

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

In the Matter of the Citation Against:

Case No. CC 2011-297

Arne Cheifer

Respondent

ORDER DENYING RECONSIDERATION

The Board of Optometry, having considered Respondent's March 25, 2016 letter as a Petition for Reconsideration in the above entitled matter and determining that good cause for the granting of reconsideration has not been established, hereby denies the granting of the Petition.

IT IS SO ORDERED this 18th day of April, 2016.



Madhu Chawla, O.D, President
California State Board of Optometry

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

In the Matter of the Citation Against:

Case No. CC 2011-297

Arnie Cheifer

Respondent.

ORDER GRANTING STAY OF EFFECTIVE DATE

Respondent filed a Petition for Reconsideration in the above-entitled matter on March 25, 2016. In accordance with the provisions of Section 11521 of the Government Code, and for the sole purpose of considering the Petition for Reconsideration, the effective date of the Decision is hereby stayed until April 16, 2016.

IT IS SO ORDERED this 4th day of April, 2016.



Jessica Sieferman, Executive Officer
California State Board of Optometry

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

In the Matter of the Citation Against:

ARNE CHEIFER

Respondent.

Case No. CC-2011-297

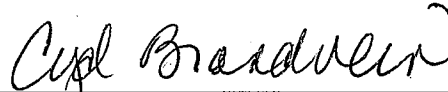
OAH No. 2015050003

DECISION AND ORDER

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

This Decision shall become effective on April 6, 2016.

It is so ORDERED March 7, 2016.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Citation Against:

ARNE CHEIFER

Respondent.

Agency Case No. CC2011-297

OAH No. 2015050003

CORRECTED PROPOSED DECISION

This matter came regularly for hearing before Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California, on October 26, 2015 and October 27, 2015.

Morgan Malek, Deputy Attorney General, represented Mona Maggio, Executive Officer (Complainant) of the State Board of Optometry, Department of Consumer Affairs.

Respondent Arne Cheifer, owner of Optics by Arne (Respondent) was self-represented.

Complainant issued the Citation on December 13, 2013, alleging that Respondent violated Business and Professions Code¹ section 3040 when he advertised and controlled an optometric practice without being licensed to do so. Respondent disputes the Citation and its order of abatement and \$2,500 administrative penalty.

Oral and documentary evidence was received, the record was closed, and the case was submitted for decision on October 26, 2015. A proposed Decision was issued on November 18, 2015. On December 21, 2015, the Board of Optometry filed and served a request for the following corrections to made to the proposed decision. The ALJ has reviewed and approved the requested corrections as follows: On page 1, the word "administrative" is substituted for "civil", on page 4, the word "administrative" is substituted for "civil" and the words "in part" are deleted from the order on page 4.

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¹ All further statutory references are to the Business and Professions Code.

FACTUAL FINDINGS

1. Complainant issued the Citation solely in her official capacity.
2. At all times material, Respondent was not licensed by the Board of Optometry in any capacity.
3. At all relevant times since June 14, 1983, Optics By Arne, with an address of 10665 W. Pico Blvd., Los Angeles, California was certificated as a Registered Dispensing Optician by the Medical Board of California. Arne Cheifer is and has been the owner of Optics By Arne since 1983.
4. On April 30, 2012, the Board received an anonymous complaint about Optics by Arne and an optometrist operating from the same address.
5. On October 24, 2012, Investigators Mark Felton and Mark Chimarusti of the Department of Consumer Affairs, Division of Investigations, conducted an undercover operation as part of the investigation of the complaint. Chimarusti and Felton observed various signs on the building located at 8920 W. Pico Blvd., Los Angeles, California including signs which read:
"Independent Doctor of Optometry, Enter through Suite #B (Rear)"
"Eye Glass Exam \$34.99"
"Optometry Enter in Rear Suite B"
"CT Lens Exam \$79.00"

Most of the signs regarding optometry were old and faded.

6. The investigators followed the signs to Suite #B in the rear of the building in search of the optometrist. The investigators found the door to the rear entrance locked with a security door and then returned to the front of the building where Optics by Arne was located and entered through the open front door. The investigators posed as customers. The investigators were greeted by Lee Cheifer, the son and employee of Arne Cheifer. Investigator Chimarusti asked Lee Cheifer if he needed an appointment to see the optometrist. Lee Cheifer advised him that he should make an appointment because the optometrist was only there on Mondays and Thursdays. Lee Cheifer then offered to make an appointment with the optometrist for investigator Chimarusti, but the investigator declined. Lee Cheifer gave Investigator Chimarusti a business card which had a schedule, a telephone number, address and the word "Optometrist" without the name of a doctor. On the card, Lee Cheifer underlined the printed portions which read "\$34.99" and "All Exams Cash Only." He also told the investigators that only cash was accepted.
7. Investigator Chimarusti asked Lee Cheifer if the optometrist conducts the portion of the exam using a puff of air into the eyes, and if so, was it required or could it be skipped. Lee Cheifer responded that he did not have to do that portion of the exam and that it was "just a basic eye exam." Investigator Felton asked Lee Cheifer the name of the optometrist

and he responded "Dr. Butchert." The investigators took an Optics by Arne business card and left the shop. While in the alley calling their office, the investigators were approached and confronted by Arne Cheifer and Lee Cheifer who demanded to know if they were Board investigators and what they were doing in the shop. After a heated exchange, the investigators left the area.

8. Respondent Arne Cheifer has been in business under various business names as an optician since 1983 at the same location at 8920 West Pico Boulevard in Los Angeles. 8920 is part of a building which at one time housed four storefronts. Respondent Arne Cheifer leased the space at 8920 West Pico Boulevard until its recent sale. Over the years, the building has been changed with several storefronts combined and a small 100 square foot space created in the back of Respondent's business. Respondent refers to the 100 square foot space as Suite #B. The evidence did not establish when or how Suite #B was created or who created the space. Nevertheless, for more than 20 years optometrists have used Suite #B to examine patients. There is no record of a lease or sublease or the existence of a Suite #B. In fact, the property manager for Respondent's most recent landlord was not aware of the existence of a Suite #B. The signs advertising optometrist's services were not placed by Respondent Arne Cheifer and had been in place for approximately 20 years.

9. A separate telephone line for Dr. Robert Engle which was later transferred to Dr. L. Franklin Thornton existed in Suite #B for the use of the optometrists. The evidence did not establish who had paid the bill for the phone line over the years. Dr. David Butchert, an optometrist, used the Suite #B as an office to examine patients for three to four years. Dr. Butchert worked two days a week and was paid a daily or half-daily rate in cash at the end of the day. Respondent Arne Cheifer's wife acted as a receptionist and assistant for Dr. Butchert. She also provided Dr. Butchert with cash payment at the end of each working day. The equipment in the optometric office did not belong to Dr. Butchert, he did not have a key to the office, and was not permitted by Respondent Arne Cheifer to remove patient files. Dr. Butchert believed that it had been Arne Cheifer who approached him about working a few days a week at the location, but could not say with certainty that it was not an optometrist by the name of Dr. Packwood who had previously worked at the location and was known to Dr. Butchert from his prior work at the Walmart Optometric practice.

10. As a result of the undercover investigation, Dr. David Butchert was disciplined by the Board in Case No. CC-2012-115. In that case, Dr. Butchert entered into a stipulated settlement and disciplinary order which was adopted by the Board on April 28, 2014. Pursuant to the stipulation and in his testimony at hearing, Dr. Butchert admitted, that:

- a. He was paid as an independent contractor to provide optometry services inside Optics by Arne.
- b. He did not have a lease agreement for space at 8620 West Pico Boulevard.
- c. He did not pay rent for the space at 8620 West Pico Boulevard.

- d. He provided optometry services at Optics by Arne for three to four years.
- e. He did not own the optometry equipment located at 8620 West Pico Boulevard.
- f. The receptionist for the optometrist business was not hired or paid by Dr. Butchert; that role was usually performed by either Lee Cheifer or Wendy Cheifer, the wife of Arne Cheifer.
- g. When a patient came in to receive optometry services from Dr. Butchert, the patient would see Wendy Cheifer first. She would have the patient complete a patient information form and ask if the patient was there for an eyeglass or contact lens exam. Then, Wendy Cheifer would quote the price for the exam, and advise the patient that the payment was to be cash only. Wendy Cheifer would perform a pretest on the patient using an auto refractor, and then turn the patient over to Dr. Butchert. After Dr. Butchert performed a complete eye exam on the patient, he would turn the patient back to Wendy Cheifer with the prescription.
- h. Arne Cheifer refused to allow Dr. Butchert to remove the optometry records from the premises when Dr. Butcher terminated his practice at 8620 West Pico Boulevard.
11. As a result, Dr. Butchert's license to practice optometry was revoked. However, the revocation was stayed and Dr. Butchert was placed on probation for five years on certain terms and conditions.

LEGAL CONCLUSION

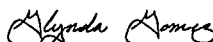
1. Cause exists to sustain the Citation and civil penalty by reason of factual findings 2-11 because Respondent Arne Cheifer advertised and controlled an optometry practice in violation of Business and Professions Code section 3040.

ORDER

The Citation is affirmed. The administrative penalty of \$2,500 is affirmed.

DATED: January 4, 2016

DocuSigned by:



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Glynda B. Gomez
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Citation
Against:

No. CC 2011-297

Arne Cheifer
8920 W. Pico Blvd.
Los Angeles, CA 90035

Respondent

Complainant alleges:

PARTIES

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

STATUTORY PROVISIONS

California Code of Regulations (CCR) Sections 1576 authorizes the executive officer of the Board to issue citations containing orders of abatement and/or administrative fines pursuant to Business and Professions Code section 125.9 against an optometrist who has committed any acts or omissions which are in violation of the Optometry Practice Act or any regulation adopted pursuant thereto.

CCR Section 1577 authorizes the Executive Officer of the Board to issue citations containing orders of abatement and fines against persons, as defined in Section 125.9 of the Code, who are performing or who have performed services for which a license is required under the statutes and regulations enforced by the Board of Optometry. Each citation issued for unlicensed activity shall be issued in accordance with Section 1578 of these regulations. The provisions of Section 1578 shall apply to the issuance of citations for unlicensed activity under this section. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

BPC Section 3040 provides that 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. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

CAUSE FOR CITATION

On or about April 30, 2012, the Board received a complaint alleging your business, Optics by Arne, was advertising services and controlling an optometric practice, which requires an Optometry license.

On or about October 24, 2012, an undercover operation was conducted by the Department of Consumer Affairs' Division of Investigation at Optics by Arne. During this operation, investigators observed signs on the side of your building offering eyeglass and contact lens exams. When investigators entered Optics by Arne to inquire about eye exams, your employee approached them and offered to set an appointment for an eye exam. Investigators declined to set an appointment at that time, and the employee handed them a business card showing the prices for glasses and contact lens exams; the business card specified the exams were cash only. The investigators inquired with your employee as to the name of the Optometrist at your business, and were told his name was "Dr. Butchert."

On or about December 13, 2012, Dr. Butchert, accompanied by his attorney were interviewed by the Division of Investigation concerning his business relationship with Optics by Arne. During the interview, Dr. Butchert stated the following:

- 1) All Optometric Equipment in the back space of your business was owned by you.
- 2) Building signage was up before he began working there, and he had no control over that signage.
- 3) All business cards were provided to him by you.
- 4) There was a telephone for the optical business, and one for the optometry business, both of which were owned and operated by you.
- 5) Appointments were handled by your wife, who would find out if the patient needed an exam for glasses or contacts, quote prices to be paid in cash, and have them fill out forms. She would also pretest the patients using an auto refractor.
- 6) After completion of the eye exam, the patient was turned back over to your wife, along with the prescription and associated patient documents. The patient would obtain the prescription from your wife, unless she was unavailable.
- 7) Although the sign on the building read "Independent Doctor of Optometry, Enter through Suite B in Rear," it was your practice to keep the back door locked so that all potential optometry patients would have to enter through the front door of the optical business. The only exceptions occurred when there was a patient with a disability, in which case, the back door would be opened to allow this patient to enter and exit through the rear.
- 8) His attorney advised him that it was possible to set up an optical business and an optometry business at the same location if everything was done right. His attorney contacted you to pay a visit to Optics by Arne to determine whether the two businesses could be set up so as to be in compliance. However, you refused to make your business available.

It is the Board's finding that you violated BPC section 3040 when you advertised for and controlled an optometric practice without being licensed to do so.

Orders

(1) Order of Abatement:

The Board orders you to:

1. Comply with all statutes and regulations governing the practice of Optometry in the future.
2. Cease and desist advertising and controlling the of services requiring a license to practice optometry

Within thirty (30) days from the date of this citation, but no later than January 13, 2014, you must submit proof that you have brought yourself into compliance with the order imposed by the Board of Optometry as stated above. Proof of compliance must be sent to the Board to the attention of the Enforcement Unit at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834.

(2) Order to Pay an Administrative Fine:

In addition, you must pay an administrative penalty (fine) in the amount of \$2500.00, within thirty (30) days from the date of this citation but no later than January 13, 2014. This penalty constitutes a Class "A" citation in the amount of \$2500.00 for violation of BPC section 3040.

Payment of the administrative penalty must be submitted to the Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Note your citation number on the check or money order and complete the enclosed Acknowledgment of Receipt of Citation/Payment of Fine with your payment.

You may contest this citation or any portion thereof, by requesting either an Informal Citation Conference or a formal Administrative Hearing, or both. If you request both an Informal Citation Conference and a formal Administrative Hearing, and an Informal Citation Conference is held, your request for an Administrative Hearing shall be deemed to be withdrawn. Following the conclusion of the Informal Citation Conference, the Executive Officer shall either, affirm, modify or dismiss the citation. If the citation is affirmed or modified you will then have the opportunity to contest it by filing a request for a formal hearing to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

Your request for an Informal Citation Conference must be in writing and be submitted to the Board within thirty (30) calendar days after service of the citation. The request for a formal Administrative Hearing must also be in writing and be submitted to the Board within thirty (30) calendar days. (Please refer to the enclosed Instructions to Cited Person for additional appeal information)

CITATION ORDER

Arne Cheifer

December 13, 2013

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You may withdraw a Request for Informal Citation Conference at any time prior to the date of the conference. You may withdraw a Request for Administrative Hearing any time prior to the date of the hearing.

Failure to request an Informal Citation Conference or Administrative Hearing in a timely manner will waive your right to contest this citation.

Pursuant to Business and Professions Code section 125.9, if you do not request a formal Administrative Hearing, payment of the fine does not constitute an admission of the violation(s) alleged.

DATED: December 13, 2013



MONA MAGGIO

Executive Officer

State Board of Optometry

Department of Consumer Affairs

State of California

Complainant