

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

In the Matter of the Statement of Issues  
Against:

MARIO ALBERTO MARTINEZ,

Respondent.

Case No. 800 2016 024794

OAH No. 2017110797

**FINAL DECISION AFTER REJECTION OF PROPOSED DECISION**

Administrative Law Judge Carmen D. Snuggs, Office of Administrative Hearings, State of California, heard this matter on January 24, 2018, in Los Angeles, California.

Deputy Attorney General Steve Pyun represented Jessica Siefertman (Complainant), Executive Officer, Board of Optometry (Board). Mario Alberto Martinez (Respondent) appeared and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 24, 2018.

The Proposed Decision of the Administrative Law Judge was submitted to the Board and after due consideration thereof, the board rejected the proposed decision on May 16, 2018. On June 6, 2018, the board issued an Order Fixing Date for Submission of Written Argument.

Complainant timely submitted written argument on June 25, 2017. The time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the board, pursuant to Government Code section 11517, hereby decides this matter as follows:

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. On June 17, 2016, the Board received Respondent's applications for a Contact Lens Dispenser Registration and Spectacle Lens Dispenser Registration. On April 4, 2017, the Board denied Respondent's applications.

2. On November 16, 2017, Complainant, acting solely in her official capacity, filed a Statement of Issues alleging various grounds to deny the applications under Business and Professions Code section 480. Specifically, Complainant cited Respondent's criminal convictions as described in more detail below. Respondent timely requested a hearing, and this hearing ensued.

*Respondent's Convictions*

3. On October 5, 1994, in the Superior Court of California, County of Los Angeles, Case No. 94M1185, Respondent was convicted on his nolo contendere plea of violating Penal Code section 314.1 (indecent exposure), a misdemeanor. The court suspended imposition of sentence and placed Respondent on summary probation for two years on condition that he: (a) serve one day in the Los Angeles County Jail, less credit for 1 day time served; (b) perform 15 days of service with the California Department of Transportation (Cal Trans); (c) complete six months of counseling; and (d) complete two sessions of Alcoholic Anonymous meetings per month.

4. The facts and circumstances underlying Respondent's conviction are that on September 6, 1994, Montebello Police Department officers were dispatched to Greenwood Elementary School in response to a report that a male in a vehicle parked in front of the school was exposing himself. Officers traced the reported license plate number and vehicle description to a residence where Respondent was located. Respondent was arrested after he was positively identified in an in-field line-up.

5. On January 6, 1995, Respondent admitted that he violated his probation. The court modified the terms of Respondent's probation and ordered him to serve 30 days in jail in lieu of the court's previous order regarding Cal Trans service. Respondent thereafter complied with the terms of his probation.

6. On February 8, 2005, in the Superior Court of California, County of Los Angeles, Case No. 3WH05808 Respondent was convicted on his nolo contendere plea of violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol content exceeding 0.08 percent), a misdemeanor. The court found that there was a factual basis for Respondent's plea. It suspended imposition of sentence and placed Respondent on summary probation for three years on condition that, among other things, he serve 60 days in the Los Angeles County Jail and pay a \$390 fine, or that he serve 12 days in the Los Angeles County Jail, pay fines and fees totaling \$540, and enroll in and complete a three-month first offender alcohol program.

7. The facts and circumstances underlying Respondent's conviction are that on September 23, 2003, Respondent drove his vehicle while under the influence of alcohol. In his written statement to the Board, Respondent indicated that he was stopped by a police officer for speeding. The officer arrested Respondent after determining that Respondent was under the influence of alcohol.

8. Respondent complied with all terms and conditions of his probation.

9. On March 27, 2007, in Los Angeles County Superior Court, Case No. 6EA11461, Respondent was convicted on his nolo contendere plea of violating Vehicle Code section 14601.2, subdivision (a) (driving while driving privilege is suspended or revoked for a conviction under Vehicle Code section 23152), a misdemeanor. The court found that there was a factual basis for Respondent's plea. It suspended imposition of sentence and placed Respondent on summary probation for three years on condition that he pay fines and fees totaling \$1,074 or serve 10 days in the Los Angeles County jail.

10. The facts and circumstances underlying Respondent's conviction are that on October 12, 2006, he made the decision to drive even though his licensed had been suspended. Respondent defended his decision at the hearing by explaining that he needed to assist his wife who had become stranded after her vehicle became inoperable.

11. Respondent complied with all terms and conditions of his probation.

#### *Respondent's Evidence*

12. Respondent previously worked in the construction industry. He suffered a back injury in 2012 and thereafter sought non-physical work. At that time, he was separated from his wife and he was not fulfilling his parental and familial responsibilities. Because Respondent wanted to improve his life and increase his earning potential, he attended American Career College and graduated in 2014 from its optical dispensing program. He reconciled with his wife and now lives in the family home with his wife and their teenage daughter. Respondent is fulfilling his parental and familial responsibilities and is assisting his daughter prepare for college. He also supports her participation in a volleyball club.

13. Respondent disclosed on his applications to the Board that he had suffered previous convictions. In a written statement to the Board in support of his applications, Respondent disclosed that he developed a drug habit as a youth, and was arrested in December 2013 for being under the influence of a controlled substance. Respondent also stated that he attended 45 Narcotics Anonymous meetings, and that he no longer uses drugs.

14. Respondent expressed gratitude that he was stopped by the police in 2003 when he was driving under the influence before "anything else happened." However, he did not express remorse for his actions at the hearing or in his written statement to the Board. He stated that because he believed the court-ordered counseling was effective, he subsequently voluntarily enrolled in psychotherapy at Mele Counseling in East Los Angeles, California. Respondent testified that he participated in psychotherapy at Mele Counseling for one year, but did not offer corroborating evidence. Respondent denied exposing himself in 1994, stating "I never exposed myself to anybody," and indicated that his public defender advised him to accept the criminal charge against him. Respondent testified that it was "something unfortunate that happened to [him] . . . that [he] didn't actually do." However, Respondent's nolo contendere plea is conclusive evidence of guilt for purposes of imposing administrative discipline or denial of licensure. (See *Arneson v. Fox* (1980) 28 Cal.3d 440,449 (proof of a conviction is "conclusive evidence of ... guilt of the offense charged."); see also *People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-1461 (certified court record admissible to prove the offense occurred).)

15. Respondent has worked for the past three years in an optical lab where he coats lens and dispenses lens prescriptions.<sup>1</sup> He maintains that he is of good character and has been a productive member of society since his last conviction in 2007. Respondent did not offer any character evidence.

## LEGAL CONCLUSIONS

### *The Standard and Burden of Proof*

1. The burden of proof is on Respondent to prove by a preponderance of the evidence that his license applications should be granted. (*Martin v. Alcoholic Beverage Control Appeals Board* (1950) 52 cal. 2d 259, 264-265.)

2. “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.] ...The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the quality of the evidence. The quantity of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314,324-325.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation].” (*People v. Mabini* (2001)92 Cal.App.4th 654, 663.)

### *Licensing and Disciplinary Authority*

3. Administrative disciplinary proceedings are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206; *Bryce v. Board of Medical Assurance* (1986) 184 Cal.App.4th 1471,1474.) The main purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

4. Business and Professions Code section 3010.1<sup>2</sup> provides that “[p]rotection of the public shall be the highest priority for the [Board] in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

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<sup>1</sup> Respondent explained that he, as well as other employees, is able to dispense lenses under the license of a co-worker.

<sup>2</sup> Further references to statute are to the Business and Professions Code unless otherwise stated.

5. Dispensing opticians fill prescriptions for contact and spectacle lenses and, incidental to the filling of those prescriptions, take facial measurements, fit and adjust those lenses, and fit and adjust spectacle frames. (§ 2550.) Sections 2559.2 and 2561 govern applications for spectacle lens dispenser and contact lens dispenser certificates of registration. The board “may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).” (§§ 2559.2, subd. (b), and 2561.)

6. Section 480, subdivisions (a)(1), (a)(3)(A), and (a)(3)(B), provide:

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

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

¶ ... ¶

(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.

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

7. Section 2555.1 states:

In the discretion of the board, a certificate issued hereunder may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

A plea, or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the

certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his, or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

8. Section 493 provides:

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

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

9. The conclusion that a conviction justifies the denial of an application for a license requires a reasoned determination that the conduct in question was substantially related to the licensee’s fitness to engage in the profession. Licensing authorities do not have unfettered discretion to determine whether a given conviction is substantially related to the relevant professional qualifications. (*Robbins v. Davi* (2009) 175 Cal.App.4th 118, 124.) Licensing authorities are required to develop criteria to aid them in making that determination. (§ 481.)

10. The substantial relationship criteria developed by the Board are set forth in California Code of Regulations (CCR), title 16, section 1517,<sup>3</sup> which provides: For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist ..., 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.

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<sup>3</sup> Further references to the CCR are to title 16. While section 1517 references optometrists, it is reasonable to apply it to opticians and their functions as well.

### *Cause Exists to Deny Respondent's Applications*

11. Respondent's convictions for indecent exposure, driving while having 0.08 percent or more blood alcohol content, and driving while his driving privileges were suspended or revoked, are crimes substantially related to the qualifications, functions, and duties of a spectacle lens dispenser and contact lens dispenser because it evidences potential unfitness to perform the functions authorized by such certificates of registration in a manner consistent with the public health, safety, or welfare pursuant to section 480, subdivisions (a)(1) and (a)(3)(B), and CCR section 1517. Additionally, Respondent's commission of indecent exposure, and his acts of driving while under the influence of alcohol and while his driving privileges were suspended, as evidenced by his convictions, are acts that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of licensure under sections 480, subdivision (a)(3)(A), and 2555.1. Therefore, cause exists under sections 480, subdivisions (a)(1), (a)(3)(A) and (a)(3)(B), and 2555.1 to deny Respondent's applications for spectacle lens dispenser and contact lens dispenser certificates of registration.

### *Authority Regarding Rehabilitation*

12. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "Remorse does not demonstrate rehabilitation. While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice..." (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125; see also *In Re Menna* (1995) 11 Cal.4th 975, 971 [A truer indication of rehabilitation is sustained conduct for an extended period of time.].) Moreover, "[t]he evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

13. The rehabilitation criteria the Board must consider when evaluating the rehabilitation of an applicant and his or her present eligibility for registration include the nature and severity of the acts or crimes committed, the time that has elapsed since the commission of the acts or crimes, the applicant's total record, whether the applicant has complied with the terms of probation and restitution, and whether the applicant's convictions have been expunged. (CCR, § 1516.)

14. The Board's disciplinary guidelines (revised May 2012) recommend penalties and conditions of probation to be imposed by administrative law judges in disciplinary actions. The guidelines recommend a maximum discipline of revocation and a minimum discipline of revocation, stayed, with a three to five-year period of probation, for a licensee who has been convicted of a substantially related crime under CCR section 1517. However, the guidelines also contemplate situations when deviation from the recommendations may be appropriate. The introduction to the guidelines states:

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviations. If there are deviations or omissions from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include some statement of this in the proposed decision so that the circumstances can be better understood and evaluated by the Board upon review of the proposed decision and before its ultimate action is taken.

15. The guidelines outline examples of the types of evidence in aggravation and/or mitigation which may be considered. Examples of evidence in aggravation include a respondent's history of one or more convictions related to the current violation, the commission of perjury on official Board forms, crimes or conduct that is violent in nature, and commission of a crime against a minor. Examples of evidence in mitigation of discipline include the respondent's recognition of his wrongdoing and demonstration of corrective action to prevent recurrence, that the respondent was forthcoming and reported his convictions to the Board, a substantial amount of time has lapsed since the conviction occurred, and that the respondent has no prior criminal or disciplinary history.

#### *Evaluation*

16. Considering the relevant criteria and the Board's guidelines, the evidence weighs against granting Respondent the requested registrations. Respondent's 1994 conviction for indecent exposure involved the commission of a crime against a minor, which is an aggravating factor under the Board's disciplinary guidelines. (Factual Findings 3-4; Legal Conclusion 15.) In addition, Respondent did not express any remorse for his crimes, which is a necessary first step in the process of rehabilitation and a factor of mitigation. (Factual Finding 14; Legal Conclusions 12; 15.) In fact, Respondent was adamant at hearing that he was not responsible for his 1994 conviction, claiming that he did not expose himself to anyone and blaming the public defender for his conviction rather than taking responsibility. (*Id.*) Respondent also did not provide any character evidence on his own behalf, such as letters of reference or witness testimony from friends, business associates, or psychiatric or psychological professionals, which could have been helpful in evaluating Respondent's present fitness for registration. Further, despite testifying that he participated in psychotherapy to rehabilitate himself, he offered no corroborating evidence of this participation. (Factual Findings 14-15.) Respondent testified that he completed an optical dispensing program and is fulfilling his familial and parental responsibilities, but again, provided no corroborating evidence to support that testimony. (*Id.*) Moreover, Respondent was arrested as recently as December 2013 for being under the influence of a controlled substance, thus it cannot be said that Respondent has demonstrated appropriate behavior over an extended period of time since his last criminal conviction. (Factual Finding 13.)

In sum, Respondent's testimony did not evidence that he has the state of mind of a person who is fully rehabilitated. "Rehabilitation...is a 'state of mind' and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved 'reformation and regeneration.' [Citations.]" (*March v. Com. of Bar Examiners* (1967) 67 Cal.2d 718, 732.) While Respondent accepted responsibility for the existence of his convictions, he did



not accept complete responsibility for the underlying conduct. The convictions also have not been expunged. Finally, other than his own testimony, Respondent did not provide any proof of a stable employment history, character witnesses, character reference letters, or other evidence that would have helped him meet his burden of establishing rehabilitation.

17. The purpose of a licensing proceeding is to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) When attempting to enter a regulated profession with a license or registration, a sufficient showing of rehabilitation – beyond remaining conviction free – is required. On this record, in consideration of Respondent’s conviction history and the insufficient showing rehabilitation as discussed above, Respondent has not carried his burden of proving that he meets the prerequisites for issuance of the requested Contact Lens Dispenser and Spectacle Lens Dispenser Registrations.

**ORDER**

The applications of Respondent Mario Alberto Martinez for a Contact Lens Dispenser Registration and a Spectacle Lens Dispenser Registration are hereby denied.

DATED: October 15, 2018



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CYD BRANDVEIN  
President  
California State Board of Optometry

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

In the Matter of the Statement of Issues  
Against:

MARIO ALBERTO MARTINEZ,

Contact Lens Dispenser Registration Applicant

and

Spectacle Lens Dispenser Registration Applicant

Respondent.

Case No. 800 2016 024794

OAH No. 2017110797

**ORDER OF NON-ADOPTION OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. The California State Board of Optometry (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written arguments as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such arguments when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Jilio-Ryan Court Reporters, 14661 Franklin Avenue, Suite 150, Tustin, CA 92780. Their telephone number is (714) 424-9902.

To order a copy of the exhibits, please submit a written request to this Board.

Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Board. Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

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

Date: May 16, 2018



President

California State Board of Optometry

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**PROPOSED DECISION**

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**FACTUAL FINDINGS**

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2. On November 16, 2017, Complainant, acting solely in her official capacity, filed a Statement of Issues alleging various grounds to deny the applications under Business and Professions Code section 480. Specifically, Complainant cited Respondent's criminal convictions as described in more detail below. Respondent timely requested a hearing, and this hearing ensued.

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## LEGAL CONCLUSIONS

### *The Standard and Burden of Proof*

1. The burden of proof is on Respondent to prove by a preponderance of the evidence that his license applications should be granted. (*Martin v. Alcoholic Beverage Control Appeals Board* (1950) 52 Cal. 2d 259, 264-265.)

2. “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.] . . . . The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the quality of the evidence. The quantity of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314,324-325.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation].” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

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[¶] . . . [¶]

(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.

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

7. Section 2555.1 states:

In the discretion of the board, a certificate issued hereunder may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the

certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

8. Section 493 provides:

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

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

9. The conclusion that a conviction justifies the denial of an application for a license requires a reasoned determination that the conduct in question was substantially related to the licensee's fitness to engage in the profession. Licensing authorities do not have unfettered discretion to determine whether a given conviction is substantially related to the relevant professional qualifications. (*Robbins v. Davi* (2009) 175 Cal.App.4th 118, 124.) Licensing authorities are required to develop criteria to aid them in making that determination. (§ 481.)

10. The substantial relationship criteria developed by the Board are set forth in California Code of Regulations (CCR), title 16, section 1517,<sup>3</sup> which provides:

For the purpose of denial, suspension, or revocation of the certificate of registration of an optometrist . . . , 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.

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<sup>3</sup> Further references to the CCR are to title 16.



### *Cause Exists to Deny Respondent's Applications*

11. Respondent's convictions for indecent exposure, driving while having 0.08 percent or more blood alcohol content, and driving while his driving privileges were suspended or revoked, are crimes substantially related to the qualifications, functions, and duties of a spectacle lens dispenser and contact lens dispenser because it evidences potential unfitness to perform the functions authorized by such certificates of registration in a manner consistent with the public health, safety, or welfare pursuant to section 480, subdivisions (a)(1) and (a)(3)(B), and CCR section 1517. Additionally, Respondent's commission of indecent exposure, and his acts of driving while under the influence of alcohol and while his driving privileges were suspended, as evidenced by his convictions, are acts that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of licensure under sections 480, subdivision (a)(3)(A), and 2555.1. Therefore, cause exists under sections 480, subdivisions (a)(1), (a)(3)(A) and (a)(3)(B), and 2555.1 to deny Respondent's applications for spectacle lens dispenser and contact lens dispenser certificates of registration.

### *Authority Regarding Rehabilitation*

12. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "Remorse does not demonstrate rehabilitation. While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . ." (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125; see also *In Re Menna* (1995) 11 Cal.4th 975, 971 [A truer indication of rehabilitation is sustained conduct for an extended period of time.].) Moreover, "[t]he evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

13. The rehabilitation criteria the Board must consider when evaluating the rehabilitation of an applicant and his or her present eligibility for registration include the nature and severity of the acts or crimes committed, the time that has elapsed since the commission of the acts or crimes, the applicant's total record, whether the applicant has complied with the terms of probation and restitution, and whether the applicant's convictions have been expunged. (CCR, § 1516.)

14. The Board's disciplinary guidelines (revised May 2012) recommend penalties and conditions of probation to be imposed by administrative law judges in disciplinary actions. The guidelines recommend a maximum discipline of revocation and a minimum discipline of revocation, stayed, with a three to five-year period of probation, for a licensee who has been convicted of a substantially related crime under CCR section 1517. However, the guidelines also contemplate situations when deviation from the recommendations may be appropriate. The introduction to the guidelines states:

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviations. If there are deviations or omissions from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include some statement of this in the proposed decision so that the circumstances can be better understood and evaluated by the Board upon review of the proposed decision and before its ultimate action is taken.

15. The guidelines outline examples of the types of evidence in aggravation and/or mitigation which may be considered. Examples of evidence in aggravation include a respondent's history of one or more convictions related to the current violation, the commission of perjury on official Board forms, crimes or conduct that is violent in nature, and commission of a crime against a minor. Examples of evidence in mitigation of discipline include the respondent's recognition of his wrongdoing and demonstration of corrective action to prevent recurrence, that the respondent was forthcoming and reported his convictions to the Board, a substantial amount of time has lapsed since the conviction occurred, and that the respondent has no prior criminal or disciplinary history.

16. Considering the relevant criteria and the Board's guidelines, the evidence supports a finding that probationary registrations with appropriate terms and conditions are warranted to ensure that Respondent poses no threat to the public or to patients. Respondent's criminal record consists of three misdemeanor convictions ranging from low to moderate severity. In addition, Respondent did not express remorse for his crimes or offer character evidence. Despite these shortcomings, the evidence shows that Respondent has been free of court supervision for approximately eight years, and with the exception of his arrest in 2013 for being under the influence of a controlled substance, which he unreservedly disclosed to the Board, Respondent has demonstrated appropriate behavior over an extended period of time. Additionally, while Respondent has suffered multiple convictions that have not been expunged, his most recent crime is more than 10 years old. Moreover, Respondent was also forthcoming in reporting all of his convictions to the Board. Finally, Respondent has completed an optical dispensing program and is fulfilling his familial and parental responsibilities.

17. On the balance, though Respondent has not shown that he is entitled to unrestricted Contact Lens Dispenser and Spectacle Lens Dispenser Registrations, he has demonstrated enough rehabilitation to show that the public will be protected if he is issued properly-conditioned probationary registrations.

#### ORDER

The applications of Respondent Mario Alberto Martinez for a Contact Lens Dispenser Registration and a Spectacle Lens Dispenser Registration are hereby granted. Upon

successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the applications, Contact Lens Dispenser and Spectacle Lens Dispenser Registrations shall be issued to Respondent. Said registrations shall immediately be revoked, the order of revocation stayed and Respondent's registrations placed on probation for a period of three years pursuant to following 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 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 (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. 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 monitoring program representative at any time he 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. Probation Monitoring Costs. All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/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 it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. Function As A Registered Spectacle and Contact Lens Dispenser. Respondent shall function as a registered spectacle lens and contact lens dispenser for a minimum of 60 hours per month for the entire term of his/her probation period.

6. Notice to Employer. Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status,

performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and 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 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). 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.

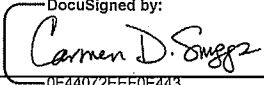
7. Changes Of Employment Or Residence. Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation 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 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

#### SEVERABILITY CLAUSE

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

DATED: February 22, 2018

DocuSigned by:  
  
OF 44072EEF0E423  
CARMEN D. SNUGGS  
Administrative Law Judge  
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against:

Case No. 800 2016 024794

13 **MARIO ALBERTO MARTINEZ**

**STATEMENT OF ISSUES**

14 Contact Lens Dispenser Registration Applicant

15 and

16 Spectacle Lens Dispenser Registration Applicant

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 17, 2016, the Board received an application for a Contact Lens  
24 Dispenser Registration from Mario Alberto Martinez (Respondent). On or about June 9, 2016,  
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on April 4, 2017.

27 3. On or about June 17, 2016, the Board received an application for a Spectacle Lens  
28 Dispenser Registration from Respondent. On or about June 9, 2016, Respondent certified under

1 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
2 application. The Board denied the application on April 4, 2017.

3 **JURISDICTION**

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

7 5. Section 3023.1<sup>1</sup> states, in pertinent part:

8 "(a) The nonresident contact lens seller program established under Chapter 5.45  
9 (commencing with Section 2546) and the registered dispensing optician, spectacle lens dispensing,  
10 and contact lens dispensing programs established under Chapter 5.5 (commencing with Section  
11 2550) are hereby transferred from the jurisdiction of the Medical Board of California and placed  
12 under the jurisdiction of the State Board of Optometry.

13 "(b) All the duties, powers, purposes, responsibilities, and jurisdictions of the Medical  
14 Board of California under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5  
15 (commencing with Section 2550) shall be transferred to the State Board of Optometry."

16 6. Section 2559.1 states, in pertinent part:

17 "On and after January 1, 1988, no individual may fit and adjust spectacle lenses unless the  
18 registration requirement of Section 2550 is complied with, and unless (1) the individual is a duly  
19 registered spectacle lens dispenser as provided in Section 2559.2 or (2) the individual performs the  
20 fitting and adjusting under the direct responsibility and supervision of a duly registered spectacle  
21 lens dispenser whose certificate of registration is then conspicuously and prominently displayed on  
22 the premises. A supervising registered dispenser shall be on the registered premises when an  
23 unregistered technician fits and adjusts spectacle lenses, allowing for usual and customary absences  
24 including illness and vacation."

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28 <sup>1</sup> This statute went into effect on January 1, 2016.

1 7. Section 2560 states, in pertinent part:

2 “No individual may fit and adjust contact lenses, including plano contact lenses, unless the  
3 registration requirement of Section 2550 is complied with, and unless (a) the individual is a duly  
4 registered contact lens dispenser as provided in Section 2561 ...”

5 **STATUTORY PROVISIONS**

6 8. Section 480 states, in pertinent part:

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

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

15 . . . .

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

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

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

28 ///



1           “(c) Notwithstanding any other provisions of this code, a person shall not be denied a  
2 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,  
3 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed  
4 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the  
5 dismissal.”

6           9. Section 490 states:

7           “(a) In addition to any other action that a board is permitted to take against a licensee, a  
8 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
10 or profession for which the license was issued.

11           “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
12 discipline a licensee for conviction of a crime that is independent of the authority granted under  
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of  
14 the business or profession for which the licensee's license was issued.

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

21           “(d) The Legislature hereby finds and declares that the application of this section has been  
22 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
23 554, and that the holding in that case has placed a significant number of statutes and regulations in  
24 question, resulting in potential harm to the consumers of California from licensees who have been  
25 convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an  
26 independent basis for a board to impose discipline upon a licensee, and that the amendments to this  
27 section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are  
28 declaratory of, existing law.”

1           10. Section 2559.2 states, in pertinent part:

2           “(a) An individual shall apply for registration as a registered spectacle lens dispenser on  
3 forms prescribed by the board. The board shall register an individual as a registered spectacle lens  
4 dispenser upon satisfactory proof that the individual has passed the registry examination of the  
5 American Board of Opticianry or any successor agency to that board. In the event the board  
6 should determine, after hearing, that the registry examination is not appropriate to determine entry  
7 level competence as a spectacle lens dispenser or is not designed to measure specific job  
8 performance requirements, the board may thereafter prescribe or administer a written examination  
9 that meets those specifications. If an applicant for renewal has not engaged in the full-time or  
10 substantial part-time practice of fitting and adjusting spectacle lenses within the last five years then  
11 the board may require the applicant to take and pass the examination referred to in this section as a  
12 condition of registration. Any examination prescribed or administered by the board shall be given  
13 at least twice each year on dates publicly announced at least 90 days before the examination dates.  
14 The board is authorized to contract for administration of an examination.

15           “(b) The board may deny registration where there are grounds for denial under the  
16 provisions of Division 1.5 (commencing with Section 475).

17           “(c) The board shall issue a certificate to each qualified individual stating that the individual  
18 is a registered spectacle lens dispenser.

19           “(d) Any individual who had been approved as a manager of dispensing operations of a  
20 registered dispensing optician under the provisions of Section 2552 as it existed before January 1,  
21 1988, and who had not been subject to any disciplinary action under the provisions of Section  
22 2555.2 shall be exempt from the examination requirement set forth in this section and shall be  
23 issued a certificate as a registered spectacle lens dispenser, provided an application for that  
24 certificate is filed with the board on or before December 31, 1989.

25           “(e) A registered spectacle lens dispenser is authorized to fit and adjust spectacle lenses at  
26 any place of business holding a certificate of registration under Section 2553 provided that the  
27 certificate of the registered spectacle lens dispenser is displayed in a conspicuous place at the place  
28 of business where he or she is fitting and adjusting.

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1399.270, states:

3 "For the purpose of denial, suspension, or revocation of the registration of a dispensing  
4 optician pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall  
5 be considered substantially related to the qualifications, functions, and duties of a dispensing  
6 optician if to a substantial degree it evidences present or potential unfitness of a dispensing  
7 optician to perform the functions authorized by his registration in a manner consistent with the  
8 public health, safety, or welfare."

9 12. California Code of Regulations, title 16, section 1399.271, states:

10 "When considering the denial of a registration under Section 480 of the code, or a petition  
11 for reinstatement under Section 11522 of the code, the division in evaluating the rehabilitation of  
12 the applicant and his or her present eligibility for registration, shall consider the following criteria:

13 "(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for  
14 denial.

15 "(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
16 consideration as grounds for denial which also could be considered as grounds for denial under  
17 Section 480 of the Business and Professions Code.

18 "(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in  
19 subdivision (a) or (b).

20 "(d) In the case of a denial or revocation based upon the conviction of a crime, the criteria  
21 set forth in Section 1399.272.

22 "(e) Evidence, if any, of rehabilitation submitted by the applicant."

23 13. California Code of Regulations, title 16, section 1399.272, states:

24 "When considering the suspension or revocation of a registration on the grounds that the  
25 registrant has been convicted of a crime, the division, in evaluating the rehabilitation of such  
26 person and his or her present eligibility for a registration, shall consider the following criteria:

27 "(a) Nature and severity of the act(s) or offense(s).

28 "(b) Total criminal record.

1 “(c) Extent of time that has elapsed since commission of the act(s) or offense(s).

2 “(d) Whether the registrant has complied with any or all terms of parole, probation,  
3 restitution or any other sanctions lawfully imposed against the registrant.

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

6 “(f) Evidence, if any, of rehabilitation submitted by the registrant.”

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Convictions of Substantially Related Crimes)**

9 14. Respondent's applications are subject to denial under section 480, subdivision (a)(1),  
10 in that Respondent was convicted of crimes as follows:

11 a. On or about March 27, 2007, after pleading nolo contendere, Respondent was  
12 convicted of one misdemeanor count of violating Penal Code section 14601.2, subdivision (a)  
13 [driving while driving privileges are suspended or revoked] in the criminal proceeding entitled *The*  
14 *People of the State of California v. Mario A. Martinez* (Super. Ct. L.A. County, 2007, No.  
15 6EA11461). The Court placed Respondent on 36 months probation, with terms and conditions.

16 b. On or about February 8, 2005, after pleading nolo contendere, Respondent was  
17 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
18 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding  
19 entitled *The People of the State of California v. Mario Martinez* (Super. Ct. L.A. County, 2005,  
20 No. 3WH05808). The Court sentenced Respondent to serve 60 days in jail, ordered him to  
21 complete a 3-month first offender DUI program, and placed him on 3 years probation, with terms  
22 and conditions.

23 c. On or about October 5, 1994, after pleading nolo contendere, Respondent was  
24 convicted of one misdemeanor count of violating Penal Code section 314.1 [indecent exposure] in  
25 the criminal proceeding entitled *The People of the State of California v. Mario Alberto Martinez*  
26 (Super. Ct. L.A. County, 1994, No. 94M11885). The Court sentenced Respondent to serve 1 day  
27 in jail, ordered him to complete 6 months counseling, and placed him on 2 years probation, with  
28 terms and conditions. The circumstances surrounding the conviction are that on or about

1 September 6, 1994, Respondent exposed his penis while sitting in his vehicle that was parked near  
2 an elementary school.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Acts Warranting Denial of Licensure)**

5 15. Respondent's applications are subject to denial under section 480, subdivisions  
6 (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the  
7 business and profession in question, would be grounds for suspension or revocation of his licenses.

8 Respondent was convicted of crimes substantially related to the qualifications, functions, or duties  
9 of a registered contact lens dispenser and a spectacle lens dispenser which to a substantial degree  
10 evidences his present or potential unfitness to perform the functions authorized by his licenses in a  
11 manner consistent with the public health, safety, or welfare, in violation of section 490, in  
12 conjunction with California Code of Regulations, title 16, section 1399.270. Complainant refers  
13 to, and by this reference incorporates, the allegations set forth above in paragraph 14, as though  
14 set forth fully.

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**PRAYER**

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

1. Denying the application of Mario Alberto Martinez for a Contact Lens Dispenser Registration;
2. Denying the application of Mario Alberto Martinez for a Spectacle Lens Dispenser Registration; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/17/17

  
\_\_\_\_\_  
JESSICA SIEFERMAN  
Executive Officer  
Registered Dispensing Optician Program  
California State Board of Optometry  
Department of Consumer Affairs  
State of California  
*Complainant*

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