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To: Board Members **Date:** November 3, 2017

From: Cheree Kimball **Telephone:** (916) 575-7173
Lead Enforcement Analyst, Probation Monitor

Subject: **Agenda Item 2 – Petition for Reduction of Penalty or Early Termination of Probation**

Petition for Reduction of Penalty or Early Termination of Probation

- **Aeven Awraha (D7523, SL6167)**

Aeven Awraha (Petitioner) was issued Registered Dispensing Optician Certificate No. D7523 and Registered Spectacle Lens Dispenser Certificate No. SL6167 on April 6, 2010. On April 13, 2016, the Board filed First Amended Accusation No. 800-2015-011781 against Petitioner charging him with violations of laws and regulations based on the conviction of a crime substantially related to the qualifications, functions, or duties of a Dispensing Optician. Effective July 21, 2016, Petitioner's registrations were revoked, the revocations were stayed, and Petitioner's registrations were placed on three (3) years' probation, subject to certain terms and conditions.

The Petitioner is requesting the Board to grant his Petition for Reduction of Penalty or Early Termination of Probation.

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

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Copies of the Proposed Decision and First Amended Accusation



CALIFORNIA STATE BOARD OF OPTOMETRY
 2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
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**PETITION FOR REDUCTION OF PENALTY
 OR EARLY TERMINATION OF PROBATION**

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

PLEASE TYPE OR PRINT LEGIBLY

1. NAME (FIRST) (MIDDLE) (LAST)	CERTIFICATE OF REGISTRATION NO.			
Aeven (FIRST) (MIDDLE) Awraha (LAST)				
2. ADDRESS (NUMBER) (STREET)	DATE OF BIRTH			
1137 Lorna Ave	12-02-82			
(CITY) (STATE) (ZIP CODE)	TELEPHONE			
EL Cajon CA 92020	(619) 456.3989			
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
5'07" 170lb BRN Bold				
4. EDUCATION: NAME(S) OF SCHOOL(S) OR COLLEGE(S) OF OPTOMETRY ATTENDED				
NAME OF SCHOOL				
ADDRESS (NUMBER) (STREET)				
(CITY) (STATE) (ZIP CODE)				
5. ARE YOU CURRENTLY LICENSED IN ANY OTHER STATE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS
CA				

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

LOCATION	DATE FROM	DATE TO	TYPE OF PRACTICE
Prince optical	10/01-2010	Until Now	optical & wireless / opticians


- 7. Are you or have you ever been addicted to the use of narcotics or alcohol? YES NO
- 8. Are you or have you ever suffered from a contagious disease? YES NO
- 9. Are you or have you ever been under observation or treatment for mental disorders, alcoholism or narcotic addiction? YES NO
- 10. Have you ever been arrested, convicted or pled no contest to a violation of any law of a foreign country, the United States, any state, or a local ordinance? you must include all convictions, including those that have been set aside under Penal Code Section 1203.4 (which includes diversion programs) YES NO
- 11. Are you now on probation or parole for any criminal or administrative violations in this state or any other state? (Attach certified copies of all disciplinary or court documents) YES NO
- 12. Have you ever had disciplinary action taken against your optometric license in this state or any other state? YES NO

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

ON A SEPARATE SHEET OF PAPER PROVIDE THE FOLLOWING INFORMATION

- 13. List the date of disciplinary action taken against your license and explain fully the cause of the disciplinary action.
- 14. Explain fully why you feel your license should be restored, or the disciplinary penalty reduced.
- 15. Describe in detail your activities and occupation since the date of the disciplinary action; include dates, employers and locations.
- 16. Describe any rehabilitative or corrective measures you have taken since your license was disciplined to support your petition.
- 17. List all post-graduate or refresher courses, with dates, location and type of course, you have taken since your license was disciplined.
- 18. List all optometric literature you have studied during the last year.
- 19. List all continuing education courses you have completed since your license was disciplined.
- 20. List names, addresses and telephone numbers of persons submitting letters of recommendation accompanying this petition.

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

Date 07.01.17 Signature 

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

To: California State Board of Optometry

Att: Cheree Kimbal (Probation Officer)

This is Aeven Awraha , the owner of Prince Optical located at 528 E. Main St, El Cajon CA 92020, and the reason for this letter is to request early termination of probation.

I am very sorry and I apologize about whatever happened in the past, I really regret what I did and how this all happened to me.

Ever since the first interview I had with Board Of Optometry, most of the insurances have been suspended from my account and I am not able to accept insurances. They terminated me from Provider Relationship because of my issue with state board.

Since state board took action against me, everything got worse. I began losing customers because I can't accept their insurance and they know I am allowed take their insurances since I opened my store in 2010. So I feel uncomfortable with the situation because I am a hard working individual and I am married, I am a dad of three kids ages: 10, 6, and 1 and half years old. Taking this into consideration, I have been behind since 2015 and I lost a lot of customers. Please forgive me for what ever happened to me. I have been released of my probation even the federal court have terminated me on the first year of five years of probation. Please I am requesting mercy to get rid of this probation. I was following every single rule without making any mistakes, especially in U.S except that mistake. We are human, all of us make mistake, but I have learned my lesson on this whole situation. Please accept my apology and I want to move forward and take care of my business and family, because I believe all of us eventually will no longer live on this earth and the only thing that will go with us will be our good deeds. I believe we can love and help each other in peace. I want to keep my family and kids moving forward the right way, please let's keep our flower alive because we only live once.

Please please please accept my request to have early termination and go back to work as normal.

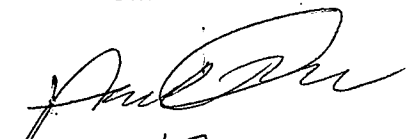
Aeven Awraha

Prince Optical

528 E.Main St, El Cajon CA 92020

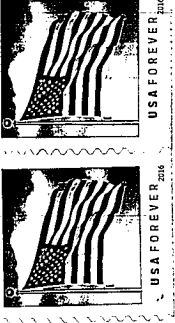
Cell: 619-456-3989

Office: 619-401-8845

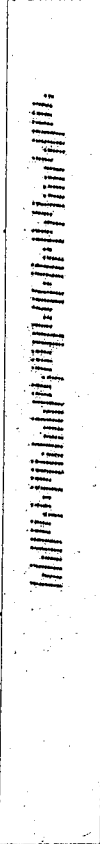

07.21.17

From:

PRINCE OPTICAL
528 E. Main St.
El Cajon, CA 92020
619-401-8845



To: State Board of Optometry
2450 Del Paso RD ste 105
Sacramento, CA 95834



Thanks you

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

In the Matter of the First Amended Accusation
Against:

Case No. 800-2015-011781

Aeven Awraha

Registered Dispensing Optician
Certificate No. D7523

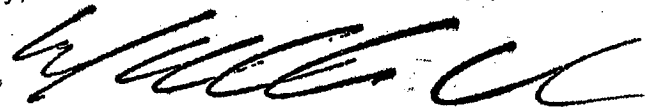
Registered Spectacle Lens Dispenser
Certificate No. SL6167

Respondent.

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective on July 21, 2016.

IT IS SO ORDERED this 20th day of July, 2016.



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

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

In the Matter of the Accusation Against:

AEVEN M. AWRAHA,

Respondent.

Case No. 800-2015-011781

OAH No. 2015080766

ORDER OF DECISION

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 July 21, 2016.

IT IS SO ORDERED this 21st day of June, 2016.

By: 

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

In the Matter of the First Amended Accusation
Against:

AEVEN AWRAHA, RDO, SLD

Registered Dispensing Optician
Certificate No. D7523

Registered Spectacle Lens Dispenser
Certificate No. SL6167,

Respondent.

Case No. 800-2015-011781

OAH No. 2015080766

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 10, 2016, in San Diego, California.

Nicole R. Trama, Deputy Attorney General, Department of Justice, State of California, represented complainant, Jessica Siefertman, Executive Officer of the State Board of Optometry, Department of Consumer Affairs, State of California.

Carl M. Hancock, Attorney at Law, represented respondent, Aeven Awraha, RDO, SLD, who was present throughout the disciplinary hearing.

The matter was submitted on May 10, 2016.

SUMMARY

Complainant seeks to impose discipline upon the certificates of registration issued to respondent as a result of respondent's April 3, 2014, felony conviction for knowingly conducting an unlicensed money transmitting business. Respondent admitted the fact of his conviction and the circumstances underlying that conviction in this proceeding.

Respondent's conviction, and the circumstances giving rise to it, are substantially related to the qualifications, functions and duties of a registered dispensing optician and

registered spectacle lens dispenser, who must be honest and of good moral character. Complainant established respondent knowingly engaged in dishonest activities for the purpose of financial gain. However, respondent established some mitigating circumstances, appears to have learned a valuable lesson, and likely will not engage in the same or similar misconduct in the future.

Putting respondent permanently out of business is not necessary to protect the public. Doing so would constitute needless punishment. A more appropriate disciplinary option is available that will permit respondent to continue his practice with restrictions in place that will permit the Board to monitor his practice and protect the public. That option requires the registrations be revoked, with the order of revocation stayed on condition that respondent be placed on probation for a period of three years with term of probation that requires a 30-day actual suspension and other terms and conditions that will permit the Board to monitor respondent's rehabilitation and ensure his safe professional practice.

FACTUAL FINDINGS

Respondent's Background, Education, and Experience

1. Respondent was born in Baghdad, Iraq, in 1982. He grew up in Iraq, where he and family members belonged to the Chaldean Catholic Church. Respondent practiced optometry in Iraq following his receipt of a diploma from the Institute of Medicine in Baghdad. Respondent and his relatives owned and operated optical stores before respondent fled from Iraq to Jordan in 2006 as a result of religious discrimination, terrorist acts, and the seizure of his business. He remained in Jordan for a year when, as United Nations refugees, he, his wife, and their son were permitted entry into the United States.

2. In September 2007, after being granted asylum, respondent and his family settled in San Diego, California. Respondent attended English as Second Language classes and other ROP programs. He used the professional training and experience he obtained in Iraq, along with additional training, to take and pass the American Board of Opticianry examination. On that basis, respondent became certified as a registered dispensing optician in April 2010.

3. After passing the licensing examination, respondent briefly worked at Costco in National City.

4. Respondent obtained a certificate of registration as a registered spectacle lens dispenser. Respondent opened a dispensing business in a 1,900 square foot store in El Cajon. The dispensing business includes a laboratory, where respondent cuts lenses, sells optical frames, and fills special orders, and a retail sales area. The spectacle lens dispensing business shares space with respondent's other business, a prepaid cell phone sales, service and repair business. These business entitles are collectively known as Prince Wireless &

Optical. At one time during the operation of Price Wireless & Optical, respondent contracted with Western Union and the California Lottery to sell their products.

The wireless business employs four persons, while respondent is the only person working in the dispensing business.

5. As a result of his Western Union training related to money transfers, respondent knew the "hawala" system of transferring money, so pervasive in the Middle East, was inconsistent with United States money transferring laws and was illegal.¹

6. Respondent works seven days a week at Prince Wireless & Optical, often as much as ten hours a day. He fills 250 to 300 prescriptions each month. He estimated it takes him 10 to 15 minutes to fill a prescription. He estimated 35 percent of his annual income is derived from his dispensing practice, with the remainder of his income being the result of his cell phone service and sales business.

7. Respondent holds an unrestricted electronic repair license, license no. 90845, which was issued by the Bureau of Electronic and Appliance Repair, Department of Consumer Affairs, on February 26, 2016. In applying for that license, respondent disclosed the fact of the felony conviction giving rise to this disciplinary action.

Respondent also holds an unrestricted secondhand dealer license that was first issued by the El Cajon Police Department on November 16, 2015. In applying for that license, respondent disclosed the fact of the felony conviction giving rise to this disciplinary action.

8. Respondent is married. He and his wife have three sons, who are nine years old, five years old, and three months old. The family attends St. Michael Chaldean Catholic Church in El Cajon.

License History

9. On April 6, 2010, the State Board of Optometry issued Registered Spectacle Lens Dispenser Certificate of Registration No. 6157 to respondent. The registration certificate is set to expire on December 31, 2017.

There is no history of any discipline having been imposed upon the lens dispenser registration certificate.

¹ The "hawala" system is described in further detail hereafter. Respondent's attorney in the federal criminal action conceded in a sentencing memorandum he filed (Exhibit 3, AGO-0148, lines 18-20) that respondent knew, or should have known, the "hawala" system was illegal in the United States as a result of respondent's Western Union money transfer training. Respondent also admitted that was the case in this proceeding.

10. On April 6, 2010, the State Board of Optometry issued Registered Dispensing Optician Certificate of Registration No. 7523 to respondent under the name of Prince Optical. The registration certificate was set to expire on April 30, 2016. Whether the registration certificate was renewed was not established.

There is no history of any discipline having been imposed upon the dispensing optician registration certificate.

Jurisdictional Matters

11. On April 15, 2016, counsel for complainant signed the First Amended Accusation in Case No. 800-29015-011781. The first amended accusation sought to impose discipline on respondent's registrations on the basis of respondent's April 3, 2014, felony conviction for of violating United States Code, title 18, section 1960, subdivisions (a) and (b) (first cause for discipline) and under Business and Professions Code section 2559.3 (second cause for discipline). The first amended accusation sought the recovery of the Board's costs of investigation and enforcement.²

Respondent filed a notice of defense to the accusation that was dated August 7, 2015; that notice of defense controverted all new allegations in the first amended accusation.

12. The record in the hearing was opened on May 10, 2016; jurisdictional documents were presented; an evidentiary stipulation was recited; sworn testimony was taken and documentary evidence was received; official notice was taken of the Board's disciplinary guidelines; closing arguments were given; the record was closed; and the matter was submitted.

United States Money Transfer Laws and the Hawala System

13. California's Money Transmission Act prohibits a person from engaging in the business of money transmission in California unless that person is licensed or is exempt from licensure. (Fin. Code, § 2030.) Under the Act, a person who knowingly engages in an activity for which a license is required without being licensed or exempt from licensure is guilty of a felony. (Fin. Code, § 2152). A civil penalty may also be assessed against a person who violates the Act. (Fin. Code, § 2151.1.)

² Complainant Kimberly Kirchmeyer, the Executive Director of the Medical Board of California, signed the accusation on July 13, 2015. The accusation stated the matter was before the Medical Board of California, while the first amended accusation was signed on behalf of complainant Jessica Siefertman and stated the matter was before the Board of Optometry. Paragraph 5 was added to the first amended accusation, alleging that under Business and Professions Code section 2550.1, all references to the Medical Board shall be understood to mean the Board of Optometry. There were no other significant differences between the accusation and the first amended accusation.

14. Under federal law, any person who knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business “shall be fined in accordance with this title or imprisoned for not more than 5 years, or both.” The term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and is operated without an appropriate money transmitting license in a State where such unlicensed operation is punishable as a misdemeanor or a felony, whether or not the defendant knew that the operation was required; fails to comply with federal money transmitting business registration requirements; or engages in the transportation or transmission of funds known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity. (U.S.C.A., tit. 18, § 1960.)

15. Quite simply, the business of transferring money in the United States is not a simple, unregulated affair. It requires a license, limitations on transactions, and meticulous recordkeeping. It does not involve a transaction that can be accomplished with a handshake. All persons who undergo the training necessary to be eligible to transfer money through Western Union learn of the need to comply with the state and federal laws.

16. State and federal requirements related to the transfer of money are distinguishable from the hawala system, which was described in *United States v. Banki* (2d Cir. 2012) 685 F.3d 99, 103, as follows:

The transfers [of money] were effectuated through an informal system called a “hawala.” The hawala system is widely used in Middle Eastern and South Asian countries, and is primarily used to make international funds transfers. Though there are many forms of hawala, in the paradigmatic hawala system, funds are transferred from one country to another through a network of hawala brokers (i.e., “hawaladars”), with one hawaladar located in the transferor’s country and one in the transferee’s country. In this form, a hawala works as follows: If Person A in Country A wants to send \$1,000 to Person B in Country B, Person A contacts Hawaladar A in Country A and pays him \$1,000. Hawaladar A then contacts Hawaladar B in Country B and asks Hawaladar B to pay \$1,000 in Country B currency, minus any fees, to Person B. The effect of this transaction is that Person A has remitted \$1,000 (minus any fees) to Person B, although no money has actually crossed the border between Country A and Country B. Eventually, Hawaladar B may need to send money to Country A on behalf of a customer in Country B; he will then contact Hawaladar A, with whom he now has a credit due to the previous transaction. Hawaladar A will remit the money in Country A to the designated person there, thus clearing the debt between the two hawaladars. Typically, Hawaladar A and Hawaladar B would engage in many parallel transactions

moving in both directions. A number of transactions might be required before the books are balanced between the two hawaladars. If after some period of time their ledgers remain imbalanced, the hawaladars may “settle” via wire transfer or another, more formal method of money transmission. The hawala system operates in large part on trust, since, as in the example above, a hawaladar will remit money well before he receives full payment, and he does so without the benefit of a more formal legal structure to protect his investment.

Respondent's Conviction

17. On March 18, 2014, an information was filed in the United States District Court, Southern District of California, in *United States of America v. Aeven Awraha, Defendant*, Case No. 14CR0659JAH. The information alleged that from March 29, 2012, through July 4, 2013, respondent “knowingly conducted, controlled, managed, supervised, directed, and owned an unlicensed money transmitting business . . . in El Cajon, California, that affected interstate and foreign commerce and operated without an appropriate money transmitting license in the state of California, where such operation was punishable as a felony; and failed to comply with the money transmitting business registration requirements under 31 U.S.C. § 5330 and regulations prescribed thereunder, all in violation of Title 18, United States Code, Section 1960 (a) & (b) (1) (A) – (B).”

On April 3, 2014, a written plea agreement was filed in the United States District Court, Southern District of California, in Case No. 14CR0659JAH.³ In that agreement, respondent admitted he understood the elements of the offense; there was a factual basis for the guilty plea; and the maximum penalty for the offense included five years in prison, a fine of \$250,000, and supervised release for five years. Respondent acknowledged the sentencing judge was required to consult the United States Sentencing Guidelines and he or she could not determine the sentence without a presentence report.

Kyla Hamilton, a U.S. Probation Officer, prepared a comprehensive presentence report dated May 14, 2014, which was filed in respondent’s criminal case. That report calculated the sentencing range for respondent’s offense, when adjusted upward and downward based on various factors, and resulted in a recommended sentence of 12 to 18 months in custody. Defense counsel filed a sentencing memorandum that supplemented the probation officer’s report.

On August 25, 2014, the Honorable John A. Houston, United States District Judge, entered judgment in Case No. 14CR0659JAH. The court placed respondent on probation for five years. Conditions of probation required that respondent not commit any further crimes, provide a DNA sample, not possess a firearm or any other dangerous weapon, report all

³ Respondent and his attorney in the criminal matter signed the plea agreement on January 20, 2014, before the information was formally filed in the district court.

vehicles he owned or in which he had an interest, submit to searches at reasonable times and places, and notify a probation officer of any deportation proceedings. The court ordered respondent to pay a \$100 assessment.

~~Respondent was not ordered to serve time in custody, pay fines, or make restitution.~~

On September 28, 2015, Judge Houston signed an Order for Termination of Probation. The order stated the court had verified with the United States Probation Department that respondent was in full compliance with probation and there was no other criminal action pending. Probation was terminated.

Circumstances of the Offense

18. Respondent acknowledged in this proceeding that the following information, which was contained in the May 14, 2014, presentence report, was true.

In February of 2012, Immigration and Customs Enforcement (ICE), Office of the Special Agent in Charge, San Diego (SAC/SD), Financial Group, received information from a confidential source (CS) that Prince Wireless and Optical, a business located at 528 Main Street in El Cajon, California (owned by AWRAHA), was operating as an unlawful money transmitting business and engaging in money laundering by facilitating the movement of funds between Iraq and the United States. The investigation later revealed that Prince Wireless and Optical was also facilitating the movement of funds between the United States and various other Middle Eastern countries, to include Saudi Arabia and Jordan.

[¶] . . . [¶]

On February 28, 2012, a CS placed a recorded undercover telephone call to Prince Wireless and Optical. AWRAHA answered the call and engaged in conversation with the CS, AWRAHA agreed to transfer funds for the CS from El Cajon, to Iraq, for a five percent fee. AWRAHA described his business as a "hawala"

On March 22, 2012, a special agent discovered that, between February 11, 2011 and November 28, 2011, six Currency Transaction Reports (CTRs) had been filed for the deposit of cash into four Wells Fargo bank accounts for or by AWRAHA. Each of the CTRs was filed as a result of multiple cash deposits occurring within the same day, which combined, exceeded \$10,000. Another CTR was filed for the deposit of cash on July

8, 2011, into a three Wells Fargo bank accounts (one of which, AWRAHA had also deposited cash). The CTR was filed as a result of multiple cash deposits occurring within the same day, which combined, exceeded \$10,000

On March 26, 2012, a special agent conducted a review of businesses licensed with the Community Development Financial Institution (CDFI) as transmitters of money abroad, as well as a list of registered money service businesses through the Financial Crimes Enforcement Network (FinCEN). The investigation revealed that Prince Wireless and Optical was not registered with CDFI as a transmitter of money abroad, or with FinCEN as a money service business.

On March 28, 2012, a CS placed a recorded undercover telephone call to Prince Wireless and Optical. AWRAHA answered the call and agreed to transfer funds for the CS from El Cajon to Iraq. However, when the CS asked for further details regarding the proposed transaction, AWRAHA informed he did not want to talk about the details over the telephone, and instructed the CS to come to the Prince Wireless and Optical store.

On March 29, 2012, an ICE Undercover Operative (UCO) went to Prince Wireless and Optical with \$6,000 cash and met with the defendant. The UCO told AWRAHA he was there on behalf of the CS. The UCO told AWRAHA the CS needed to send \$6,000 to another individual (UCO2) in Riyadh, Saudi Arabia. At that point, AWRAHA attempted to contact the CS and the UCO2 via telephone, but was unsuccessful. AWRAHA informed the UCO he could not send the funds without speaking to the CS.

Following the meeting, the CS placed a recorded undercover telephone call to AWRAHA and informed [him] he was at work and was unable to personally bring the funds to Prince Wireless and Optical. The CS stated he was relying on the UCO to provide the money to the defendant. After confirming the UCO was a friend of the CS, AWRAHA told the CS the UCO could return to the Prince Wireless and Optical store, and the funds would be sent as agreed.

Later the same day, the UCO returned to the Prince Wireless and Optical store with \$6,000. The UCO provided AWRAHA with the money, along with the name and telephone number of

the receiving party (UCO2) in Saudi Arabia. AWRAHA asked the UCO for a \$300 fee for transferring the funds. The UCO told the defendant to take the \$300 fee out of the \$6,000 provided.

During the meeting, AWRAHA asked the UCO for identification. Instead, the UCO provided the defendant with an undercover business card which represented an unlawful cigarette sales and smuggling business.

Between April 4, 2012, and April 24, 2012, the UCO engaged in five recorded undercover telephone conversations with AWRAHA regarding the status of the \$6,000 being transferred to Saudi Arabia. The defendant informed the UCO he was unable to successfully transfer the funds. AWRAHA said he could, instead, transfer the funds to Jordan. The UCO agreed to go to the Prince Wireless and Optical store to meet with the defendant and provide him with additional cash, which, along with the \$6,000, would need to be transferred to Jordan.

On August 14, 2012, the UCO went to the Prince Wireless and Optical store and told the defendant he needed the \$6,000 sent to an individual in Iraq. AWRAHA informed he would be unable to send the funds to Iraq until the end of the following week, due to banking problems he was having. The UCO acknowledged the arrangement would be acceptable.

During the conversation, the defendant asked the UCO what he did for work. The UCO informed AWRAHA that he smuggled cigarettes from Mexico, into the United States. After learning this, AWRAHA informed the UCO that he wanted to have his brother brought from Holland to the United States (via Mexico), and asked the UCO if he knew anyone in Mexico who could arrange this. The UCO told the defendant he knew many people in Mexico, and would try to find someone who could,

Undercover E-mails Regarding Money Transfers. On May 8, 2012, a special agent established an undercover e-mail account for use in the investigation. The special agent sent correspondence to the e-mail address listed on the defendant's business card. The special agent informed he was in Baghdad, Iraq, and wanted to send \$5,000 to his relative in El Cajon, California. The special agent inquired about the fee for doing so, and inquired about who he should contact in Iraq. The following day, the special agent received a return e-mail which

advised that his relative could call the Prince Wireless and Optical store, or stop by the store.

On May 18, 2012, the special agent responded to the e-mail indicating his relative was elderly. The special agent asked if there was another way he could get further details about sending money. The next day, the special agent received an e-mail response which indicated that, if the special agent provided his relative's contact information, someone from Prince Wireless and Optical would contact the special agent's relative directly.

Following the above e-mail communications, and on June 4, 2012, a United States Magistrate Judge signed and approved a search warrant for the aforementioned e-mail account. On June 26, 2012, a special agent completed a review of the e-mail contents, which did not reveal any e-mails (besides the undercover e-mails) regarding unlawful money transmitting services.

AWRAHA's Western Union Training. On May 9, 2012, a special agent reviewed information obtained from Western Union which revealed AWRAHA became a registered agent of Western Union in July of 2011, for the purpose of sending and receiving Western Union money transfers, and selling Western Union money orders. As a Western Union agent, the defendant was required to complete the Western Union anti-money laundering (AML) training. The AML training is comprised of numerous topic including: 1) an overview of money laundering; 2) an overview of the Money Laundering Control Act; 3) information about the bank Security Act; 4) recordkeeping requirements; and 5) reporting requirements.

The AML training contains pertinent information regarding Currency Transaction Reports (CTR), which states that the bank Security Act requires money service businesses to file a CTR within 15 days of a transaction or series of transactions that: 1) totals more than \$10,000 (cash in or cash out) including any fees; 2) is conducted by or on behalf of the same person; 3) and is conducted in the same business day.

Another section of the AML training regarding recordkeeping states that the Bank Security Act contains recordkeeping requirements that affect Western Union agents involved in the sale of money transfers and/or money orders. Specifically, if a money service business conducts a money transfer in the

principal amount of \$3,000 or more, the money service business must collect and keep a record of certain information for five years. This includes information about the consumer and the transaction. The money service business must also verify the consumer's information by reviewing an acceptable identification document.

Another portion of the AML training states that the Bank Security Act requires all money service businesses to register with FinCEN and maintain a list of agents. In the United States, if a Western Union agent is a money service business solely because they are an agent of Western Union, they are not required to register with FinCEN. If those agents sell services other than Western Union services, they must register as money service businesses for the non-Western Union services that qualify them as a money service business.

If AWRAHA had been using the Western Union money transfer system to send funds for the UCO on March 29, 2012, the fee would have been approximately \$120, and the UCO would have been required to complete a Western Union money transfer sheet (which he did not). Furthermore, a review of all Western Union money transfers conducted by the defendant between March 1, 2012, and April 3, 2012 (which consisted of 34 transactions) revealed that none contained the UCO's name or the amount being transferred.

Successful Transfer of \$25,000 to Iraq. On September 26, 2012, the UCO went to Prince Wireless and Optical with \$25,000 and met with AWRAHA. The defendant agreed to transfer the \$25,000 to an individual in Iraq (UCO2). AWRAHA informed the UCO that the fee for the transfer would be \$1,375, and that the funds would be available for pickup by the UCO2 in Iraq the next morning. AWRAHA provided the UCO with contact information for a person in Iraq, from whom the UCO2 could pick up the money.

During the meeting between the UCO and AWRAHA, the defendant explained he had a bank account containing \$50,000 that had been frozen or seized. The same account contained the \$6,000 belonging to the UCO (from the previous attempt to transfer cash to Saudi Arabia), AWRAHA explained he had hired an attorney, and was trying to get the money returned to him. During their conversation, the defendant apologized to the

UCO about the funds being frozen. AWKAHA promised the UCO he would pay the \$6,000 back as soon as possible.

The UCO explained that the frozen funds were not a concern.

The UCO said he needed to transfer the \$25,000 to his boss in Iraq, in order to cover the \$6,000 of frozen funds, and an additional \$18,000 he owed to the boss. The UCO said that, once the \$25,000 had arrived in Iraq, the issue of the frozen \$6,000 would just be between AWRAHA and the UCO. The defendant stated the transfer of \$25,000 would not be a problem. It was subsequently agreed that the \$6,000 would be returned to the UCO as soon as AWRAHA was able to do so.

On October 2, 2012, the UCO telephonically contacted AWRAHA to check on the status of the \$25,000 being transferred to Iraq. AWRAHA informed the UCO that the individual in Iraq (UCO2) should call a specific telephone number in order to arrange the pickup.

On October 6, 2012, UCO2 called the provided telephone number and was told to pick up the funds from "Al Maraj Company International" in Baghdad, Iraq. The UCO2 arrived at said company and was provided with \$23,625, which had been sent by the UCO (through AWRAHA).

Successful. Transfer of \$35,000 to Iraq. On October 19, 2012, the UCO went to the Prince Wireless and Optical store and provided AWRAHA with \$35,000. AWRAHA agreed to transfer the money to the UCO2 in Iraq. The defendant informed that the fee for the transfer would be \$2,100, and said the funds would be available for pickup in Iraq in two days.

During the meeting, AWRAHA and the UCO again discussed the \$6,000 owed to the UCO by the defendant. AWRAHA told the UCO he was still trying to get his bank account, containing \$50,000, unfrozen. The agreement continued that the defendant would repay the UCO \$6,000 whenever he was able to do so.

The pair also discussed the UCO's illegal cigarette smuggling business. The UCO asked AWRAHA if he knew anyone who would be interested in purchasing cigarettes. The defendant said he knew someone who buys cigarettes; however, the person was in Iraq at that particular time. The UCO asked the defendant if he would put the UCO in contact with said person

(upon his return from Iraq), because the UCO had 2,000 boxes of cigarettes which needed to be moved. The defendant asked if the cigarettes had tax stamps on them, to which, the UCO stated they did not. The UCO offered the defendant a sample pack of cigarettes, but AWRAHA said he would simply call the UCO when he was ready to introduce him to his contact.

On October 22, 2012, the UCO placed a recorded undercover telephone call to the defendant, and learned that the \$35,000 was available for pickup in Iraq by the UCO2 at the same location previously used (Al Maraj Company International in Baghdad, Iraq).

On October 24, 2012, the UCO2 went to the Al Maraj Company International, and was provided with \$32,900, which had been sent by the UCO (via the defendant).

Successful Transfer of \$25,000 to Jordan. On December 5, 2012, the UCO took \$25,000 to Prince Wireless, and Optical, and gave the money to AWRAHA. The defendant agreed to transfer it to the UCO2 in Iraq. The defendant informed the UCO that the fee for the transfer would be \$1,500, and the funds would be available for pickup by the UCO2, in Iraq, the next morning.

During the meeting between the UCO and AWRAHA, the UCO asked the defendant if he had found any buyers for his counterfeit cigarettes. The UCO provided the defendant with a sample pack of counterfeit cigarettes and informed he still had 500 boxes of the cigarettes for sale. At that point, AWRAHA called an unknown individual using the name "Saari." Saari and the UCO discussed the counterfeit cigarettes, but ultimately, Saari refused to partake in the cigarette trade. When the UCO offered a sample of counterfeit cigarettes to the defendant, AWRAHA refused stating he does not smoke.

AWRAHA and the UCO also discussed the \$6,000 owed to the UCO by the defendant (from the previous attempt to transfer the money to Saudi Arabia). AWRAHA explained he was still working with his attorney to recover his frozen bank account. Again, the defendant promised to repay the UCO as soon as possible. The UCO explained that, as soon as the money was available, he would want the \$6,000 sent to Iraq.

On February 20, 2013, the UCO placed an undercover telephone call to the defendant. During the call, the UCO told AWRAHA to transfer the \$25,000 to another individual (UC03) in Amman, Jordan (rather than Iraq). The defendant agreed to transfer the \$25,000 to Jordan for an additional fee of \$1,500.

On February 26, 2013, during a telephone conversation between the UCO and AWRAHA, the defendant told the UCO that UC03 could pick up the funds from Ibrahim El-Awam, at his office, Sahir-awi, in Amman, Jordan.

On March 11, 2013, the UC03 received \$22,000 in Amman, Jordan, in accordance with AWRAHA's instructions.

Successful Transfer of \$30,000 to Jordan. On May 14, 2013, the UCO took \$30,000 to the defendant at Prince Wireless and Optical. AWRAHA agreed to transfer the money to the UC03 in Jordan. AWRAHA informed the UCO that the fee for the transfer would be \$1,800. At that point, the UCO reminded the defendant he owed him \$6,000, and AWRAHA subsequently agreed to lower the fee to \$1,500. AWRAHA explained he was going to small claims court to fight for a portion of this money, which had been frozen in a bank account.

On July 24, 2013, the UC03 received \$28,500 in Amman, Jordan, in accordance with AWRAHA's instructions.

Service of Search Warrant. On August 9, 2013, a United States Magistrate Judge approved and signed a search warrant for Prince Wireless and Optical.

On August 20, 2013, several special agents went to AWRAHA's home . . . in El Cajon, arrested the defendant, and transported him to the ICE office in San Diego in order to conduct an interview.

Following his arrest, the defendant affirmed he is the sole owner of Prince Wireless and Optical, and had been since 2010. AWRAHA admitted to engaging in the business of transmitting funds from the United States to Iraq and Jordan for various customers, from which he profited. The defendant stated he only profited one to one-half percent per transaction; however, when AWRAHA gave specific examples of transaction amounts and his corresponding fees, it appeared he was profiting two to three percent per transfer.

AWRAHA admitted that, as a result of previously being a Western Union agent, he knew it was illegal to conduct money transfers in the manner he had been doing. The defendant also admitted he knew it was illegal to conduct a financial transaction in excess of \$10,000 without completing a Currency Transaction Report (CTR). Further, AWRAHA admitted knowing that one of his money transfer customers was engaged in various unlawful activities, and stated he sent funds internationally for that customer. AWRAHA identified said customer as "Tamer," who was engaged in the unlawful sale and shipment of cigarettes.

The defendant said his money transmitting business operated as follows: a customer would come to his business (Prince Wireless and Optical) with cash they wanted to transfer to another country. AWRAHA would accept the cash along with a fee. Thereafter, AWRAHA would contact one of two persons; "Hussein" in Seattle, Washington; or "Bahaa Gorial" in El Cajon. The defendant would inform the person of the transfer details, and AWRAHA would do one of two things: 1) deposit the cash into a bank account at the direction of Hussein (never depositing more than \$9,000 in one account); or 2) provide the cash in person to Bahaa Gorial. Thereafter, Hussein or Bahaa Gorial would instruct the defendant as to where his customers could pick up the cash in the receiving country. AWRAHA would relay the pickup information to his customer. The defendant indicated that Hussein and Bahaa Gorial were both well known in the Iraqi immigrant community for providing money transfer services.

The defendant informed he did not keep records of his money transfer customers. He repeatedly made conflicting statements about how many money transfer customers he had, but ultimately stated he had assisted in providing money transfer services to three different people.

AWRAHA also described an event which occurred between June 24, 2012, and July 15, 2012. During the event, a woman entered the Prince Wireless and Optical store on numerous occasions and purchased cellular telephones and telephone cards. The defendant said the woman purchased approximately \$44,000 worth of goods, which she paid for using prepaid gift cards. AWRAHA said his bank ultimately informed that the transactions conducted by the woman were done with fraudulent

gift cards. As a result, the bank seized \$44,000 from the defendant.

[¶] . . . [¶]

It is noted that all of the funds transferred (less any fees) were ultimately returned to the SAC/SD.

Respondent's Testimony and Other Evidence

19. Respondent's testimony concerning his background, education, and experience was supplemented and explained by the probation officer's presentence report and counsel's sentencing memorandum. Respondent testified about the facts and circumstances surrounding his conviction, although not in the detail set forth in the probation officer's presentence report.

Respondent explained that his businesses were doing well, and he was financially stable until his bank froze his accounts after a female customer paid for wireless products with fraudulent prepaid gift cards. Before that occurred, respondent deposited the original \$6,000 he received from the ICE undercover agent into his bank account. When his accounts were frozen, he was unable to transfer the money to the Middle East as promised. He felt a sense of responsibility and shame, which he claimed resulted in his continuing to do business with the undercover agent. Respondent suggested the ensuing transfer of funds to the Middle East through a hawala was a small part of his overall business operation, but respondent described his business to the undercover agent as a "hawala." It is of concern that the ICE undercover agent represented to respondent during their interactions that he was engaged in unlawful cigarette sales and smuggling, which resulted in respondent asking whether the agent could assist respondent in bringing a relative into the United States from Mexico.

Respondent testified he "was under lots of pressure" at the time he engaged in the unlawful money transfers as a result of his bank accounts being frozen. He emphasized there was no loss to any customer as a result of his hawala activities. He testified he used the proceeds from the hawala transactions, which he knew were illegal, to help pay his mortgage, even though the amounts he realized from those transactions were relatively minor, less than \$500 per transaction.

Respondent emphasized his good moral character during his testimony, stating, "I am really honest . . . I am straight . . . I don't deserve it." After making such statements, respondent expressed some remorse, claiming, "I don't blame anyone but myself." He was unable to articulate the reasons the Board was concerned, other than to state he had suffered a criminal conviction.

20. Father David Stephen testified. Father Stephen is the Parochial Vicar of St. Michael Chaldean Catholic Church in El Cajon. He has known respondent for many years. He testified respondent is a faithful member of the congregation who provides free glasses to

impoverished parishioners. He is of service to the congregation. Father Stephen believes respondent essentially to be an honest individual. Respondent is respected in the Chaldean community.

The Board's Disciplinary Guidelines

21. The California State Board of Optometry's mission is to serve the public and professionals by promoting and enforcing laws and regulations, which protect the health and safety of California's consumers and to ensure high quality care. In keeping with its mandate to protect the consumer of optometric services from unsafe, incompetent and/or negligent professionals the Board adopted recommended guidelines for disciplinary orders and conditions of probation. The guidelines include factors to be considered in aggravation and mitigation; suggested discipline for violations of specific statutes; and standard and specialty probationary terms and conditions.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors revocation of the license. If, however, the respondent has demonstrated a capacity to practice optometry safely, a stayed revocation order with probation is recommended. Suspension of a license may also be appropriate where the public may be better protected if the professional's practice is suspended in order to correct deficiencies in skills and education, or for the licensee to achieve personal rehabilitation.

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 deviation from the guidelines in particular cases.

Matters in Aggravation and Mitigation

22. Using the Board's criteria, the following matters in aggravation and mitigation were established.

- No patient's trust, health, safety or well-being was jeopardized.
- Respondent has no history of prior administrative discipline.
- Respondent engaged in a series of unlawful acts that gave rise to his conviction.
- Respondent's conviction did not involve violence.
- Respondent's conviction did not involve a crime against a minor, elderly person, or a person with a disability.

- Respondent demonstrated minimal recognition of his wrongdoing, but he no longer engages in any kind of money transfer.
- Respondent was forthcoming in this disciplinary proceeding, admitted the facts and circumstances giving rise to his conviction, and expressed some remorse.
- Approximately three years has passed since respondent's last illegal act.
- Respondent has been off probation for less than a year.
- Respondent has no other criminal or administrative disciplinary history.

Evaluation

23. Respondent has held Board certifications for more than six years. He has provided valuable professional services to members of his community and the general public according to Father Stephen. He continued to provide those services after the accusation was filed almost a year ago. There was no need to impose an interim suspension order. There is no evidence respondent ever engaged in professional negligence, mistreated a consumer, or committed a fraudulent act in which a consumer was the victim. There is no reason to conclude that respondent is not capable of safe practice; to the contrary, respondent has demonstrated a capacity to practice safely.

The concern raised by respondent's felony conviction relates to his character for honesty and trustworthiness. The conviction at issue involved respondent knowingly providing unlicensed money transfer services to a person who claimed to be engaged in illegal transactions. The illegal activities occurred under the same roof where respondent provided professional optometry services.

Persons holding certification and registration with the Board of Optometry must be of good moral character, and respondent's dishonest conduct, resulting in his felony conviction, goes directly to his character. Two factors are particularly troubling in this case: first, respondent engaged in a continuing pattern of illegal conduct; second, despite his felony conviction, for which minimal punishment was imposed, respondent still does not appear to understand the seriousness of his illegal conduct. Respondent's conduct and attitude cannot be ignored.

Where, as here, an individual has demonstrated a capacity to practice safely, the guidelines recommend a stayed revocation with standard and special terms of probation. Suspension may also be appropriate when a suspension provides a measure of public protection and fosters personal rehabilitation.

The central question in this matter is whether terms and condition of probation exist that will adequately protect the public and will, at the same time, permit the Board to monitor respondent's professional practices, protect the public, and encourage rehabilitation. The question may be answered in the affirmative.

To impress upon respondent his need to be of good moral character and his obligation not to engage in unlawful activities, the imposition of a 30-day actual suspension is appropriate. The suspension will remind respondent his misconduct was not trifling and was related to the qualifications and practice of a registered dispensing optician and registered spectacle lens dispenser, who must be of good moral character.

A three year period of probation is imposed following the suspension with terms and conditions requiring respondent to obey all laws; submit quarterly reports; cooperate with the probation monitoring program; pay probation monitoring costs; continue to function as a registered dispensing optician and registered spectacle lens dispenser; maintain valid registrations; notify the Board of any changes in his employment or residence; pay the Board's reasonable costs of investigation and enforcement; and not engage in any kind of business involving the transmission of money requiring any kind of license.

The disciplinary order outlined above falls directly within the Board's recommended guidelines and protects the public.

Costs of Investigation and Enforcement

24. A Certification of Costs: Declaration of Nicole R. Trama was introduced. A billing summary attached to the declaration identified various legal services provided by the Office of the Attorney General. Legal services were billed at a reasonable hourly rate. The deputy who tried this matter was organized and professional.

Respondent did not object to the certification or the attachment.

The certification and attachment satisfied the requirements of California Code of Regulations, title 1, section 1042, subdivision (b), and support a finding of costs in the amount of \$4,862.50.

LEGAL CONCLUSIONS

Purpose of Disciplinary Proceedings

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license 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.)

2. The purpose of an administrative proceeding concerning the revocation or suspension of a license is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

The Standard of Proof

3. In determining the proper standard of proof to apply in administrative license revocation proceedings, courts have drawn a distinction between professional licenses (such as those held by doctors, lawyers, and real estate brokers) and nonprofessional or occupational licenses (such as those held by food processors and vehicle salespersons). In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses the preponderance of the evidence standard of proof applies. In a proceeding to revoke the license issued to an advanced emission specialist technician, which required the passing of a competency examination but not the extensive training and experience required to obtain a professional license, the preponderance of the evidence standard applied. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Auto. Repair* (2011) 201 Cal.App.4th 911, 916-17.

4. Although a dispensing optician must pass the registry examination administered by of the American Board of Opticianry (Bus. & Prof. Code, § 2559.2) to obtain registration, and the registrations at issue are subject to suspension or revocation following the conviction of a substantially related crime (Bus. & Prof. Code, § 2555.1), respondent did not establish that extensive education, training, or testing was required to obtain the registrations. A review of applicable statutes leads to the conclusion that the education, training, and testing requirements necessary to hold and maintain the registrations at issue are quite similar to the requirements necessary to hold licensure as an advanced emission specialist technician. It is concluded that the preponderance of the evidence standard applies.⁴

Statutory Authority to Impose License Discipline

5. Business and Professions Code section 2555.1 provides in part:

In the discretion of the Division of Licensing, 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

⁴ The same disciplinary findings and order would be imposed even if it were determined that the clear and convincing evidentiary standard applies.

certified copy thereof shall be conclusive evidence of the conviction.

..... 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

6. Business and Professions Code section 2559.3 provides:

A certificate issued to a registered spectacle lens dispenser may, in the discretion of the division, be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.1.

Regulatory Authority

7. California Code of Regulations, title 16, section 1399.270, provides in part:

For the purpose of denial, suspension, or revocation of the registration of a dispensing optician . . . a crime or act shall be considered substantially related to the qualifications, functions, and duties of a dispensing optician if to a substantial degree it evidences present or potential unfitness of a dispensing optician to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

- (a) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the code relating to dispensing opticians.
- (b) Any violation of the provisions of Chapter 5.4, Division 2 of the code.
- (c) Any violation of the provisions of Chapter 5.5, Division 2, of the code.

8. California Code of Regulations, title 16, section 1399.272, provides:

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

- (a) Nature and severity of the act(s) or offense(s).
- (b) Total criminal record.
- (c) Extent of time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the registrant has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the registrant.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the registrant.

Substantial Relationship

9. A determination that a criminal conviction justifies license discipline requires a reasoned determination that the conduct at issue was in fact 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 and must develop criteria to aid in making that determination. (*Robbins v. Davi* (2009) 175 Cal.App.4th 118, 124.)

10. California Code of Regulations, title 16, section 1399.270, states a crime or act is substantially related to the qualifications, functions, and duties of a dispensing optician if to a substantial degree it evidences the present or potential unfitness of the dispensing optician to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare.⁵ It is clear that persons who do business with respondent in the licensed setting must be treated in an honest and ethical manner; indeed, one purpose of licensure is to protect the public from dishonest, immoral, and disreputable

⁵ The regulatory language "Such crimes or acts shall include, but not be limited to, those involving the following . . ." does not require a finding of a violation enumerated in the regulation. The term "unprofessional conduct" is not limited to enumerated conduct, but also includes conduct which breaches the rules or ethical code of a profession, or conduct unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

practitioners. Respondent's felony conviction raises concerns about his character for honesty. Respondent purposefully disregarded legal standards of conduct and engaged in an unlawful conspiracy, which supports the imposition of discipline. (*In re Higbie* (1972) 6 Cal.3d 562, 573.)

Respondent's felony conviction is substantially related to the qualifications, functions and duties of a registered dispensing optician and a registered spectacle lens dispenser.

Mitigation

11. Although the respondent's conduct requires discipline to protect both the profession and the public, the following factors mitigate against respondent's permanent removal from registration: he had no disciplinary record prior to the instant case; he enjoyed a good reputation among his clientele and members of his community, even after the events of his participation in the unlicensed money transfer scheme came to light; he has continued to practice following his conviction; his actions did not cause any particular individual to suffer physical or financial harm; and, he cooperated when confronted with law enforcement following his arrest, indicating recognition of his wrongful conduct. (*In re Higbie, supra*, at pp. 573-74.)

Rehabilitation

12. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an individual can demonstrate by sustained conduct over an extended period of time that he or she is fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

Cause Exists to Impose Discipline

13. First Cause for Discipline: Cause exists to impose discipline under Business and Professions Code sections 2555.1 and 2559.3, and California Code of Regulations, title 16, section 1399.270. A preponderance of the evidence established respondent was convicted on April 3, 2014, on his plea of guilty, of violating United States Code, title 18, section 1960 (a) and (b)(1) (A) – (B) (knowingly conducting an unlicensed money transmitting business), a felony. The conviction involved a crime substantially related to the qualifications, functions, and duties of a registered dispensing optician and a spectacle lens dispenser.

14. Second Cause for Discipline: Cause exists to impose discipline under Business and Professions Code section 2559.3. A preponderance of the evidence established respondent was convicted of a felony.

Appropriate Measure of Discipline

15. Based on the facts and circumstances, the Board's mission to protect the public, and the application of the factors and recommendations set forth in the disciplinary guidelines, it is concluded that a three year period of probation should be imposed following a 30-day actual suspension and that terms and conditions of probation should include requirements that respondent obey all laws; submit quarterly reports; cooperate with the Board's probation monitoring program; pay probation monitoring costs; continue to function as a registered dispensing optician and registered spectacle lens dispenser; maintain valid registrations; notify the Board of any changes in his employment or residence; pay the Board's reasonable costs of investigation and enforcement; and not engage in any kind of business involving money transferring.

Costs of Investigation and Enforcement

16. Business and Professions Code section 125.3 provides in part:

(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

17. Cause exists under Business and Professions Code section 125.3 to issue an order directing respondent to pay the Board's reasonable costs of enforcement of \$4,862.50.

ORDER

Registered Dispensing Optician Certificate No. D7523 and Registered Spectacle Lens Dispenser Certificate No. SL6167, issued to respondent, Aeven Awraha, are revoked for the causes of discipline identified in the decision separately and for all of the causes; however, the orders of revocation are stayed and respondent shall be placed on probation for three years on the following terms and conditions of probation:

1. OBEY ALL LAWS: Respondent shall obey all federal, state, and local laws, governing the practice of a dispensing optician and a spectacle lens dispenser in California. Respondent shall notify the Board in writing within 72 hours of any incident resulting in his arrest, the filing of charges against him, or in the issuance of a citation to him.

2. SUSPENSION: As part of probation, respondent shall be suspended from the practice as an optician and lens dispenser for a period of 30 days, beginning the effective date of this decision. If not employed as by another as an optician or lens dispenser, or if currently on any other type of leave from employment, the suspension shall be served once

employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that any employer informs the Board, in writing, that it is aware of the dates of suspension.

~~3. RESTRICTED ACTIVITIES: During probation, respondent is prohibited from engaging in any kind of money transmission activity that requires a license.~~

4. 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 licenses and certifications. Respondent shall be 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.

5. 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 terms and conditions of probation.

The 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.

6. **PROBATION MONITORING COSTS:** All costs incurred for probation monitoring during the entire probation shall be paid by 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 of Optometry 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 shall be required, instead, to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

The failure to submit costs on time is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, providing evidence and supporting documentation of financial hardship 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 optician registration and lens dispenser registration will not be renewed, until such time as all probation monitoring costs have been paid.

7. **FUNCTION AS A REGISTERED DISPENSING OPTICIAN:** Respondent shall function as Registered Dispensing Optician for a minimum of 60 hours per month for the entire term of his probation period.

8. **NOTICE TO EMPLOYER:** Should respondent become employed by any other person or entity, he 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 he authorizes the Board and the employers and supervisors to communicate regarding his 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 any employer he has during the probation period of the discipline imposed by providing this decision to his 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.

Respondent shall ensure that the Board receives written confirmation from his employer that his employer is aware of the disciplinary order imposed in this matter on forms to be provided to respondent (DG-Form 1 (05/2012)). 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.

9. **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 respondent must also provide his physical residence address as well.

10. **COST RECOVERY:** Respondent shall pay to the Board a sum not to exceed the reasonable costs of enforcement of this case in the amount of \$4,862.50, which shall be paid in full directly to the Board, in a Board-approved payment plan, within six months before the end of the probation term. Cost recovery will not be tolled.

If respondent is unable to submit costs timely, he shall submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of the reason respondent is unable to make such payment(s) must accompany this submission. That failure to submit costs timely is a violation of probation and the submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. Providing evidence and supporting documentation of financial hardship may delay further disciplinary action. Consideration to financial hardship will not be given should respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

11. **VALID REGISTRATION STATUS:** Respondent shall maintain current, active and valid registrations for the length of the probation period. Failure to pay all fees and meet any continuing education requirements prior to the expiration of his registrations shall constitute a violation of probation.

12. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE:** Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, shall toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as an optician is provided.

Respondent's registrations shall be automatically cancelled if his periods of temporary or permanent residence or practice outside California total two years. However, respondent's registrations shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. REGISTRATION SURRENDER: During respondent's term of probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, he may surrender his registrations to the Board. The Board reserves the right to evaluate respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered registration, license and wall certificate, respondent will no longer be subject to the conditions of probation.

All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

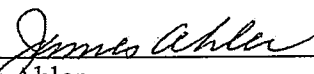
The surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license and registration history with the Board.

14. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE: If respondent sells or closes his office or practice after the imposition of administrative discipline, he shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work or services have not be provided or completed, and he shall not misrepresent to anyone the reason for the sale or closure of his office or practice. The provisions of this condition in no way authorize respondent's engaging of any actives requiring registration during any period of license suspension.

15. VIOLATION OF PROBATION: If respondent violates any term of probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against respondent.

16. COMPLETION OF PROBATION: Upon successful completion of probation, respondent's registrations shall be fully restored.

Dated: May 25, 2016



 James Ahler
 Administrative Law Judge
 Office of Administrative Hearings

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8 *Attorneys for Complainant*

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

13 **In the Matter of the Accusation Against:**
 14 **AEVEN AWRAHA, RDO, SLD**
 15 **528 East Main Street**
El Cajon, CA 92020
 16 **Registered Dispensing Optician**
 17 **Certificate No. D7523,**
 18 **Registered Spectacle Lens Dispenser**
Certificate No. SL6167,
 19 **Respondent.**

Case No. 800-2015-011781

FIRST AMENDED ACCUSATION

21 Complainant alleges:

22 **PARTIES**

23 1. Jessica Sieferman (complainant) brings this Accusation solely in her official capacity
 24 as Executive Officer of the Board of Optometry, Department of Consumer Affairs.¹

25 ¹ Pursuant to Assembly Bill 684, as incorporated and codified in relevant part in Business
 26 and Professions Code sections 2550.1, 3010.5 and 3023.1, effective January 1, 2016, this matter
 27 has been transferred to the jurisdiction of the Board of Optometry within which enforcement of
 28 this matter is now vested. Jessica Sieferman (Complainant) continues this Accusation solely in
 her official capacity as the Executive Officer of the State Board of Optometry, Department of
 Consumer Affairs. All references in this matter to the Medical Board of California or Board of
 (continued...)

1 2. On or about April 6, 2010, the Medical Board of California (Board) issued Registered
 2 Dispensing Optician Certificate No. D7523 to Aeven Awraha, RDO, SLD (respondent) under the
 3 fictitious business name PRINCE OPTICAL. Registered Dispensing Optician Certificate
 4 No. D7523 was in full force and effect at all times relevant to the charges and allegations brought
 5 herein and will expire on April 30, 2016, unless renewed.

6 3. On or about April 6, 2010, the Board issued Registered Spectacle Lens Dispenser
 7 Certificate No. SL6167 to respondent. Registered Spectacle Lens Dispenser Certificate
 8 No. SL6167 was in full force and effect at all times relevant to the charges and allegations
 9 brought herein and will expire on December 31, 2017, unless renewed.

10 **JURISDICTION**

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

14 5. Section 2550 of the Code states:

15 “Individuals, corporations, and firms engaged in the business of filling
 16 prescriptions of physicians and surgeons licensed by the Division of Licensing of the
 17 Medical Board of California or optometrists licensed by the State Board of Optometry
 18 for prescription lenses and kindred products, and, as incidental to the filling of those
 19 prescriptions, doing any or all of the following acts, either singly or in combination
 20 with others, taking facial measurements fitting and adjusting those lenses and fitting
 21 and adjusting spectacle frames, shall be known as dispensing opticians and shall not
 22 engage in that business unless registered with the Division of Licensing of the
 23 Medical Board of California.”

24 5. Section 2550.1 of the Code states:

25 “All references in this chapter to the board or the Board of Medical Examiners
 26 or division shall mean the State Board of Optometry.”

27 (...continued)
 28 Medical Examiners shall be understood to mean the Board of Optometry.

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6. Section 2555.1 of the Code states, in pertinent part:

“In the discretion of the Division of Licensing, 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.

“...”

7. Section 2559.3 of the Code states:

“A certificate issued to a registered spectacle lens dispenser may, in the discretion of the division, be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

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“Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.”

8. Section 1399.270 of title 16 of the California Code of Regulations states:

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

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

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

“(c) Any violation of the provisions of Chapter 5.5, Division 2, of the code.”

COST RECOVERY

9. Section 125.3 of the Code states, in pertinent part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

“...”

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FIRST CAUSE FOR DISCIPLINE**(Conviction of a Crime Substantially Related to the Qualifications, Functions, or Duties of a Dispensing Optician)**

10. Respondent has subjected his Registered Dispensing Optician Certificate No. D7523 and Registered Spectacle Lens Dispenser Certificate No. SL6167 to disciplinary action under sections 2555.1 and 2559.3, of the Code, and title 16 of the California Code of Regulations, section 1399.270, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a dispensing optician, as more particularly alleged hereinafter:

(a) Beginning on or about October 1, 2010, respondent established, owned, and began operating Prince Wireless and Optical, a storefront for two varying businesses, in El Cajon, California. In the optical portion of the business, respondent operates a laboratory where he cuts lenses, sells optical frames, and fulfills special orders. In the wireless portion of the business, respondent sells prepaid cellular telephone services.

(b) Between in or around March, 2012, through in or around July, 2013, respondent transmitted approximately \$115,000.00 for undercover Immigration and Customs Enforcement (ICE) Special Agents, which he believed to be proceeds of criminal activity, from his storefront at Prince Wireless and Optical, to persons in Iraq and Jordan. Respondent charged a fee of 4-6 percent of the value of the funds for his involvement in the transfers.

(c) On or about August 20, 2013, respondent was placed under arrest by ICE Special Agents, for violations of Title 18, United States Code, Section 1960.

(d) On or about March 18, 2014, a criminal information was filed against respondent in the matter of *The United States of America v. Aeven Awraha*, United States District Court, Southern District of California, Case No. 14CR0659JAH. Count One of the information charged respondent with knowingly conducting, controlling, managing, supervising, directing, and owning an unlicensed money transmitting business, that affected interstate and foreign commerce, and operating without an appropriate money transmitting

1 license, in violation of Title 18, United States Code, Section 1960, subdivisions (a) and
 2 (b)(1)(A)-(B), a felony.

3 (e) On or about April 3, 2014, in Case No. 14CR0659JAH, respondent pled guilty
 4 to Count One of the information, i.e., knowingly conducting, controlling, managing,
 5 supervising, directing, and owning an unlicensed money transmitting business, that
 6 affected interstate and foreign commerce, and operating without an appropriate money
 7 transmitting license, in violation of Title 18, United States Code, Section 1960,
 8 subdivisions (a) and (b)(1)(A)-(B), a felony. On or about August 25, 2014, the United
 9 States District Court sentenced respondent to probation for five (5) years, subject to
 10 various terms and conditions.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Violation of a Provision or Provisions of Chapter 5.5 of Division 2**
 13 **of the Business and Professions Code)**

14 11. Respondent has further subjected his Registered Dispensing Optician Certificate
 15 No. D7523 and Registered Spectacle Lens Dispenser Certificate No. SL6167 to disciplinary
 16 action under section 2559.3, of the Code, in that he has violated a provision or provisions of
 17 Chapter 5.5 of Division 2 of the Code, as more particularly alleged in paragraph 10, above, which
 18 is hereby incorporated by reference and realleged as if fully set forth herein.

19 **PRAYER**

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

22 1. Revoking or suspending Registered Dispensing Optician Certificate No. D7523 and
 23 Registered Spectacle Lens Dispenser Certificate No. SL6167 issued to respondent Aeven
 24 Awraha, RDO, SLD;

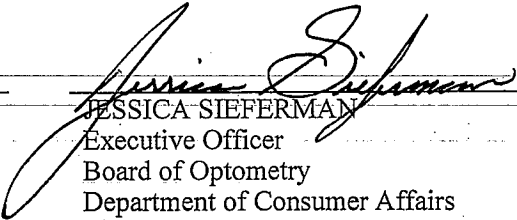
25 2. Ordering respondent Aeven Awraha, RDO, SLD, to pay the Board the reasonable
 26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
 27 Code section 125.3;

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

DATED: April 13, 2016


JESSICA SIEFERMAN
Executive Officer
Board of Optometry
Department of Consumer Affairs
State of California
Complainant