



ISSUE MEMORANDUM

DATE	August 27, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer <i>prepared by Terri Villareal, Probation Monitor</i>
SUBJECT	Agenda Item #11 – Petition for Early Termination of Probation – Martin Earl Dawson, Spectacle Lens Dispenser Registration Number 42036 and Contact Lens Dispenser Registration Number 8596

Martin Earl Dawson, (Petitioner) was issued a Spectacle Lens Dispenser Registration Number 42036 on April 2, 2020 and a Contact Lens Registration Number 8596 on April 2, 2020. On August 28, 2019, the Board filed a Statement of Issues (Case Number 420 2018 000449) against Petitioner charging him with violations of laws and regulations based on an investigation which determined Petitioner was in violation of Business and Professions Code § 2559.2(b) and Business and Professions Code § 2561.

Effective August 28, 2019, Petitioner's Spectacle Lens Dispenser and Contact Lens Dispenser Registrations were revoked; the revocation was 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 their 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. Statement of Issues



**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.	
MARTIN EARL DALSON				
2. ADDRESS (NUMBER) (STREET)			DATE OF BIRTH	
[REDACTED]			[REDACTED]	
(CITY)	(STATE)	(ZIP CODE)	TELEPHONE ()	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
3. PHYSICAL DESCRIPTION (HEIGHT) (WEIGHT) (EYE COLOR) (HAIR COLOR)				
[REDACTED]				
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 type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
STATE	LICENSE NO.	ISSUE DATE	EXPIRATION DATE	LICENSE STATUS
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	

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 08.04.2021 Signature William Dawson

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 105, 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.

PETITION FOR REDUCTION OF PENALTY
OR EARLY TERMINATION OF PROBATION

13. On April 02, 2020 Spectacle Lens Dispenser Application and Contact Lens Dispenser Application were granted and SLD 42036 and CLD 8596 were issued to to me, immediately revoked, the revocations were stayed, and my registrations placed on probation for three years for Criminal Convictions of Murder and Robbery, and a Conviction of Robbery- Acts Involving Dishonesty, Fraud, or Deceit (BPC §§480(a)(1), 480(a)(2), in conjunction with 2559.2(b)). These crimes were committed in 1991 and 1994 and were disclosed to the Board of Optometry during my application process.

14. First and foremost, I would like to say that I truly appreciate the accountability that goes along with meeting the terms of my probation. However, I believe the disciplinary penalty for my licenses should be reduced because I have shown a great respect for the terms and conditions of my probation and I have sought to conduct myself in a manner that brings the utmost respect to our profession. And finally, I believe that my work ethic and professionalism demonstrate the ability to perform my duties with sincerity and integrity.

15. Since my disciplinary action, I have worked as a Lab Manager / Licensed Optician for Stanton Optical in La Mesa, California. My employment with Stanton began in September of 2017 and ended in October of 2020 when I was recruited by Acuity Eye Group as an Optical Consultant and Licensed Optician. I began working for Acuity Eyegroup in October of 2020 and I am still currently employed with Acuity, working as the Lead Consultant / Licensed Optician of our West College Location.

16. As a part of my overall desire to continue and grow in my rehabilitation, I teach a weekly Bible Study at the Lighthouse Transitional Facility. The residents of this facility have been recently released from various stages of incarceration and are either required or have voluntarily submitted themselves to a program to help them overcome a variety of addictive / destructive behaviors. In my capacity as a Pastor and Christian Counselor, I not only share the Gospel of Jesus Christ with these men and women, but I always share my own personal story of redemption as an example of the change that is possible if a person truly desires to live a new and better life.

PETITION FOR REDUCTION OF PENALTY
OR EARLY TERMINATION OF PROBATION (Cont.)

17. I have not taken any post-graduate or refresher courses since my license was disciplined.

18. I work in an all inclusive optometry practice and during the past year there has been a big focus on the causes and treatments for dry eyes. As an office, we have been fortunate to have had clinics on new procedures and medicines for the treatment of dry eyes.

19. Since my licenses were disciplined I have completed the following continuing education courses:

07/23/201 Delivering Durability Like Never Before for No-Glare Lens Wearers with the New Crizal® Rock™ Lens Accreditation Number: STWJHI043-1

07/21/2021 The Art of Multiple Pairs Accreditation Number: SWJHI306

06/04/2021 Eyeglass Disinfection – Safe, Effective and Fast Accreditation Number: STWJHI027-1

06/06/2021 Blue Light Lenses- 5 Reasons for Rising Demand Accreditation Number: STWJHI033-2

12/26/2020 The Essential Vocation of Opticianry and its Proud Heritage Accreditation Number: STWJHI030-1

06/26/2020 The Art of Dispensing Accreditation Number: SWJHI014

06/11/2020 Oakley Prizm Lens Technology Accreditation Number: STWJHI022-2

PETITION FOR REDUCTION OF PENALTY
OR EARLY TERMINATION OF PROBATION (Cont.)

20. I am including letters of support from the following persons:

Linda Mike	[REDACTED]	[REDACTED]	[REDACTED]
Irel Nunez	[REDACTED]	[REDACTED]	[REDACTED]
Laura Garcia	[REDACTED]		[REDACTED]
Dr. John Vinh	[REDACTED]	[REDACTED]	



Certification of Registration History

This is to certify that I, Shara P. Murphy, Executive Officer of the California State Board of Optometry have custody and control of the official records of the Board and that the following information was obtained from the records of **Martin Earl Dawson**:

Registration:

Issued:

Expiration:

Status:

Spectacle Lens Dispenser Registration Number 42036

April 2, 2020

April 30, 2022

Probation

Registration

Issued:

Expiration:

Status:

Contact Lens Dispenser Registration Number 8596

April 2, 2020

April 30, 2022

Probation


Address of Record:

5085 Orange Avenue
San Diego, CA 92115-5149

Prior Discipline:

No

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this 10th day of August 2021.



Shara P. Murphy, Executive Officer
California State Board of Optometry

Acuity Eye Group

Our Vision is Your Vision™

To whom it may concern:


I am writing in regard Mr. Martin Dawson. I have known Mr. Dawson for about 9 months. I am his direct supervisor and I have nothing but great things to say about Mr. Dawson. He is a very professional and respectful man. He is a hard-working, dependable man. Always on time not once has he called out. He is also extremely conscientious of others' feelings, compassionate and friendliness to other people. All of our patients and staff members love him and feel comfortable going to him.

I understand at one point of our lives we all make mistakes. But we all deserve second chances. I know for a fact that Mr. Martin has amended his mistakes.

Please feel free to contact me directly if any questions arise. My number is

[REDACTED]

Sincerely,



Irel Nunez

Martin Dawson

1 message

John Vinh [REDACTED]

Sun, Aug 1, 2021 at 9:50 AM

To: Martin Dawson [REDACTED]

To Whom it May Concern:

I am writing this email on August 1, 2021, and I am writing to let one know that Mr. Martin Dawson should be allowed to be off of his probation for his state licenses. Not only is he an assets to the practice I work at, he is an asset to the community.

I've known Martin Dawson for well over 4 years now, and we used to work together at a retail optical location, where he was my lab manager. We worked there for over 3 years together. Martin always came early and always left late, making sure jobs for patients were done. Needless to say, he was overworked and never asked for anything in return from the company. I now work in ophthalmology, and when I knew they were looking for exceptional opticians, I asked Martin to join me, without hesitation.

Martin is also a pastor, and that should portray to one how mild and gentle his demeanor is, and in actuality it is the truth. Martin is a great role model for people around him, inspiring others to do well; he mentors new and young opticians to strive to do and be their best and to provide excellent patient care. He is a genuine, solid soul and individual who has his eyes set forward into the future, while learning from his past, as we all should. That is called growth and development, learning from experience and building and shaping who we choose to become today. Martin is someone who is trustworthy, kind, genuine, and most importantly a great individual in the world of optics.

I encourage you and the State Board to please consider ending Mr. Martin Dawson's probation for his licenses. This request is something so insignificant to the state of California, while meaning the world to Martin Dawson, so please see to it that he can practice optics fully.

Should you have any questions, please contact me directly at [REDACTED]

John B. Vinh, O.D.
Primary Eye Care at Acuity Eye Group
CA 14177 TLG

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<http://www.acuityeyegroup.com/>

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H EALTHCARE SERVICES, INC.

***Lighthouse Treatment/Community Transition Center
3880 Rosecrans
San Diego, Ca. 92110***

August 5, 2021

Re: Martin Dawson

To: California Board of Optometry



This letter is to serve as a professional and personal reference letter for Martin Dawson. I first met Marty as a client on 2/12/2017 as a part of his re-entry plan and he successfully on 7/11/2017. Marty has continued to return as alumni providing a voluntary Bible Study for men seeking a connection to faith. Martin has been accomplished in meeting all his goals, establishing a church, maintaining full time gainful employment, continuing to serve as a mentor to others in their early phase of re-entry. Martin is a pillar in society, continues demonstration and out reach in our community and diligent in pursuing relationships within the San Diego Community for betterment and make a difference in others lives.

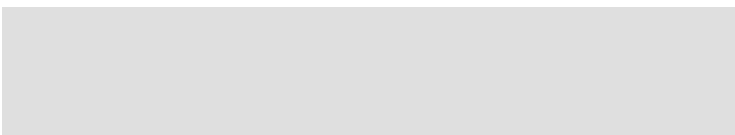
The Lighthouse is intensive 98 bed residential substance abuse/behavioral program for adult male parolees and AB109/PRCS Offenders. We are a part of the Health Care Services, S.T.O.P. Network and San Diego County Probation. The Lighthouse is an established residential treatment facility and detoxification specializing in the Criminal Justice Offender and addressing long term criminality, addiction and a unique multi- faceted methodology to address the success of offender's by addressing criminogenic behaviors, Victim Impact and developing pro-social skills. All criminogenic factors are addressed including Substance Use Disorder, Cognitive Thinking, Relapse Prevention, Life Skills, Pre-Employment development and gender responsive curriculum.

The Lighthouse conducts several scheduled and random presumptive and laboratory confirmed urinalysis, in which Mr. Dawson remained always negative for all substances, since admission to Lighthouse Residential Treatment services.

Please feel free to contact me on my cell [REDACTED] to verify and discuss this matter any further and I will be happy to provide any additional information

Laura Garcia

Laura Garcia CADC
Executive Director/Lighthouse/ CTC HCS Inc.
lgarcia@lighthouse-treatment.com
Lighthouse-Healthcare Services Inc.



Linda Mike Dawson



August 2, 2021

Recipient info -

Re: Motion to terminate probation for martin Dawson

I'm writing this support letter on behalf of my husband Martin Dawson. Martin has been a positive role model for me and my children, my sons, Akil 22, Bilal 20 and my daughter Amirah 16. As a single mother rising three kids was not an easy task. After reconnecting with Martin after 22 years has been one of the best decisions, I ever made. Martin has been the father figure to my children since 2017 and I absolute love the relationship he's built with my children. The best part is seeing them interact with each other. He respects my boys as the young men that they are growing into and my daughter as a young lady she is becoming. As a parent I only wanted to be with someone who will respects my children and actually care about their wellbeing and he does just that.

Martin is the Co-Pastor of our church. He's a hard worker, caring, loyal, trustworthy and selfless. Before reconnecting with Martin, I had not been to church in over 20 years. I'm now currently a member of the Pillar of Fire Church in San Diego, CA since 2017. My 16 years old daughter Amirah has been part of the worship team for the last two years which she loves, and all this is because of the influence Martin has on us. Martin makes himself available whenever someone reaches out to him for assistance and advice. Martin provides counseling to married couples as well as individuals that are in need of help. As a Pastor, he also provides Bible study not just for our family but for members of our church. Martin is a pillar to our community.

I want to thank everyone in advance for your consideration in reviewing his file to terminate the probation on his license.

Sincerely,

Linda Mike Dawson

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

In the Matter of the Petition for
Reduction of Penalty or Early
Termination of Probation

Case No. 420 2018 000449
OAH: 2019050477

Martin Earl Dawson


Registered Spectacle Lens Dispenser
Certificate of Registration No. 42036

Petitioner

NOTICE OF HEARING

Gov. Code § 11509

Hearing: Friday, August 27,
2021

YOUR ARE HEREBY NOTIFIED that the hearing in this matter will commence on **Friday, August 27, 2021** at 2 p.m. before the California State Board of Optometry at its regular quarterly meeting, held via WebEx Events.

To participate in the WebEx meeting, you will need to download the Webex application to your desk top computer, laptop, or tablet and log on in the day of the meeting using the link below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=mf55068dcfc9fcec382b11f8ebe275fe>

**Event Number: 146 908 0085 Password: Optometry8272021
(Or join by phone (415) 655-0001)**

The hearing will be conducted before the California State Board of Optometry.

If you object to the place of hearing, you must notify the presiding officer within ten (10) days after this notice is served on you. Failure to notify the presiding officer within ten (10) days will deprive you of a change in the hearing place.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833

INTERPRETER: Pursuant to Section 11435.20 of the Government Code, the hearing shall be conducted in the English language. If a party or a party's witness does not proficiently speak or understand the English language and before commencement of the hearing requests language assistance, an agency subject to the language assistance requirement in section 11435.15 of the Government Code shall provide a certified interpreter or an interpreter approved by the administrative law judge conducting the proceedings. Pursuant to section 11435.25 the cost of providing the interpreter shall be paid by the agency having jurisdiction over the matter if the administrative law judge or hearing officer so directs, otherwise by the party for whom the interpreter is provided. If you or a witness require the assistance of an interpreter, amply advance notice of this fact should be given to the Office of Administrative Hearing so that appropriate arrangements can be made.

CONTINUANCES: Under section 11524 of the Government Code, the agency may grant a continuance, but when an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding Administrative Law Judge for good cause. When seeking a continuance, a party shall apply for the continuance within ten (10) working days following the time the party discovered or reasonably should have discovered the event or occurrence, which establishes good cause for the continuance. A continuance may be granted for good cause after ten (10) working days have lapsed only if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

Continuances are not favored. If you need a continuance, immediately write or call the Office of Administrative Hearings, 2349 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833. Phone: 916-263-0550.



DATED: August 6, 2021

Lillian Wang, President
State Board of Optometry
Department of Consumer Affairs
State of California

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

In the Matter of the First Amended Statement of Issues

Against:

MARTIN EARL DAWSON, Respondent

Case No. 420 2018 000449

OAH No. 2019050477

CORRECTED PROPOSED DECISION

Russel T. Little, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 8, 2019, in San Diego, California.

Michael M. Karimi, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Shara Murphy, Executive Officer, Board of Optometry (board), Department of Consumer Affairs, State of California.

Martin Earl Dawson, respondent, appeared on his own behalf.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 8, 2019.

On November 4, 2019, the Proposed Decision was issued and submitted to the Board of Optometry (board). On November 22, 2019, board requested a correction to the Proposed Decision. On November 25, 2019, notice was provided to respondent and the Attorney General to submit any response to the board's request. This corrected proposed decision amends the terms of the condition precedent section of the order in the prior proposed decision as set forth below.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 12, 2018, respondent filed an application for a registered spectacle lens dispenser with the board. On December 7, 2018, the board denied his application.
2. On July 2, 2019, respondent filed an application for a registered contact lens dispenser with the board. On July 25, 2019, the board denied his application.
3. The board notified respondent that each application was denied on the grounds that on August 13, 1994, respondent was convicted of violating Penal Code section 187, subdivision (a), murder in the first degree and section 211, second degree robbery.
4. Respondent requested an appeal of both decisions with the board. Complainant initially served the statement of issues and jurisdictional documents on respondent, who timely filed a notice of defense. On August 28, 2019, complainant filed the first amended statement of issues alleging as causes to deny respondent's application that he was convicted of crimes substantially related to the qualifications,

functions, and duties of a licensee, and he committed acts involving dishonesty, fraud, or deceit. This hearing ensued.

Conviction

5. On January 31, 1996, in the Superior Court of California, County of Los Angeles, respondent was convicted by a jury verdict of violating Penal Code sections 187, subdivision (a), murder in the first degree, and 211, second degree robbery. Both were serious felonies within the meaning of Penal Code section 1192.7, subdivision (c)(1). On February 29, 1996, respondent was sentenced to 26 years to life in prison. Respondent was also ordered to pay \$5,000 funeral and burial expenses to the husband of the victim in lieu of restitution fine. On February 12, 2017, respondent was released from prison and placed on parole. He has had no parole violations, and his parole is scheduled to be terminated in 2022.

6. Respondent's conviction arose out of an incident that occurred on December 7, 1994. Respondent and the 15-year-old brother of his girlfriend sought out victims to rob. They received information that a woman, who operated a dress shop in Beverly Hills, wore a large diamond ring. Respondent and the minor drove to the dress shop located in a strip mall. Respondent went into the shop and confirmed the woman was wearing a large diamond ring. Back at the car, respondent gave a 9mm handgun to the minor and sent him in to rob the woman while he waited in the car. The woman resisted during the robbery and the minor shot and killed her. The minor took the diamond and fled with respondent in the car.¹

¹ The facts underlying respondent's conviction were obtained from law enforcement reports received in evidence under *Lake v. Reed* (1997) 16 Cal.4th 448,

Respondent's Testimony

7. Respondent testified at the hearing. The following is a summary of his testimony.

Respondent accepted responsibility for his conduct in 1994. He acknowledged his greed and selfishness as a young man. Respondent thinks about the victims of his crime. He expressed great remorse for taking the victim's life and the devastating effect it had on her family.

After his conviction in 1996, respondent's life changed when he entered prison. The confinement allowed for self-reflection. In addition, he began a path of self-realization through faith-based organizations inside the prison.

and from respondent's testimony both at the hearing in the present matter and in his narrative provided to the board. The *Lake* case considered the admissibility of law enforcement reports in administrative proceedings and concluded that law enforcement officers' direct observations memorialized in such a report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and admissions by a party memorialized in a report were admissible under Evidence Code section 1220. (*Id.* at pp. 461-462.) The *Lake* court noted that other witness statements in the report, which were not otherwise admissible under any hearsay exception, were not sufficient to establish a finding, but could be used to supplement or explain other admissible evidence, citing Government Code section 11513. (*Id.* at p. 461.) In any event, the facts contained in Finding 5 are undisputed.

In 2010 respondent began to actively participate in Celebrate Recovery programs, which continued until his release. He took a class titled "Life Without a Crutch," which caused him to take a personal inventory.

Respondent began his association with The Urban Ministry Institute of San Diego (TUMI) while in prison. He took a series of classes offered through TUMI prison fellowship in training for Christian leadership. He has continued his association with TUMI.

Through his participation in these faith-based programs, respondent acknowledged his resentment, grief and low self-esteem. Respondent spoke of his great resentment towards his father for abandoning his mother with respondent and his brother. After his father left the family, respondent sought out "hustlers" and "gang members" for the validation he might have received from his father. While in prison, respondent realized that he should release his resentment and self-centeredness, and he began a life-long commitment to becoming a better person and pay his debt by helping others through his faith.

In 1999, while at the Richard J. Donovan Correctional Facility (Donovan), respondent began training in the optical program. He worked in the prison's optical lab until he was transferred to another prison in 2006. At that time, prisoners at Donovan made 1,500 to 2,000 eye glasses per day. He studied for the American Board of Opticianry (ABO) exam. He passed the exam and received his certification in 2001.

Respondent renewed his certification from prison by mail until 2011, when the required courses were only available online. Since his release, respondent passed the ABO exam for recertification and recently passed the National Contact Lens Examiners (NCLE) exam.

Respondent is employed by Stanton Optical. He is a lab manager at their Oceanside store. He cuts, mounts and produces eyewear. He also supervises and trains staff in the lab and on the sales floor. Respondent is involved with the customers when they have questions or issues the general staff cannot address.

Respondent has continued his faith-based mission. He is the co-pastor at Pillar of Fire, a church he started while in prison. He conducts bible studies, community outreach events and motivational talks for the benefit of residents in southeast San Diego.

Respondent testified that "stressors" in prison were the pressures of a small community where everyone knows your business. He made the decision to follow his faith and survived "only with the grace of God." The "stressors" outside of prison are made up of "a whole world of things." Respondent knows he could "do things that are inappropriate," but his faith in God helps him through any difficult time. In his life after prison, he tries to "be a better person every day."

Testimony of Other Witnesses

8. Alyse Tran testified that she is employed at Stanton Optical with respondent. Ms. Tran is a 2018 graduate of the University of California, San Diego with a degree in biology. She has been a full time employee of Stanton since October 2018. Ms. Tran respects and admires respondent's skills in the lab and his rapport with customers. Respondent is never too busy to help out a fellow worker or a demanding customer. Ms. Tran's testimony was sincere, emotional and relevant to respondent's skills as applicant for these licenses. She believes that respondent has put in the work necessary for his license and should be rewarded for his efforts.

9. Pamela Gonzales, Southern California Field Director for Prison Fellowship² testified on respondent's behalf. Ms. Gonzales has known respondent since his release from prison. She is impressed with his ability to offer inspiration to the members of his church, the Pillar of Fire. Through her work, Ms. Gonzales has worked with many parolees. She noted that respondent has no sense of entitlement about his freedom, and that he has true remorse and wants to live a life of service.

10. Daniel Gonzales is respondent's co-pastor at the Pillar of Fire church. He has known respondent for over 10 years. They were in prison together. Mr. Gonzales observed respondent's impact on his fellow prisoners with character and morals.

11. Karin Esselstron testified briefly that she knows respondent through her work with World Impact Ministry.³ Ms. Esselstron noted that respondent is grateful for his freedom and wants to give back to his community through his Christian beliefs.

12. Richard Esselstron is the city director of World Impact Ministry. He helped create the Urban Ministry Institute of San Diego (TUMISD). Respondent completed many of the programs offered by Urban Ministry Institute while still in prison and has been involved with Mr. Esselstron's work since his release from prison. Mr. Esselstron is impressed with respondent's skills and dedication to local neighborhoods.

² Prison Fellowship is a Christian nonprofit organization for prisoners, former prisoners, and their families, and a leading advocate for justice reform.

³ World Impact is a Christian organization that seeks to empower urban leaders and partners with local churches through the Gospel.

Letter from Parole Agent Alvarado

13. Respondent's parole agent, F. Alvarado, wrote a letter dated May 21, 2019, which warrants being quoted nearly in full. Agent Alvarado stated:

Mr. Dawson has exceeded my expectations while on parole supervision. Dawson was released from state prison on 2/12/2017 and to date he has done extraordinary [s/c]. He completed a transitional requirement of six months and is now residing at Tumi, a faith based program in the community. Immediately following his completion of the transitional housing, he obtained full-time employment at Stanton Optical in San Diego. He has been employed there since 2017 and is still a full-time employee.

When Mr. Dawson is not working, he stays very involved with self-help groups in the community and giving back to our local troubled youth. He has done speaking engagements at local schools, outreach programs and now is approved to go into prison to mentor other inmates. Mr. Dawson is currently participating in "Giving Life Back to Lifers" and is actively involved with other inmates that are currently incarcerated giving them hope. He also graduated as a community PRNN member which is a support group within our local lifer community. His positive influence to others only re-enforces that he has dedicated himself to becoming that productive member of society and has

continued to abide by all requirements set before him on parole.

Mr. Dawson is a prime example of what hard work, determination and perseverance will do for someone who strives for better quality of life. Mr. Dawson is not only deserving of an opportunity to obtain his license as a Registered Spectacle Lens Dispenser to include Contact Lens Dispenser but should he be given the opportunity [sic] he will without question excel in the field. He continues to set goals and has dedicated himself to fulfilling them [sic] is why he has appealed the process and is not willing to give up on something he strives in.

Other Reference Letters

14. In a letter dated October 12, 2018, John B. Vinh, O.D. wrote that he has known and worked with respondent for over one year. He has seen respondent mentor young opticians with his "phenomenal" knowledge of optics and pride in his work. Dr. Vinh would not hesitate to have respondent as his licensed optician or lab manager.

15. In a letter dated October 14, 2018, Heather Bradley, who is a Brand Manager at Stanton Optical, wrote that she has known and worked with respondent for over a year. She met him shortly after his prison release. He had been hired as a relief lab technician covering four Stanton Optical locations. Even at an entry level position, respondent provided a source of inspiration for fellow workers with his "positive attitude and morality."

16. Pamela Gonzales of Prison Fellowship, Pastor Daniel L. Gonzales of Pillar of Fire Church and Rev. Richard S. Esselstron of World Impact also submitted letters of reference. All three testified at the hearing and expressed the same positive remarks in person.

Parole Board Hearing

17. On April 6, 2016, respondent appeared and testified before a two-commissioner panel of the Board of Parole Hearings. At the conclusion of the hearing, the panel found respondent suitable for parole. It was respondent's first and only parole hearing.

18. Commissioners noted respondent's positive work report in a variety of job assignments, some of which were very difficult to be screened into and easy to lose. Commissioners also noted numerous treatment and vocational programs respondent undertook while in prison. The Commissioners acknowledged that Celebrate Recovery was a consistent program for respondent.

The Commissioners also considered numerous positive "informational 128B chronos"⁴ prepared by prison staff, officers, and superiors that respondent received. Reference was made to a "laudatory chrono" respondent more than once received for his work and "dedication in Celebrate Recovery." Other examples are detailed immediately below.

⁴ A "chrono" is a kind of report or narrative filled out by prison staff on a particular form.

A correctional officer commended respondent for "his positive programming efforts and always conducting himself in a respectful manner towards staff and others" and that his "willingness to assist newly arrived inmates to adjust to being incarcerated." A dining room work supervisor commended respondent more than once for his "work performance and efforts to help the culinary run smoothly."

Respondent was recognized several times for his "dedication in the Voluntary Education Program in helping others achieve their academic goals."

The office of the Los Angeles District Attorney (DA) "vehemently opposed" respondent's release from prison. The DA was not convinced that respondent has conducted a "comprehensive, fearless inventory of his personal defects." Nevertheless, at the parole hearing, the deputy DA recognized respondent as "the antithesis of most life prisoners." The deputy DA acknowledged respondent's "stellar" record of discipline in prison and his "self-help accomplishments."

A Comprehensive Risk Assessment from a Dr. L. Hazelwood, Ph.D. was referenced at the hearing. Dr. Hazelwood found that respondent exhibited no symptoms of major mental disorder, evidence of instability or violent intent. She concluded respondent presented a statistically low risk to re-offend if paroled.

The Commissioners referenced a number of letters written on respondent's behalf by members of his family and friends.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In the absence of a statute to the contrary, the burden of proof is on the applicant for a license or permit. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224-1225; *Southern California Jockey Club, Inc. v. California Horse Racing Board* (1950) 36 Cal.2d 167, 177.) Accordingly, the burden of proof is on respondent.

2. The standard of proof applicable to a non-professional occupational license is a preponderance of the evidence. (Evid. Code, §§ 115 & 500; *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th, 312, 318-319.)

3. "'Preponderance of the evidence' means evidence that has more convincing force than that opposed to it. [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*)

Applicable Statutes

4. Business and Professions Code section 475 provides:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

5. Business and Professions Code section 480 provides in part:

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

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

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

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

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

6. Business and Professions Code section 482 provides:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Business and Professions Code section 493 provides:

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

8. Business and Professions Code section 2559.2, subdivision (b), provides that the board may deny registration as a registered spectacle lens dispenser where

there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

Applicable Regulations

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

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.

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

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

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

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

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

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

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

Substantial Relationship

11. Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or

profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

12. Respondent's convictions for murder and armed robbery are substantially related to the qualifications, functions and duties of a spectacle lens dispenser or contact lens dispenser under the board's substantial relationship criteria because of the nature of the offense. The health, safety and welfare of the public are potentially at risk. (Cal. Code Regs., tit. 16, § 1399.207.)

Cause Exists to Deny the Application

13. Cause exists under Business and Professions Code sections 480, subdivision (a), and 2559.2, subdivision (b), to deny respondent's applications as a result of the convictions described herein, which are substantially related to the qualifications, functions and duties of a dispensing optician. Cause exists under Business and Professions Code sections 480, subdivision (b)(2), and 2559.2, subdivision (b), to deny respondent's applications as respondent committed an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another.

Rehabilitation

14. California Code of Regulations, title 16, section 1399.271, establishes the criteria to consider when evaluating rehabilitation. The criteria include consideration of the nature and severity of the act or omission, the licensee's total criminal record, the time that has elapsed since the act, whether the licensee complied with the terms of criminal probation, whether the conviction has been expunged, and whether the applicant has submitted any other evidence of rehabilitation.

15. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) An individual's candor, cooperation and remorse, and a willingness to accept punishment and good faith efforts to rehabilitate himself may be significant mitigating factors. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626.) Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Evaluation

16. Respondent was convicted of murder and armed robbery. He spent 21 years in prison and was released just two years ago. Since the time of his release, respondent has been on supervised parole.

It is within this context that it must be determined whether the present case is one of those exceptional ones where, despite the seriousness of the crimes, the granting of at least probationary licenses is appropriate and consistent with the protection of the public.

In this regard, respondent presented extensive witness testimony, including a co-worker and several who have come to know respondent through community service activities. All who testified were aware of respondent's conviction, have first-hand knowledge of respondent's character and more recent activities, and spoke of respondent in highly positive terms.

Respondent also submitted five reference letters, including two from persons in supervisory positions at the facility where he has been employed for over a year. He also included an impressive letter from his parole agent, who (again) spoke of respondent in laudatory terms. Via the parole board hearing, multiple "chronos," prepared by correctional personnel at the institutions where respondent was incarcerated, and which were in a certain sense the equivalent of reference letters though not prepared specifically with that purpose in mind, were summarized or quoted from, and which also spoke of respondent in highly positive terms. Other positive "chronos" were referenced at the parole board hearing, though not summarized or quoted from.

Respondent's testimony, both at the parole board hearing and at the hearing in the present matter, provides further support of his rehabilitation. Respondent in both instances seemed very forthright about the crimes he had committed. He did not blame his family background or circumstances. Respondent did not minimize the seriousness of the crimes he committed.

Respondent accepted responsibility for his crimes and made profound and dramatic changes in his life. This process began in prison more than 10 years ago and continues to date. Respondent bettered himself and made amends through his vocational training, educational programs, volunteer work with youth and in the prisons, and through securing full-time work shortly after his release from prison.

Respondent has made this a spiritual quest as well from which he has not wavered. His church, the Pillar of Fire, began in prison and now serves the residents of southeast San Diego.

Respondent was a 25-year old man when he committed his crimes. He is now 46. While age itself does not guarantee that a person will change for the better, in this instance, the evidence is overwhelming that respondent is today a much more responsible and mature person from the one who committed those crimes 21 years ago. The evidence establishes that respondent has been fully rehabilitated. A grant of probationary licenses would not pose danger to the public and is otherwise consistent with the public interest.

17. Taking into account all of the matters discussed above within the context of the applicable statutory and regulatory framework, cause exists to deny respondent unrestricted licenses as a registered spectacle lens dispenser and a registered contact lens dispenser. However, it would not be against the public interest to grant respondent restricted (probationary) licenses with appropriate conditions.

ORDER

The applications of respondent Martin Earl Dawson for licensure as a registered spectacle lens dispenser and registered contact lens dispenser are hereby granted. Upon successful completion of the licensure examinations and all other licensing requirements including payment of all fees and evaluation of the applications, licenses shall be issued to respondent. Said licenses shall immediately be revoked, the order of revocation stayed and respondent's licenses placed on probation for a period of three years on the following conditions:

SEVERABILITY CLAUSE

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

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the board or its representative.

Respondent is encouraged to contact the board's probation monitoring program representative at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against respondent's license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board 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/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the board from pursuing further disciplinary action. However, respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

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

5. FUNCTION AS A SPECTACLE AND CONTACT LENS DISPENSER

Respondent shall function as a spectacle and contact lens dispenser for a minimum of 60 hours per month for the entire term of his/her probation period.

6. NOTICE TO EMPLOYER

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

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

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The respondent must ensure that the board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to 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.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however respondent must also provide his/her physical residence address as well.

8. COMMUNITY SERVICES

All types of community services shall be at the board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, a community service program in which respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of 10 hours per month of probation. Such services shall begin no later than 15 calendar days after respondent is notified of the approved program.

9. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

10. 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, will 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 optometrist is/was provided.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years.

However, respondent's license 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.

11. LICENSE SURRENDER

During respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, respondent may surrender his/her license 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 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.

Surrender of respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the board.

12. VIOLATION OF PROBATION

If respondent violates any term of the 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.

13. COMPLETION OF PROBATION

Upon successful completion of probation, respondent's license shall be fully restored.

DATE: December 4, 2019

DocuSigned by:
Russel T. Little
6A8EAD3666AF40B...
RUSSEL T. LITTLE

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
4 State Bar No. 120482
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9457
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:
13 **MARTIN EARL DAWSON**
14 **Registered Spectacle Lens Dispenser Applicant**
15 **Registered Contact Lens Dispenser Applicant**
16 Respondent.

Case No. 420 2018 000449
FIRST AMENDED STATEMENT OF ISSUES

17 Complainant alleges:

18 **PARTIES**

19 1. Shara Murphy (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the California State Board of Optometry (Board),
21 Department of Consumer Affairs.

22 2. On June 12, 2018, the Board received an application for a Spectacle Lens
23 Dispenser Registration from Martin Earl Dawson (Respondent). On June 12, 2018, Martin Earl
24 Dawson certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on December 7, 2018.

26 3. On July 2, 2019, the Board received an application for a Contact Lens Dispenser
27 Registration from Respondent. On July 2, 2019, Martin Earl Dawson certified under penalty of
28

1 perjury to the truthfulness of all statements, answers, and representations in the application. The
2 Board denied the application on July 25, 2019.

3 JURISDICTION

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

7 5. Code section 2559.2, subdivision (b) states:

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

10 6. Code section 2561 states:

11

12 The Board may deny registration where there are grounds for denial under
13 the provisions of Division 1.5 (commencing with Section 475).

14

15 STATUTORY PROVISIONS

16 7. Code section 475 states:

17 (a) Notwithstanding any other provisions of this code, the provisions of
18 this division shall govern the denial of licenses on the grounds of:

19 (1) Knowingly making a false statement of material fact, or knowingly
20 omitting to state a material fact, in an application for a license.

21 (2) Conviction of a crime.

22 (3) Commission of any act involving dishonesty, fraud or deceit with
the intent to substantially benefit himself or another, or substantially injure
another.

23 (4) Commission of any act which, if done by a licentiate of the
24 business or profession in question, would be grounds for suspension or revocation
of license.

25 (b) Notwithstanding any other provisions of this code, the provisions of
26 this division shall govern the suspension and revocation of licenses on grounds
specified in paragraphs (1) and (2) of subdivision (a).

27 (c) A license shall not be denied, suspended, or revoked on the grounds of
28 a lack of good moral character or any similar ground relating to an applicant's
character, reputation, personality, or habits.

1 8. Code section 477 states:

2 As used in this division:

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

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

7 9. Code section 480 states:

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

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

18 (2) Done any act involving dishonesty, fraud, or deceit with the intent
19 to substantially benefit himself or herself or another, or substantially injure
20 another.

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

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

26

27 10. Code section 482 states:

28 Each board under the provisions of this code shall develop criteria to
evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

11. Code section 493 states:

(a) Notwithstanding any other provision of law, in a proceeding conducted
by a board within the department pursuant to law to deny an application for a

1 license or to suspend or revoke a license or otherwise take disciplinary action
2 against a person who holds a license, upon the ground that the applicant or the
3 licensee has been convicted of a crime substantially related to the qualifications,
4 functions, and duties of the licensee in question, the record of conviction of the
5 crime shall be conclusive evidence of the fact that the conviction occurred, but
6 only of that fact, and the board may inquire into the circumstances surrounding
7 the commission of the crime in order to fix the degree of discipline or to
8 determine if the conviction is substantially related to the qualifications, functions,
9 and duties of the licensee in question.

10 (b) As used in this section, "license" includes "certificate," "permit,"
11 "authority," and "registration."

12 (c) This section shall become inoperative on July 1, 2020, and, as of
13 January 1, 2021, is repealed.

14 **REGULATORY PROVISIONS**

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

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

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

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

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

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

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

29 **FIRST CAUSE FOR DENIAL OF APPLICATIONS**

30 **(January 31, 1996 Convictions for Murder and Robbery on December 7, 1994)**

31 13. Respondent's application for a Spectacle Lens Dispenser Registration, and his
32 application for a Contact Lens Dispenser Registration, are each subject to denial under Code
33 section 2559.2, subdivision (b), and section 480, subdivision (a)(1), in that he was convicted of
34 crimes substantially related to the qualifications, duties, and functions of a Registered Spectacle
35 Lens Dispenser.

1 14. The circumstances are that on January 31, 1996, in a criminal proceeding entitled
2 *People of the State of California v. Martin Earl Dawson*, in Los Angeles County Superior Court,
3 Beverly Hills Courthouse, Case Number SA020541, Respondent was convicted by jury verdict
4 of violating Penal Code section 187, subdivision (a), and section 189, murder of the first degree,
5 and Penal Code section 211, second degree robbery, both serious felonies within the meaning of
6 Penal Code section 1192.7, subdivision (c)(1). The jury found true the allegation that at the time
7 of the commission of murder in the first degree and second degree robbery, Respondent
8 personally used a deadly or dangerous weapon, a .9 millimeter pistol, which was a sentencing
9 enhancement under Penal Code section 12022, subdivision (a)(1). The facts that led to the
10 convictions are that on December 7, 1994, Respondent learned that a shop owner in Beverly
11 Hills, California, wore a large diamond ring. Respondent went to the shop, confirmed that the
12 owner was wearing the ring, and notified his co-conspirator. Respondent's co-conspirator then
13 went to the shop, demanded the ring and when refused, shot the owner, took her ring and left in a
14 getaway vehicle driven by Respondent. During a search of Respondent's residence, investigators
15 located the firearm used in the business owner's murder. On February 29, 1996, as a result of the
16 conviction for first degree murder, Respondent was sentenced to 26 years to life in prison, with
17 possibility for parole, and credit for 427 days actually served and 64 days for good behavior. As
18 to the conviction for second degree robbery, Respondent was sentenced to six years in prison, to
19 be served consecutively with the first degree murder conviction, but stayed under Penal Code
20 section 654. Respondent was also ordered to pay \$5,000.00 in restitution to the victim's family.

21 **SECOND CAUSE FOR DENIAL OF APPLICATIONS**

22 **(Robbery - Acts Involving Dishonesty, Fraud, or Deceit)**

23 15. Respondent's application for a Spectacle Lens Dispenser Registration, and his
24 application for a Contact Lens Dispenser Registration, are each subject to denial under Code
25 section 2559.2, subdivision (b), and section 480, subdivision (a)(2), in that he committed acts
26 involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or
27 substantially injure another.

28 16. The circumstances are that on June 8, 1991, Respondent and an accomplice,

1 posing as customers, entered a store along Sepulveda Boulevard in Los Angeles, California.
2 Once inside, Respondent held sales staff at gun point, while his accomplice robbed office staff.
3 When Respondent was arrested at his residence, officers found a loaded .9 millimeter weapon in
4 plain view. On April 3, 1992, in a criminal proceeding entitled *The People of the State of*
5 *California v. Martin Earl Dawson*, in Los Angeles County Superior Court, West Los Angeles
6 Courthouse, Case Number SA007162, Respondent was convicted on his plea of nolo contendere
7 to violating Penal Code section 32, accessory to the felony crime of second degree robbery, a
8 misdemeanor. A felony charge for violation of Penal Code section 211, second degree robbery,
9 was dismissed under a plea bargain. As a result of the conviction, Respondent was sentenced to
10 one-year summary probation, with the first 14 days to be served in jail, with credit for nine days
11 served and five days for good behavior. On August 3, 1994, after Respondent's probation had
12 expired, Respondent's plea of guilty was set aside, a plea of not guilty was entered, and
13 Respondent's case was dismissed under Penal Code section 1203.4.

14 **PRAYER**

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

- 17 1. Denying the application of Martin Earl Dawson for a Registered Spectacle Lens
18 Dispenser Certificate of Registration;
19 2. Denying the application of Martin Earl Dawson for a Contact Lens Dispenser
20 Certificate of Registration; and,
21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 28 AUG 2019


23 SHARA MURPHY
24 Executive Officer
25 California State Board of Optometry
26 Department of Consumer Affairs
27 State of California
28 Complainant

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