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

11 In the Matter of the Statement of Issues
Against:

Case No. 420 2024 000426

12 **DAVID ALEXANDER CHAVEZ**

STATEMENT OF ISSUES

13
14 Registered Spectacle Lens Dispenser License
Applicant,

15 Respondent.
16

17 **PARTIES**

18 1. Gregory Pruden (Complainant) brings this Statement of Issues solely in his official
19 capacity as the Executive Officer of the California State Board of Optometry (Board),
20 Department of Consumer Affairs.

21 2. On or about April 13, 2024, the Board received an application for a Registered
22 Spectacle Lens Dispenser License from David Alexander Chavez (Respondent). On or about
23 April 13, 2024, Respondent certified under penalty of perjury to the truthfulness of all statements,
24 answers, and representations in the application. The Board denied the application on or about
25 July 8, 2024.

26 **JURISDICTION**

27 3. This Statement of Issues is brought before the Board under the authority of the
28 following laws. All section references are to the Business and Professions Code (Code) unless

1 otherwise indicated.

2 4. Section 2559.2, subdivision (b), of the Code provides, in pertinent part, that an
3 application for registration as a Spectacle Lens Dispenser may be denied under the provisions of
4 Division 1.5 (commencing with Section 475).

5 **STATUTORY PROVISIONS**

6 5. Section 477 of the Code states:

7 As used in this division:

8 (a) "Board" includes "bureau," "commission," "committee," "department,"
9 "division," "examining committee," "program," and "agency."

10 (b) "License" includes certificate, registration or other means to engage in a
11 business or profession regulated by this code.

12 6. Section 480 of the Code states:

13 (a) Notwithstanding any other provision of this code, a board may deny a
14 license regulated by this code on the grounds that the applicant has been convicted of
15 a crime or has been subject to formal discipline only if either of the following
16 conditions are met:

17 (1) The applicant has been convicted of a crime within the preceding seven
18 years from the date of application that is substantially related to the qualifications,
19 functions, or duties of the business or profession for which the application is made,
20 regardless of whether the applicant was incarcerated for that crime, or the applicant

21 has been convicted of a crime that is substantially related to the qualifications,
22 functions, or duties of the business or profession for which the application is made
23 and for which the applicant is presently incarcerated or for which the applicant was
24 released from incarceration within the preceding seven years from the date of
25 application. However, the preceding seven-year limitation shall not apply in either of
26 the following situations:

27 (A) The applicant was convicted of a serious felony, as defined in Section
28 1192.7 of the Penal Code or a crime for which registration is required pursuant to
paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a
felony that is directly and adversely related to the fiduciary qualifications, functions,
or duties of the business or profession for which the application is made, pursuant to
regulations adopted by the board, and for which the applicant is seeking licensure
under any of the following:

(i) Chapter 6 (commencing with Section 6500) of Division 3.

(ii) Chapter 9 (commencing with Section 7000) of Division 3.

(iii) Chapter 11.3 (commencing with Section 7512) of Division 3.

1 (iv) Licensure as a funeral director or cemetery manager under Chapter 12
2 (commencing with Section 7600) of Division 3.

3 (v) Division 4 (commencing with Section 10000).

4 . . .

5 (e) A board may deny a license regulated by this code on the ground that the
6 applicant knowingly made a false statement of fact that is required to be revealed in
7 the application for the license. A board shall not deny a license based solely on an
8 applicant's failure to disclose a fact that would not have been cause for denial of the
9 license had it been disclosed.

10

11 7. Section 493 of the Code states:

12 (a) Notwithstanding any other law, in a proceeding conducted by a board within
13 the department pursuant to law to deny an application for a license or to suspend or
14 revoke a license or otherwise take disciplinary action against a person who holds a
15 license, upon the ground that the applicant or the licensee has been convicted of a
16 crime substantially related to the qualifications, functions, and duties of the licensee
17 in question, the record of conviction of the crime shall be conclusive evidence of the
18 fact that the conviction occurred, but only of that fact.

19 (b) (1) Criteria for determining whether a crime is substantially related to the
20 qualifications, functions, or duties of the business or profession the board regulates
21 shall include all of the following:

22 (A) The nature and gravity of the offense.

23 (B) The number of years elapsed since the date of the offense.

24 (C) The nature and duties of the profession.

25 (2) A board shall not categorically bar an applicant based solely on the type of
26 conviction without considering evidence of rehabilitation.

27 (c) As used in this section, "license" includes "certificate," "permit,"
28 "authority," and "registration."

. . . .

8. Title 18 United States Code section 1701 states:

Whoever knowingly and willfully obstructs or retards the passage of the mail,
or any carrier or conveyance carrying the mail, shall be fined under this title or
imprisoned not more than six months, or both.

REGULATORY PROVISIONS

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

(a) For the purpose of denial, suspension, or revocation of the registration of a
dispensing optician pursuant to Section 141, Division 1.5 (commencing with Section

1 475), or Section 2555.1 of the code, a crime, professional misconduct, or act shall be
2 considered substantially related to the qualifications, functions, and duties of a
3 dispensing optician if, to a substantial degree, it evidences present or potential
unfitness of a dispensing optician to perform the functions authorized by the
registration in a manner consistent with the public health, safety, or welfare.

4 (b) In making the substantial relationship determination required under
5 subdivision (a) for a crime, the Board shall consider the following criteria:

- 6 (1) The nature and gravity of the offense;
- 7 (2) The number of years elapsed since the date of the offense; and
- 8 (3) The nature and duties of the registration type sought or held by the person.

9 (c) For purposes of subdivision (a), substantially related crimes, professional
misconduct, or acts shall include, but are not limited to, the following:

10 (1) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the
11 code relating to dispensing opticians.

12 (2) Any violation of the provisions of Chapter 5.4, Division 2 of the code.

13 (3) Any violation of the provisions of Chapter 5.5, Division 2, of the code.

14 (4) Any act involving theft, dishonesty, fraud, or deceit.

15 (5) Any act involving assaultive or abusive conduct as defined in Penal Code
section 11160(d).

16 (6) Any act involving sexual misconduct as defined in Business and Professions
17 Code section 726(a).

18 10. California Code of Regulations, title 16, section 1399.271, states:

19 (a) When considering the denial of a registration under Section 480 of the
20 code on the ground that the applicant has been convicted of a crime, the Board shall
21 consider whether the applicant has made a showing of rehabilitation if the applicant
completed the criminal sentence at issue without a violation of parole or probation. In
making this determination, the Board shall consider the following criteria:

22 (1) The circumstances, nature, and gravity of the crime(s).

23 (2) The length(s) of time that has elapsed since the criminal conduct and the
24 completion of probation.

25 (3) Whether the applicant is a repeat offender of the same or similar crime(s),
and the total criminal record.

26 (4) The terms or conditions of parole or probation and the extent to which they
27 bear on the applicant's rehabilitation.

28 (b) If the applicant has not completed the criminal sentence at issue without a
violation of parole or probation, the Board determines that the applicant did not make

1 a showing of rehabilitation based on the criteria in subdivision (a), the denial is based
2 on professional misconduct, or when considering a petition for reinstatement under
3 Section 11522 of the code, the Board shall apply the following criteria in evaluating
4 the applicant's rehabilitation:

5 (1) The nature and gravity of the act(s), professional misconduct, or crime(s)
6 under consideration as grounds for denial.

7 (2) Evidence of any act(s), professional misconduct, or crime(s) committed
8 subsequent to the act(s), professional misconduct, or crime(s) under consideration as
9 grounds for denial.

10 (3) The time that has elapsed since commission of the act(s), professional
11 misconduct, or crime(s) referred to in subdivision (b)(1) or (b)(2).

12 (4) The criteria in subdivision (a)(1) through (a)(4), as applicable.

13 (5) Evidence, if any, of rehabilitation submitted by the applicant.

14 **FACTUAL ALLEGATIONS**

15 11. On or about January 29, 2021, in a criminal proceeding entitled *United States of*
16 *America v. David Chavez*, United States District Court for the Central District of California, Case
17 Number 2:19-cr-00688-JAK, Respondent was convicted on a plea of guilty of Obstruction of
18 Mail in violation of 18 U.S.C. § 1701, a Class B Misdemeanor. The circumstances that led to the
19 conviction are that, on or about April 17, 2019, May 11, 2019, and July 18, 2019, while employed
20 by the United States Postal Service (USPS), Respondent stole four gift cards from the United
21 States mail addressed to four USPS customers. On or about July 18, 2019, Respondent also
22 possessed approximately 48 stolen pieces of mail. The total known loss that resulted from
23 Respondent's conduct was at least \$125.00.

24 12. Respondent was sentenced to one year of probation under terms and conditions that
25 included, but were not limited to, not seeking employment with the USPS or other mail couriers,
26 including FedEx, UPS, and DHL; restitution in the amount of \$125.00; a \$10.00 special
27 assessment; a \$500.00 fine; and standard conditions of probation and supervised release.
28 Respondent successfully completed the terms of his probation as of January 27, 2022.

29 **FIRST CAUSE FOR DENIAL OF APPLICATION**

30 **(Conviction of a Substantially Related Crime)**

31 13. Respondent's application is subject to denial under Code sections 2559.2, subdivision

1 (b), and 480, subdivision (a)(1), in conjunction with California Code of Regulations, title 16,
2 section 1399.270, in that on or about January 29, 2021, Respondent was convicted of a crime that
3 is substantially related to the qualifications, duties, and functions of a Spectacle Lens Dispenser.
4 The allegations in paragraphs 11 to 12, are hereby incorporated by reference as though fully set
5 forth herein.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Knowingly Made a False Statement of Fact on Application)**

8 14. Respondent’s application is subject to denial under Code sections 2559.2, subdivision
9 (b), and 480, subdivision (e), in that on or about April 13, 2024, Respondent knowingly made a
10 false statement of material fact that is required to be revealed in the application for the license
11 when he marked “no” to the question “Have you ever been convicted of or plead nolo contendere
12 to a crime?” In fact, Respondent was convicted of a crime, as alleged in paragraphs 11 to 12,
13 which are incorporated by reference as though fully set forth herein.

14 **PRAYER**

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

- 17 1. Denying the application of David Alexander Chavez for a Registered Spectacle Lens
18 Dispenser License; and
19 2. Taking such other and further action as deemed necessary and proper.

20
21 signature on file

22 DATED: 12-20-2024

23 _____
24 GREGORY PRUDEN
25 Executive Officer
26 California State Board of Optometry
27 Department of Consumer Affairs
28 State of California
Complainant

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