye examinations on patients in Board & Care facilities, unless she files a petition to do so with the Board, and the Board grants her petition. There have been no complaints to the Board from any of Respondent's patients about the care and treatment she provides at her own offices, and there is no evidence that her recordkeeping at her offices is substandard.

Respondent has agreed to three years' probation, and will pay all of the Board's investigation and enforcement costs. In addition, she submitted the following mitigation evidence:

1. Letter from Respondent, indicating that she admits she improperly documented a number of patient records, and that she struggled to provide the maximum patient comfort and understanding to patients who exhibited behavioral problems which were exacerbated by taking numerous psychiatric medications. She cooperated fully with the DHCS audit of her optometric practice, and settled the DHCS audit case by agreeing to pay substantial fines. She stopped servicing Board & Care patients around May of 2006, because of the difficult and depleting nature of this work. Respondent also states that she is a well-respected practitioner amongst her peers, and has never had a patient complain to the Board of Optometry about her services. Her medical records are impeccable for the vast majority of her patients.

2. Letter from Dr. Fisher and staff to patients, administrators, colleagues and friends dated June 1, 2006, announcing that she would no longer be offering mobile optometry services.

3. Certificate of Attendance for Respondent at Coding and Medical Billing two-hour seminar, at C&E Vision Ocular Symposium on October 26, 2008.

4. E-mail registration confirmation, program printout and registration form regarding Respondent's attendance at three-hour Coding & Billing seminar, as well as five-hour and four-hour sessions, and a workshop on July 7-8, 2007.

5. "Medicare Start to Finish Cope Course" certification of attendance for four hours for Respondent.

6. Character reference letter from Patrick Milburn, J.D., O.D. to Board of May 12, 2010, stating that he has known Dr. Fisher for twenty-one years and finds her to be an honest, ethical and trustworthy person. He has occasionally filled in for Dr. Fisher at her offices, and her patient files are complete, comprehensive, accurate and legible, with good case histories, clinical findings and analysis, prescription and treatment recommendations. Dr. Milburn also states that she is conscientious, caring, compassionate, and hard working, and habitually goes the extra mile on behalf of her patients. He states that respondent is a competent optometrist, who is an asset to the healthcare community in California.

7. Character reference letter from Emma Vinarsky, M.D. of the Eye Institute of Los Angeles dated April 29, 2010, indicating that Dr. Fisher is a colleague whom she met in 1997, while attending a CME course at the Jules Stein Eye Institute. She has been impressed with Respondent's definitive base of knowledge as an optometrist, and found that she was extremely well-regarded and has an excellent reputation as a valued community optometrist. Respondent helped her to establish her medical practice in opthalmaology. She is a very knowledgeable and professional optometrist who stays up-to-date in her field, and frequently attends medical conferences and lectures. She refers patients to Dr. Fisher who are in need of visual rehabilitation, and trusts her completely with providing her patients with the best of care. In addition, Respondent is extremely conscientious and a highly ethical doctor and human being. She is extremely patient and warm, and is also very meticulous about delivering comprehensive optometry care. She lives her life with integrity, and has raised two sons as a single mother. Her medical expertise, professional ethics, and personal character are exemplary, and her patients and colleagues alike have tremendous respect for her.

8. Medi-Cal Telecommunications Provider and Biller Application/Agreement, indicating that Respondent updated her office address on or about July 30, 2006.

9. Character reference letter from Barry M. Kolom, O.D., F.A.A.O. to Board of January 16, 2011 stating that he has been an Assistant Professor of clinical optometry at the Optometric Center of Los Angeles, a teaching clinic for the Southern California College of Optometry for over thirty-seven years, and operates a private and group optometric practice. He first met Dr. Fisher when she was a senior intern at his clinic, and has stayed in touch with her since then. He has always been impressed with how hard Respondent works and he knows that she has always put her patients' welfare first and provided them with excellent care. He does not believe she would ever do anything unethical or had any intent to do anything but try to be compensated fairly, for her service to patients in non-standard care practice situations.

In light of all the above-stated considerations, this office recommends *without reservation* that the Board adopt the proposed stipulation as the decision in this case.

Svetlana Fisher is represented by Craig S. Steinberg, O.D., J.D., who should be sent a copy of the decision at:

Law Offices of Craig S. Steinberg
5737 Kanan Road, # 540
Agoura Hills, CA 91301
(Telephone: (818) 879-7919).

I hope the above information is sufficient to enable the Board to make a decision in this matter. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Sincerely,

---Helene E. Swanson---

HELENE E. SWANSON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

Attachment: Proposed Stipulation and Accusation

LA2009602506
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **SVETLANA FISHER** **7976 Santa Monica Blvd.** **West Hollywood, CA 90046** **Optometrist License No. 9936** Respondent.	Case No. CC 2007-79 OAH No. L-2010080070 **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. 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 Kamala D. Harris, Attorney General of the State of California, by Helene E. Swanson, Deputy Attorney General.

2. Respondent Svetlana Fisher (Respondent) is represented in this proceeding by attorney Craig Steinberg, whose address is:

Law Offices of Craig S. Steinberg
5737 Kanan Road, #540
Agoura Hills, CA 91301

3. On or about September 8, 1992, the State Board of Optometry issued Optometrist License No. 9936 to Svetlana Fisher (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. CC 2007-79 and will expire on July 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. CC 2007-79 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 15, 2010. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of the First Amended Accusation (Accusation) No. CC 2007-79 is attached as **Exhibit A** and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. CC 2007-79. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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.

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

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CULPABILITY

9. Respondent admits to a violation of Section 3110, subdivision (q), failure to maintain adequate records pertaining to treatment of nine patients who resided and were treated at Board & Care facilities, as alleged in Accusation No. CC 2007-79.

10. Respondent agrees that her Optometrist License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding and any future proceedings between the Board and Respondent, or any other proceedings in which the State Board of Optometry or other professional licensing agency in the State of California is involved, and shall not be admissible in any other criminal or civil action, forum or proceeding.

CONTINGENCY

12. 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 or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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.

13. 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.

14. 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.

15. 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 Optometrist License No. 9936 issued to Respondent Svetlana Fisher (Respondent) is suspended. However, the suspension is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. OBEY ALL LAWS: Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California. Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS: Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided 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

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

In the Matter of the Accusation Against: **SVETLANA FISHER** **7976 Santa Monica Blvd.** **West Hollywood, CA 90046** **Optometrist License No. 9936** Respondent.	Case No. CC 2007-79 OAH No. L-2010080070

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 _____.

It is so ORDERED _____.

_____

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout 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. COOPERATE WITH PROBATION MONITORING PROGRAM: Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear 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 is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her 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 may 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 60 hours per month for the entire term of her probation period, except for ordinary vacations or due to illness or injury.

5. NOTICE TO EMPLOYER: Respondent shall provide to the Board the names,

physical addresses, mailing addresses, and telephone number(s) of all employers and shall give specific, written consent that the licensee authorizes the Board and the employers to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing her director and all subsequent directors with a copy of the decision and order, and the Accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a director.

The Respondent must ensure that the Board receives written confirmation from the employer that she is aware of the Discipline, on forms to be provided to the Respondent. The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

6. 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/her 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/her physical residence address as well.

7. 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 $21,869.75 and shall be paid in full directly to the Board, in a Board approved payment plan, within six (6) months from the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) she

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/her responsibility to reimburse the Board for these costs.

8. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION: Before the probationary term is completed, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). 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. Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination prior to the end of probation, Respondent shall be considered to be in violation of probation.

9. 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 (continuing education) requirements prior to her license expiration date shall constitute a violation of probation.

10. 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 outside 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 her return to California and prior to the commencement of any employment where representation as an optometrist is/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.

11. LICENSE SURRENDER: During Respondent's term of probation, if she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender her 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) 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.

12. VIOLATION OF PROBATION: If Respondent violates any term of the probation in any respect, the order staying the suspension of Respondent's license will be revoked automatically. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

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

14. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE: If Respondent sells or closes her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

15. MONITOR BILLING AUDIT: Within sixty (60) days of the effective date of this decision, Respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three auditors to audit Respondent's billings and patient records for compliance with this condition of probation. During said audit, twenty (20) randomly selected client billing and patient records shall be reviewed per quarter during the period of probation, in accordance with accepted auditing/accounting standards and practices to ensure that the examinations and/or tests billed for were completed. The records reviewed will be records from at or after the start of probation. If requested by the Board, the Board shall be advised of the results of the audit, and may obtain any and all copies of any documents audited or the results of the audit, upon request. The cost of the audits shall be borne by Respondent. Failure to pay for the audits in a timely fashion or failure to provide the Board with the audit results and/or copies of the audited records within ten (10) days from audit completion shall constitute a violation of probation.

IT IS HEREBY FURTHER ORDERED that:

1. **Restricted Practice.** Respondent shall be permanently prohibited from providing optometry treatment to patients at skilled nursing faculties, nursing homes, residential care facilities, Board and Care facilities, and assisted living facilities. This condition shall continue until such time, if ever, Respondent successfully petitions the Board for the reinstatement of her ability to perform such examinations. Respondent understands and agrees that the Board is under no obligation to reinstate Respondent's ability to perform such examinations, that the Board has made no representations concerning whether any such reinstatement might occur, and that the

decision to reinstate is within the sole discretion of the Board.

2. **Full Compliance.** This Stipulated Settlement and Disciplinary Order as a resolution to the charges in the Accusation is contingent upon Respondent's full compliance with the condition of this Order, set forth in Paragraph I above. If Respondent fails to satisfy this condition, she agrees the Board can file a supplemental accusation for unprofessional conduct based on her failure to comply with the term set forth in Paragraph I above as an independent basis for disciplinary action. In the event that Respondent fails to satisfy the above condition, Respondent understands and agrees that the Board will be entitled to proceed on the supplemental accusation based on her failure to comply with the above condition.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Craig Steinberg. I understand the stipulation and the effect it will have on my Optometrist 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: 2-25-12

SVETLANA FISHER
Respondent

I have read and fully discussed with Respondent Svetlana Fisher the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2-26-12

CRAIG S. STEINBERG, ESQ.
Attorney for 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: February 27, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

HELENE E. SWANSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. CC 2007-79

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

In the Matter of the Accusation Against: **SVETLANA FISHER** **7976 Santa Monica Blvd.** **West Hollywood, CA 90046** **Optometrist License No. 9936** Respondent.	Case No. CC 2007-79 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 8, 1992, the State Board of Optometry issued Optometrist License Number 9936 to Svetlana Fisher (Respondent). The Optometrist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation 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.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 3090 of the Code states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board."

6. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

. . .

(d) Incompetence.

. . .

(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients. . . ."

7. California Code of Regulations, Title 16, section 1510, provides as follows:

"Inefficiency in the profession is indicated by the failure to use, or the lack of proficiency in the use of the ophthalmoscope, the retinoscope, the ophthalmometer (or keratometer), tonometer, biomicroscope, any one of the modern refracting instruments such as the phoroptor, refractor, etc., or the phorometer-trial frame containing phoria and duction measuring elements or a multicelled trial frame, trial lenses, and prisms, in the conduct of an ocular examination; the failure to make and keep an accurate record of findings, lack of familiarity with, or neglect to use, a tangent screen or perimeter or campimeter; and the failure to make a careful record of the findings when the need of the information these instruments afford is definitely indicated."

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

STATEMENT OF FACTS

9. On or about June 2007, nurse evaluators Elizabeth Schein and Priscilla Tan, who were and are employed by the California Department of Health Care Services (DHCS), Audits and Investigations Division, began their investigation and audit, which included reviewing the patient records of twenty patients examined and treated by Respondent who resided at various Board and Care facilities.[12] Services were rendered by Respondent to those patients and Medi-

[1] In California in the early 1970's the residential care system was established to provide non institutional home based services to dependent care groups such as the elderly, developmentally disabled, mentally disordered and child care centers under the supervision of the Department of Public Social Services. At that time, homes for the elderly were known as Board and Care Homes and the name still persists as a common term to describe a licensed residential care home. In the vernacular of the State, these homes are also known as "Residential Care Facilities for the Elderly".

(continued...)

Cal was billed for 68 services provided to those patients between 2002 through 2006. The DHCS records at issue in this matter concern patient records for service dates from approximately January 2005 through December 2005.

10. Nine patient records that were reviewed were billed as comprehensive eye examinations, on separate dates of service (DOS), as follows:

Record No.	Patient ID[3]	Patient Date of Birth	Date of Service
1	A	4/24/66	1/28/05
5	B	10/28/49	3/21/05
7	D	6/5/81	3/23/05
8	E	12/25/39	7/22/05
9	F	3/21/47	4/12/05
14	J	1/9/57	4/26/05
17	M	11/19/49	4/26/05
23	Q	11/3/62	5/4/05
26	T	12/12/72	9/2/05

11. A second level of review of the medical records, some of which are identified above, was performed by DHCS Medi-Cal Vision Care Program Consultant, Cory Vu, O.D. Based upon his review, Dr. Vu determined that there was poor or inadequate documentation in the majority of records, most of the eye examination forms failed to include Respondent's signature, there was

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Residential care facilities do not provide skilled nursing services (such as giving injections, unless there is a credentialed RN or LVN individual working in the home), but they do provide assistance with all daily living activities, such as bathing and dressing. The patient records at issue in this Accusation note that these patients had eye examinations at the following Board and Care facilities: Gilmar Manor, Rosewood, Walkers Boarding Care, Pleasant View, and Westside Manor.

[2] On or about June 2007, the DHCS requested that Respondent provide additional patient records for 20 patients; 10 records from her office located at 7976 Santa Monica Blvd., West Hollywood, CA, and 10 records from her office located at 906 San Fernando Road, San Fernando, CA.

[3] To protect the patient's privacy, they will each be identified only by an assigned letter identification. The patient records were provided to Respondent's attorney on or about April 19, 2010, in response to a request for discovery from Respondent's attorney. Complainant's attorney did not receive any further requests for patient records, information or any other discovery from Respondent's attorneys.

widespread omission of vision tests on the eye records, and various violations involving Medi-Cal requirements. On or about July 25, 2008, a telephone exit conference was held with Respondent, Respondent's attorney, Dr. Vu, Ms. Schein and Ms. Tan, where the preliminary audit findings that had been sent by fax to her were discussed, and she was given an opportunity to respond to the findings.

12. In a letter dated August 6, 2007, DHCS referred the case to the Board of Optometry for review of the services provided by Respondent to her patients.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence and / or Incompetence)

13. Respondent is subject to disciplinary action under section 3110, subdivisions (b) and (d), in that Respondent provided grossly negligent and / or incompetent care and treatment to her patients, as referenced in Paragraph 10, above, as follows:

a) Respondent failed to complete or had inadequate medical histories in Record Nos. 1, 9, 14, 17, and 23.

b) Respondent failed to do a required annual dilated eye exam for those patients diagnosed with diabetes (see Record Nos. 5 and 8.).

c) Although it was noted in Record No. 5 that the patient had background diabetic retinopathy and reduced best corrected visual acuity (BCVA), Respondent failed to dilate the patient and determine whether the reduced visual acuity was from the diabetic retinopathy which would have necessitated a referral to a retinal specialist for laser treatment.

d) Respondent failed to determine whether there were any signs of diabetic retinopathy in the eyes of the patient in Record No. 8.

e) Respondent failed to perform, or improperly performed, two routine tests for glaucoma, *i.e.*, tonometry and ophthalmoscopy, which are a required standard of care for comprehensive eye examinations. Specifically, Respondent failed to perform tonometry measurements, or intraocular pressure, in Record Nos. 14 and 23 and failed to note the time that the tonometry test was performed in Record Nos. 1,

14, and 23. Respondent further failed to perform ophthalmoscopy and record the cup to disc ratio (C/D ratio) in Record Nos. 1, 5, 7, 8, 9, 14, 17, 23, and 26.

f) Respondent failed to properly record visual acuity (VA) measurements in numerous patients. Specifically, Respondent failed to record the entering VA in Record Nos. 1, 8, 9, 14, 17, and 23, and failed to record the BCVA in Record Nos. 7, 8, 9, 14, 17, and 23.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

14. Respondent is subject to disciplinary action under Section 3110, subdivision (q), in that Respondent failed to maintain adequate and accurate records relating to the provisions of services provided to her patients, as more fully set forth in Paragraphs 9 to 13, above.

THIRD CAUSE FOR DISCIPLINE

(Violation of Regulations)

15. Respondent is subject to disciplinary action under Section 3110, subdivision (a), in that Respondent demonstrated professional inefficiency in violation of California Code of Regulations, Title 16, section 1510, as more fully set forth in Paragraphs 9 to 14, 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 or suspending Optometrist License Number 9936, issued to Svetlana Fisher.

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2. Ordering Svetlana Fisher to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: March 1, 2011

Mona Maggio

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

LA2009602506
60609510.docx

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

In the Matter of the Accusation Against: **SVETLANA FISHER** **7976 Santa Monica Blvd.** **West Hollywood, CA 90046** **Optometrist License No. 9936** Respondent.	Case No. CC 2007-79 OAH No. L-2010080070

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 _____.

It is so ORDERED _____.

_____

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** March 30, 2012

From: Jessica Sieferman **Telephone:** (916) 575-7170

Subject: **Agenda Item 4 – Full Board Closed Session**

Pursuant to Government Code Section 1126(c)(3), the Board will meet in closed session for discussion and possible action on disciplinary matters.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** March 30, 2012

From: Andrea Leiva, Policy Analyst **Telephone:** (916) 575-7170

Subject: **Agenda Item 5 – Discussion and Possible Action Pertaining to California Code of Regulations Sections 1513, 1514, and 1525.1.**

Background:

At its April 11, 2011 meeting, the Board discussed and approved proposed regulatory language for California Code of Regulations (CCR) Sections 1513 - Registered Name Only, 1514 - Renting Space From and Practicing on Premises of Commercial (Mercantile) Concern, and 1525.1 - Fingerprint Requirements. The Board directed staff to initiate a rulemaking with the Office of Administrative Law (OAL).

Staff filed the rulemaking with OAL on May 17, 2011 and the proposed regulatory language relative to CCR Sections 1513, 1514 and 1525.1 was noticed on the Board's website and mailed to interested parties on May 27, 2011. The 45-day public comment period began on May 27, 2011 and ended on July 11, 2011. A regulatory hearing was held on July 11, 2011 in Sacramento. The Board received one comment of opposition pertaining to CCR Sections 1513 and 1514.

At its December 2, 2011 meeting, the Board considered the comment received during the 45-day comment period and approved modified text for CCR 1513 and 1514 in order to address the comment. The required 15-day public comment period for the modified text began on December 8, 2011 and ended on December 23, 2011. The Board received three comments in opposition and one comment in support pertaining to CCR Section 1513.

At its March 2, 2012 meeting, the Board considered the comments received during the 15-day comment period and approved an additional modified text in order to address the comments. The required 15-day public comment period began on March 7, 2012 and ended on March 22, 2012. The Board received two comments in opposition pertaining to CCR Section 1513.

The deadline to submit the final rulemaking to the Office of Administrative Law (OAL) is May 27, 2012. If the rulemaking package is not submitted by this date, then the Board will have to start the regulatory process over again for these regulations.

Summary of Comments Received During the 2nd 15-day comment period from Blair M. Ball O.D. and Staff Recommendations:

1) Dr. Ball comments that the proposed regulatory changes represent a large financial burden on each individual optometrist as far as set-up fees and print costs are concerned. He comments that a consumer would only be interested in an optometrist's license number if they had an unpleasant

experience and wanted to file a complaint. Other than for that reason, a consumer would not have an interest to view an optometrist's license number on a business card or other advertisement.

2) Dr. Ball recommends that a more cost effective solution would be to change the format of a license certificate by increasing the size of the license number and placing it in a more prominent area on the certificate (e.g., next to the optometrist's name).

Staff Recommendation: Staff recommends acceptance of both of Dr. Ball's comments. After further research and discussion with interested parties, staff recognizes that requiring California licensed optometrists to use their full name *and* include their license number in all forms of advertisement may cause them an undue burden. When the proposed amendments to this regulation were initially drafted, the Board was only trying to make the language of the regulation match the title of the regulation to clarify that optometrists must use their name "as registered with the Board" in all forms of advertisement. The intent was to clarify the language to increase compliance by licensees and ensure that patients could easily identify their optometrists in the event a complaint needed to be filed. Also, the fiscal impact upon optometrists was underestimated.

In light of the amount of comments received throughout this rulemaking, staff recommends that CCR Section 1513 be withdrawn from this regulatory package. This will permit staff to work with stakeholders in order to develop a solution that will better serve consumers and optometrists. This will also permit staff to move forward with the other two regulations in this rulemaking package, whose proposed amendments have resulted to be non-controversial and minor in nature.

Summary of Comments Received During the 2nd 15-day comment period from the California Optometric Association (COA) and Staff Recommendations:

1) COA comments that current law is sufficient to address the Board's concerns. Current law already requires advertisements to "clearly and prominently identify the individual optometrist." Anyone who uses a completely different name is already in violation of current law, and the Board has the authority to enforce action against them.

2) COA comments that the new proposed modified text provides an added expense to optometrists who are complying with current law. Requiring both an optometrist's full name and license number in advertising goes well beyond solving the narrow problem the regulation originally intended to address.

3) COA comments that the proposed regulation would be overly burdensome on optometrists even with the removal of the word "signs". While the word "signs" was deleted, the phrase "publication, media or other" was added when referring to types of advertisement that would require an optometrist's full name and license number. Eliminating the word "signs" is of no benefit, since "signs" would still be included under the phrase "or other". Additionally the words "media" and "publication" is also a concern because that may include e-mails sent to patients, social media such as Facebook or Twitter, and COA's publications and website. Adding these words not only creates a burden, but also uncertainty as to the regulation's requirements.

Staff Recommendation: Staff recommends acceptance of all three of COA's comments. Upon further evaluation, the Board *does* have authority in current law to enforce that an optometrist's name is used clearly and prominently in all advertisements. Business and Professions Code (BPC) Section 651 makes it unlawful for an optometrist to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purposes of or likely to induce, directly or indirectly, the rendering of professional services in connection with the practice of optometry or their business.

Staff recommends to continue discussions with stakeholders to find a solution that will not be overly burdensome to optometrists. The fiscal impact on optometrists has been underestimated. Furthermore, the Board's intent was not to create what can be construed as additional requirements by inserting the

words “media” and “publication.” BPC Section 651’s use of the words “any form of public communication” is sufficient.

Moreover, upon further inspection, the Board has not found any patient harm that has not been successfully disciplined or corrected due to violations of CCR Section 1513 because BPC 651 compensates for any clarity issues in CCR Section 1513.

Before another regulatory solution is considered, staff would like to withdraw this regulation from the rulemaking package and be given the opportunity to conduct outreach to consumers on how to identify their optometrists, and to optometrists on ways to advertise in order to stay in compliance with the Board. Withdrawing CCR Section 1513 will also permit staff to move forward with the other two regulations in this rulemaking package, whose proposed amendments have resulted to be non-controversial and minor in nature.

Additional Staff Recommendations:

With the Board’s approval, staff plans to create advertising guidelines and frequently asked questions for optometrists, and a fact sheet for consumers on the tools available to them to identify their optometrist.

Staff recommends to also possibly do a random review of optometrist websites and other public communication to ensure optometrists are complying with current law. If staff finds that this is not the case, steps will be taken to rectify these issues with an educational letter. The last resort may be formal disciplinary action.

Action Requested:

Depending on the Board’s response to the comments received, staff requests the Board to take one of the following actions.

A. If the Board accepts any comments received and agrees to withdraw CCR Section 1513 as recommended by staff, then the Board would:

   Make a motion to accept staff’s recommended responses to the comments and withdraw CCR Section 1513 from the rulemaking package so that staff can move forward with CCR Sections 1514 and 1525.1. These two regulations were adopted by the Board at the December 2, 2011 meeting.

B. If the Board rejects any comments received or modifies the text for a third time, and rejects recommendations by staff, then the Board would:

   Modify the text after consideration and rejection of the comments received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to CCR Sections 1513, 1514, and 1525.1.

   Staff recommends the Board hold a special teleconference meeting, if needed, to respond to any adverse comments that may be received during the modified text ‘s public comment period to expedite the adoption of these regulations. If no adverse comments are received after the 15-day public comment period, there will be no need for the Board to hold a special teleconference meeting, since the Board would have adopted the modified text as the final text at this meeting.

Attachments:

1) Comments received
2) 2nd proposed modified text

Leiva, Andrea@DCA

From: Leiva, Andrea@DCA
Sent: Wednesday, March 14, 2012 3:45 PM
To: Leiva, Andrea@DCA
Subject: registered name modified text comment period

From: Blair m Ball od [mailto:blairmballod@yahoo.com]
Sent: Sunday, March 11, 2012 10:08 PM
To: Optometry@DCA
Cc: Blair Ball
Subject: Re: registered name modified text comment period

My comments are in opposition to the proposed text change in the law concerning registered names. This would represent a large financial burden on each individual Optometrist as far as set up fees, and print costs are concerned.
Perhaps a simpler solution would be to change the format of the license certificate and increase the size of the individuals license number and/or put it next to the name so both can be easily seen. It would seem that in the vast majority of cases the only time a person would have in an interest in an individual Optometrist's license number is if that person had an encounter with that particular Optometrist, was unhappy with the outcome and wanted to file a complaint. Other than that why would a person have an interest in an Optometrist's license number as viewed on a business card or advertisement etc? Does this imply that every time an Optometrist has a license expansion such as DPA, TPA, GL or any future scope expansion there would be a need to reformat all stationary, etc.? I believe a simple change to the format of the license certificate by increasing the size and or location of the number would solve the concerns and be much less expensive to all. Of course it would need to be shown in a prominent position in the office setting.

Thanks,
Blair M Ball, O.D.
8422T

California Optometric Association
2415 K Street Sacramento, California 95816
916.441.3990 800.877.5738 Fax 916.448.1423 www.coavision.org

March 14, 2012

Andrea Leiva, Policy Analyst
California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
andrea.leiva@dca.ca.gov

VIA E-MAIL

RE: Comment Letter on CCR §1513: Licensee Name and Use of License Number in All Forms of Advertisement

Dear Ms. Leiva:

The California Optometric Association (COA) would like to extend our appreciation for the opportunity to comment on the above-cited regulation, which now requires optometrists to include their full name and license number on any advertisement. The COA strongly supports the intent of the regulation, which we believe is to allow patients to easily identify their optometrists; however, we have a variety of concerns with the latest proposed language and request that the California State Board of Optometry (SBO) eliminate the proposed changes to §1513 from the regulation package entirely.

COA believes that current law is sufficient to address SBO's concern. It is our understanding that one of the main reasons for the regulation change stemmed from an optometrist that was practicing and advertising under a completely different name, and SBO initiated an enforcement action against him because SBO believed he was practicing without a license. As enforced today, §1513 requires advertisements to "clearly and prominently identify the individual optometrist". Therefore, the optometrist is already in violation of current law and SBO has the authority to enforce actions against him. SBO has also stated that the proposed regulation is intended to minimize the difficulty in identifying optometrists with the same names when a patient has a complaint. It is highly unlikely that the patient will know the optometrist's license number, and if they do identify the number by obtaining a business card or going to the optometrist's office, then they should have sufficient information to provide to SBO, such as the physical address of the optometrist's medical office. In theory, tightening current law may help patients identify an optometrist should they have a complaint; however, COA believes that existing law is arguably sufficient to address the concern.

The previous version of the proposed regulation allowed optometrists to *either* include their full name or their license number on any advertisement. While COA did not officially support the previous version, we did recognize and appreciate the fact that it was a compromise that SBO staff developed to address concerns from some optometrists who did not want to be forced to practice under their full name. Under the new proposed modified text, which requires all optometrists to include their full name *and* license number on all advertising, optometrists who have been complying with current law and using their full name will have an added expense of

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changing all advertising, which includes business cards, stationery, etc. It is COA's opinion that requiring both an optometrist's full name and license number goes well beyond solving the narrow problem the regulation was originally intended to address.

Finally, COA still believes the proposed regulation would be overly burdensome on optometrists even with the removal of the word "signs". While the word "signs" was deleted, the phrase "publication, media or other" was added when referring to types of advertisements that would require an optometrist's full name and license number. The elimination of the term "signs" is of no benefit, since "signs" would still be included under the phrase "or other". Additionally, the added words "media" and "publication" is a concern for COA. Would this include e-mails sent to patients? Or optometrists' personal social media accounts like Facebook and Twitter? Would COA be required to include an optometrist's license number when we mention them in our publications or on our website? Adding these words not only creates a burden, but also uncertainty as to the regulation's requirements.

We respectfully ask that SBO consider the impact that its regulation will have on optometrists, as we believe that the regulation, as drafted, is unnecessary and overly burdensome. While we understand the intent, and the need for patients to identify optometrists when they have a complaint, we do not agree that requiring optometrists to include both their full name and license number on advertisements is the solution.

As always, we appreciate your consideration of our views. Please don't hesitate to call if we can provide additional information to support our comments.

Sincerely,

Movses D'Janbatian, OD
COA President

BOARD OF OPTOMETRY

MODIFIED TEXT

Changes to the originally proposed language are shown by blue double underline for new text and red double strikethrough for deleted text.

Amend sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1513. LICENSEE ~~REGISTERED~~ NAME ~~ONLY~~ AND USE OF LICENSE NUMBER IN ALL FORMS OF ADVERTISEMENT~~S~~

Any ~~All~~ ~~signs,~~ card~~s~~, stationary, publication, media or other ~~other advertising~~ advertisement must clearly and prominently identify the full name of the individual optometrist or optometrists and include each optometrist's license number as issued by the Board. ~~as listed on their registration or certification, registered with the Board, unless the license or registration number is included in the sign, card, stationary, or advertisement.~~

Note: Authority cited: Sections 137, 651 and 3025, Business and Professions Code. Reference: Sections 651 and ~~3125~~ 3078, Business and Professions Code.

§1514. RENTING SPACE FROM AND PRACTICING ON PREMISES OF COMMERCIAL (MERCANTILE) CONCERN

Where an optometrist rents or leases space from and practices optometry on the premises of a commercial (mercantile) concern, all of the following conditions shall be met:

(a) The practice shall be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry. The optometrist shall make every effort to provide for emergency referrals.

(b) The rented space shall be definite and apart from space occupied by other occupants of the premises and shall have a sign designating that the rented space is occupied by an optometrist or optometrists.

(c) ~~The practice shall contain~~ ~~All~~ Any signs~~,~~ ~~and~~ advertisement ~~advertising~~, or ~~, and~~ ~~that~~ display shall likewise be ~~shall likewise be~~ ~~the practice as~~ separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

(d) There shall be no legends as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any advertising.

(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he/she is leasing space.

Note: Authority cited: Sections 3025 and 3025.5, Business and Professions Code. Reference: Sections 651 and 3025, Business and Professions Code.

§ 1525.1, FINGERPRINT REQUIREMENTS

(a) As a condition of renewal for a licensee who was initially licensed prior to ~~January~~ April 1, ~~1998~~ 2007, ~~or for whom an electronic record of the submission of fingerprints no longer exists,~~ such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints to the Department of Justice and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(3) This requirement is waived if the license is renewed in an inactive status, or if the licensee is actively serving in the military outside the country. The board shall not return a license to active status until the licensee has complied with subsection (a).

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state and, the United States, and its territories, military court, or other country, omitting traffic infractions under $300 not involving alcohol, dangerous drugs, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

Note: Authority cited: Sections 144, 3010.1, 3010.5, 3024 and 3025, Business and Professions Code.
Reference: Section 3110, Business and Professions Code; and Section 11105, Penal Code.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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www.optometry.ca.gov

To: Board Members

Date: March 30, 2012

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 6 - Adjournment**