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

In the Matter of the Statement of Issues Against:	Case No. CC 2011 315
	OAH No. 2013030564
JENNIFER ANNE JENSEN, O.D.,	ORDER OF DECISION
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 on March 20, 2014.

IT IS SO ORDERED this 18th day of February 2014.

By: Alejandro M. Arredondo, OD

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

In the Matter of the Statement of Issues Against:	Case No. CC 2011 315
	OAH No. 2013030564
JENNIFER ANNE JENSEN, O.D.,	
Respondent.	

PROPOSED DECISION

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on November 13, 2013, in Sacramento, California.

Karen R. Denvir, Deputy Attorney General, represented complainant Mona Maggio, Executive Officer of the State Board of Optometry (Board).

Respondent Jennifer Anne Jensen, O.D., appeared telephonically and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 13, 2013.

FACTUAL FINDINGS

1. On February 5, 2013, complainant filed the Statement of Issues in her official capacity.

2. On February 22, 2012, respondent submitted an application to the Board for licensure as an optometrist. The Board denied the application on July 30, 2012, and respondent requested a hearing. The denial was based upon the revocation of respondent's optometrist license by the Nevada State Board of Optometry, effective January 31, 2011, and a disciplinary action by the Oklahoma Board of Examiners in Optometry placing her

optometrist license on probation for a period of one year, effective October 13, 2011, and revoking her authority to prescribe controlled substances for the period of her probation.

Nevada Revocation Action

3. The Nevada revocation action was taken pursuant to a hearing, on January 7, 2011, at which evidence was taken and findings were made after respondent had been given notice of the charges and an opportunity to be heard. In addition to revoking her optometrist license, the Nevada disciplinary action ordered respondent to pay a $5,000 fine and to pay the Board's costs of investigation and prosecution in the amount of $2,847. Neither respondent nor any attorney or representative on her behalf appeared at the hearing. The Nevada Board's disciplinary proceeding was based on respondent's prescribing, or failing to properly supervise or monitor her employees who prescribed controlled substances in violation of Nevada law.

4. The Nevada Board's decision determined that respondent violated certain disciplinary provisions contained in Nevada statutes and regulations: (1) by writing or authorizing prescriptions for controlled substances that are not "therapeutic pharmaceutical agents" (namely phentermine, carisoprodol, diazepam, alprazolam, adderall, and zolpidem tartrate), or by knowing that such prescriptions were being written or authorized in her name; (2) by writing or authorizing prescriptions for a hydrocodone compound for periods in excess of 72 hours which were subsequently refilled, or by knowing that such prescriptions were being written, authorized, or refilled in her name, and (3) by failing to properly supervise or monitor the acts of her employees with the result that controlled substance prescriptions were written or authorized, and filled for people who were not respondent's patients.

5. The Nevada Board made certain subsidiary findings upon which it based its determinations that respondent had violated Nevada statutes and regulations pertaining to her practice. Those findings are hereafter set forth below in summary form:

(1) A report from the Nevada Prescription Controlled Substance Abuse Task Force (Task Force) showed that respondent had written or authorized 77 prescriptions for controlled substances for nine different patients;

(2) The various controlled substances that had been prescribed were outside respondent's scope of practice as an optometrist;

(3) When respondent was presented with a copy of the Task Force report in April and May, 2010, she responded that five of the nine identified patients were, in fact, her patients and that she had prescribed controlled substances for them, and

(4) The controlled substances that appeared on the Task Force Report for the five patients for whom respondent admitted writing or authorizing prescriptions included various controlled substances typically prescribed

for the following medical (non-optometric) reasons: weight loss (phentermine), muscle tightness or spasms (soma), anxiety relief (valium and xanax), attention-deficit hyperactivity or narcolepsy (adderall), sleep aid (ambien), and pain relief (vicodin).

Oklahoma Disciplinary Action

6. The Oklahoma disciplinary action was taken pursuant to a hearing, on October 13, 2011, at which evidence was taken and findings were made after respondent had been given notice of the charges and an opportunity to be heard. Respondent appeared at the hearing and was represented by counsel. The Oklahoma Board's disciplinary action was based on findings of two acts of unprofessional conduct by respondent, in violation of Oklahoma law. First, respondent had disciplinary action taken by another state (the State of Nevada) against her optometrist license based upon acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action in Oklahoma. Secondly, respondent failed to report the Nevada disciplinary action to the Oklahoma Board. With respect to the second act of unprofessional conduct, the Oklahoma Board made the following subsidiary findings: (1) that respondent was licensed to practice optometry in Oklahoma on July 14, 2010; (2) that respondent moved from Nevada to Oklahoma in October, 2010, before she was disciplined in Nevada; (3) that respondent knew that she had been disciplined by the Nevada Board in February or March, 2011, and (4) that when respondent applied for relicensure in Oklahoma in 2011, she responded to the question about any action taken in another state where she holds a license by not disclosing the Nevada discipline.

Respondent's Testimony

7. Respondent testified that when she was first notified of the Nevada prescribing allegations, she was in the middle of a high risk pregnancy, and planned to sell her practice and move to another state. She unsuccessfully requested a continuance of the Nevada disciplinary hearing for medical reasons. In addressing the prescription irregularities attributed to her in the Nevada action, she denied that she admitted writing or authorizing prescriptions for the five patients identified in the Nevada Task Force report. She noted that she did not see the Task Force report until September of 2010, and could not have made the admissions attributed to her in April and May, 2010. She further testified that her car had been stolen during the previous year and that the improper prescriptions had been written by the car thieves, who accessed the prescription pad and stamp which she had left inside her car. She took responsibility for writing only two of the 77 prescriptions attributed to her in the Nevada action, while noting that she had provided those prescriptions to her employee (KP) and her employee's son (JD). She stated that the various prescriptions attributed to her did not relate to optometry.

8. Respondent further testified that she has held optometry licenses in three states: Minnesota (1995-1997), Nevada (1997-2010), and Oklahoma. Her licensure was discipline-free until the January, 2011 Nevada revocation action. With respect to the Oklahoma disciplinary action, she stated that she did not report the Nevada discipline to the Oklahoma

Board because she did not plan to practice in Oklahoma. At variance with respondent's testimony, the Oklahoma disciplinary action found that respondent's failure to report the Nevada discipline occurred when she applied for Oklahoma license renewal in 2011, after initially being licensed to practice in July, 2010. The Oklahoma disciplinary action further found that since the time of her Nevada discipline, she renewed her Oklahoma license and contacted the Oklahoma Board for a certificate of good standing so that she could apply for licensure in California, without ever disclosing that she had been disciplined in the State of Nevada.

9. Respondent averred that she is currently practicing in the Oklahoma City area, after having served the one-year probation imposed by the Oklahoma Board. She maintains a solo practice and states that she no longer writes controlled substance prescriptions because they are not necessary for optometric practice. She is divorced and has full custody of a daughter. Her Nevada license remains in a revoked status. She desires to relocate to California, where she avers that she has a support system of friends. In Oklahoma, she now has a protective order in effect, until 2018, against her ex-husband.

Discussion

10. Complainant in this proceeding need only establish that discipline has been imposed by another state regarding respondent's license to practice optometry in that other state. (See, *Marek v. Board of Podiatric Medicine* (1993) 16 Cal.App.4th 1089, 1097 [interpreting a similar disciplinary statute in the Medical Practice Act].) Respondent's "unprofessional conduct", for purposes of the California statutory scheme governing optometry, lies not in the alleged underlying misfeasance in Nevada or Oklahoma, but in the fact that she sustained license discipline in those states. Respondent's unprofessional conduct, as reflected by the out-of-state disciplinary actions is clearly substantially related to the qualifications, functions, and duties of a California licensed optometrist. Because respondent seeks California licensure, her unprofessional conduct implicates California public health and safety considerations and the public protection responsibilities of the California Board of Optometry.

11. Respondent may not impeach her Nevada or Oklahoma disciplinary actions by re-litigating matters conclusively determined in those proceedings. The fact that the Nevada revocation resulted from a default proceeding is immaterial, as is respondent's challenge to the findings of that proceeding. In Nevada, it was determined that she violated statutes and regulations designed for public protection, in derogation of her responsibilities as a health care professional. In Oklahoma, it was determined that she dishonestly failed to report the Nevada disciplinary action, in further derogation of her responsibilities as a health care professional. The burden of proof is on the applicant seeking a license to prove his or her fitness for licensure. In this case, respondent has not taken responsibility for the actions which resulted in the Nevada revocation action, or her Oklahoma disciplinary action for failing to report the Nevada revocation. Her testimony, at hearing, conflicted in essential respects with conclusive findings regarding her level of responsibility for the prescribing irregularities attributed to her in the Nevada disciplinary action. In summary, the Nevada

and Oklahoma disciplinary actions establish cause for license denial, and respondent has not met her burden of establishing fitness for licensure, in light of the seriousness of those disciplinary actions. Therefore, respondent's license application must be denied.

LEGAL CONCLUSIONS

1. Business and Professions Code section 3110, subdivision (h), authorizes license denial (or discipline) for unprofessional conduct, which includes revocation or any other disciplinary action against a health care professional license by another state of the United States.

2. Business and Professions Code section 480, subdivision (a)(3)(A), authorizes license denial for the commission of any act that, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The Nevada and Oklahoma disciplinary actions sustained by respondent, as set forth in Findings 3 through 11, constitute qualifying acts for purposes of this statute because they would constitute grounds for suspension or revocation of an optometry license, pursuant to Business and Professions Code section 3110, subdivision (h).

3. Cause exists for license denial pursuant to Business and Professions Code section 3110, subdivision (h), by reason of Findings 3 through 11.

4. Cause exists for license denial pursuant to Business and Professions Code section 480, subdivision (a)(3)(A), by reason of Findings 3 through 11.

ORDER

Respondent Jennifer Anne Jensen's application for licensure as an optometrist is DENIED.

Dated: December 16, 2013

Wilbert E. Bennett

WILBERT E. BENNETT
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Statement of Issues Against: **JENNIFER ANNE JENSEN** Respondent.	Case No. CC 2011 315 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about February 22, 2012, the State Board of Optometry, Department of Consumer Affairs received an application for an optometrist license from Jennifer Anne Jensen (Respondent). On or about February 10, 2012, Jennifer Anne Jensen certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 30, 2012.

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JURISDICTION

3. This Statement of Issues 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.

STATUTORY PROVISIONS

4. Section 480 of the Code states:

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

. . . .

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

. . . .

5. 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:

. . . .

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

. . . .

CAUSE FOR DENIAL OF APPLICATION

(Out of State Discipline)

5. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A) in that Respondent committed an act that if done by a licentiate would be grounds for suspension or revocation of a license. The circumstances are as follows:

a. On or about January 7, 2011, pursuant to the Findings of Fact, Conclusions of Law, and Order in the disciplinary proceeding entitled "*Judi D. Kennedy, as Executive Director of the Nevada State Board of Optometry v. Jennifer A. Jensen, O.D.*", the Nevada State Board of Optometry ("Nevada Board") revoked Respondent's Optometrist License No. 338. The Nevada Board's disciplinary proceeding was based on Respondent's prescribing, or failing to properly supervise or monitor her employees who prescribed, controlled substances in violation of Nevada law. A true and correct copy of the Findings of Fact, Conclusions of Law, and Order is attached as **Exhibit A** and incorporated herein by reference.

b. On or about October 13, 2011, pursuant to the Findings of Fact, Conclusions of Law and Order in the disciplinary proceeding entitled "*In re Dr. Jennifer A. Jensen License No. 2652*", the Oklahoma Board of Examiners in Optometry ("Oklahoma Board") placed Respondent's Optometrist License No. 2652 in probation for a period of one year, and revoked her authority to prescribe controlled substances during the period of probation. The Oklahoma Board's disciplinary proceeding was based on the revocation of Respondent's Nevada Optometrist License, and on her failure to report the revocation to the Oklahoma Board as required by Oklahoma law. A true and correct copy of the Findings of Fact, Conclusions of Law and Order is attached as **Exhibit B** and incorporated herein by reference.

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. Denying the application of Jennifer Anne Jensen for an Optometrist License,

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

DATED: February 5, 2013

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

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