

1 **BEFORE THE**
2 **ARIZONA STATE BOARD OF DISPENSING OPTICIANS**

3 In the Matter of

Case No. 18-005 _____

4 **SEARS OPTICAL #1719**
5 **3400 GATEWAY BLVD.**
6 **PRESCOTT, AZ 86303**
7 **OPTICAL ESTABLISHMENT**
8 **LICENSE # 000483,**

**CONSENT AGREEMENT/
ORDER**

Respondent.

9 **RECITALS**

10 In the interest of a prompt and judicious settlement of this case, consistent with the
11 public interest, statutory requirements, and responsibilities of the Arizona State Board of
12 Dispensing Opticians ("Board"), and under A.R.S. §§ 32-1671, et seq., and 41-
13 1092.07(F)(5), Respondent Sears Optical #1719 located at 3400 Gateway Blvd., Prescott,
14 AZ, 86303, holder of Optical Establishment License number 000483 issued by the Board
15 ("Respondent 1719") and the Board enter into the following Recitals, Findings of Fact,
16 Conclusions of Law and Order ("Consent Agreement") as the final disposition of this
17 matter.

18
19 1. Respondent has read and understands this Consent Agreement; has been provided
20 the opportunity to discuss this Consent Agreement with an attorney; and knowingly,
21 intelligently, and voluntarily enter into this Consent Agreement.

22 2. Respondent understands they have the right to a public administrative hearing
23 concerning this matter, at which they could present evidence and cross-examine
24 witnesses. By entering into this Consent Agreement, Respondent knowingly and
25 voluntarily relinquishes all rights to such an administrative hearing, as well as all rights
26 of rehearing, review, reconsideration, appeal, judicial review or any other administrative

1 and/or judicial action, concerning the matters set forth herein. Respondent affirmatively
2 agrees that this Consent Agreement shall be irrevocable.

3 3. Respondent understands that this Consent Agreement or any part of the Agreement
4 may be considered in any future disciplinary action by the Board against Respondent.

5 4. Respondent understands that this Consent Agreement deals with Board Case No.
6 18-005. The investigation into this case against Respondent shall be concluded upon the
7 Board's adoption of this Consent Agreement.

8 5. All admissions made by Respondent in this Consent Agreement are made solely
9 for the final disposition of this matter, and any related administrative proceedings or civil
10 litigation involving the Board and Respondent. Any admissions made by Respondent in
11 this Consent Agreement are not intended for any other use, such as in the context of
12 another regulatory agency's proceedings, or civil or criminal proceedings, whether in the
13 State of Arizona or in any other state or federal court.
14

15 6. Respondent acknowledges and agrees that, upon signing this Consent Agreement
16 and returning this document to the Board's Executive Director, Respondent may not
17 revoke acceptance of the Consent Agreement or make any modifications to the document,
18 regardless of whether the Consent Agreement has been issued by the Board's Chairman.
19 Any modification to this original document is ineffective and void unless mutually
20 approved by the parties in writing.

21 7. Respondent understands that the foregoing Consent Agreement shall not become
22 effective unless and until adopted by the Board and signed by its Chairman.
23

24 8. Respondent understands and agrees that if the Board does not adopt this Consent
25 Agreement, they will not assert as a defense that the Board's consideration of this
26 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

1 9. Respondent understands that this Consent Agreement is a public record that may
2 be publicly disseminated by the Board.

3 **FINDINGS OF FACT**

4 10. The Board has jurisdiction over the practice of Dispensing Opticians and
5 Dispensing Optician Establishments pursuant to A.R.S. §§ 32-1671, *et seq.*

6 11. Respondent 1719 holds Optical Establishment License number 000483, issued by
7 the Board.

8 12. Prior to October 25, 2018, Board staff became aware there was no licensed
9 optician working at the physical location of Respondent 1719.

10 13. On or about October 25, 2018, the Board contacted Respondent 1719 to notify
11 them that:

12
13 A.R.S. Sections 32-1671.2 and 32-1684.01 require that one licensed
14 dispensing optician be employed on a full-time basis at each optical
15 establishment. According to the Board's records, [Respondent 1719] does
16 not have a licensed dispensing optician assigned on a full-time basis.

17 The correspondence further requested Respondent 1719 provide a written response
18 notifying the Board as to what remedial action Respondent 1719 intended to take.

19 14. On or about November 5, 2018, the Board received a response confirming there
20 was not a licensed dispensing optician employed on-site on a full-time basis at
21 Respondent 1719. The response additionally notified Board staff that the last date of full-
22 time employment of a licensed dispensing optician at Respondent 1719 was August 31,
23 2018.

24 15. On December 4, 2018, the Board received further notification from Respondent
25 1719 that there was still not a full-time licensed optician on-site.
26

1 16. On January 3, 2019, the Board voted the matter to Complaint/ Notice of hearing
2 for violation of Board statutes.

3 **CONCLUSIONS OF LAW**

4 17. "A person who violates... a board rule is subject to disciplinary action as
5 prescribed in this article." A.R.S. § 32-1696(B).

6 18. Pursuant to A.R.S. § 32-1693(B), through A.R.S. § 32-1691.01, the Board may
7 take any combination of the following disciplinary actions against a licensee for a
8 violation of Board rules: revocation, suspension, decree of censure, probation, order of
9 restitution, and civil penalty of no more than one thousand dollars per violation.

10 19. Pursuant to A.A.C. R4-20-110(C), "[t]o be licensed, an optical establishment shall
11 employ at least one dispensing optician licensed by the Board, for at least 32 hours or
12 more per week."
13

14 **ORDER**

15 Based on the above Findings of Fact and Conclusions of Law, **IT IS ORDERED**
16 that:

17 1. **VOLUNTARY REVOCATION:** Optical Establishment License number 000483,
18 issued by the Board, shall be revoked as of the effective date of this Order.

19 2. **PENALTY:** Respondent shall pay a civil penalty in the amount of Seven-Hundred
20 and Fifty Dollars (\$750.00).

21 3. **ASSURANCE OF DISCONTINUANCE:** Respondent shall not operate in
22 violation of Board statutes and rules.


23 4. **ATTORNEY'S FEES/ COSTS:** Each party shall bear its own attorney's fees and
24 costs.

25 5. **EFFECTIVE DATE:** This Order is effective upon acceptance by the Board and
26

1 by Respondent of the Consent Agreement/ Order as evidenced by the respective
2 signatures thereto. The parties may execute this Consent Agreement/ Order in
3 counterparts, and the parties understand and agree that copies, including facsimile or e-
4 mail signatures thereto, shall have the same force and effect as originals.

5
6 DATED AND EFFECTIVE this 2ND day of FEBRUARY, 2019.

7 ARIZONA BOARD OF DISPENSING OPTICIANS

8
9 By: 
10 Dale Nyblade
11 Chairman
12 Licensed Optician

13
14
15 **CONSENT TO BOARD ORDER OF**
16 **SEARS OPTICAL #1719**

17 I, Tammy Reaves, am an authorized signer signing on behalf
18 of Respondent 1719 in the above-entitled matter pending before the Arizona State Board
19 of Dispensing Opticians ("Board").

20 I have read and understand everything contained in the foregoing Findings of Fact,
21 Conclusions of Law and Order. If this Consent Agreement/ Order is approved by the
22 Board, Respondent 1719 agrees to its immediate issuance and to be bound by its terms.

23 I am aware of the right to consult legal counsel prior to entering into the Consent
24 Agreement/ Order, and such consultation has either been obtained or is waived. I am
25 aware of the right to an administrative hearing in this matter and, except as otherwise
26 provided by the Consent Agreement/ Order, waive the same. No promises of any kind or

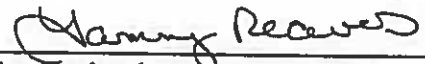
1 nature whatsoever were made by the Board to induce consent to this Consent Agreement/
2 Order. I waive all rights on behalf of Respondent 1719 to challenge the foregoing
3 Consent Agreement/ Order on appeal, or otherwise to the Board or any other court or
4 tribunal.

5 I understand that that the Consent Agreement/ Order may be considered in any
6 future disciplinary action against Respondent 1719, and that acceptance of this Consent
7 Agreement/ Order does not preclude any other agency, subdivision or officer of this State
8 or another city, county, state or federal agency from instituting other civil or criminal
9 proceedings with respect to the conduct in issue as may be appropriate now or in the
10 future.

11 I understand that this Consent Agreement/ Order constitutes disciplinary action
12 against Respondent Firm's registration, and that the related investigation is a matter of
13 public record.

14 By my signature, I verify that I have read and understand everything contained in
15 the foregoing Consent Agreement/ Order.

16 Dated this 22 day of February, 2019.

17
18 
19 _____
20 Authorized representative
21 Sears Optical #1719
22 3400 Gateway Blvd.
23 Prescott, AZ, 86303
24
25
26

1 **Original** of the foregoing filed
2 this 25 day of February 2019, with:

3 The Arizona State Board of Dispensing Opticians
4 1740 W. Adams Street
5 Suite 3001
6 Phoenix, AZ 85007

7 **Copy** of the foregoing mailed
8 this 25 day of February 2019 to:

9 Sears Optical # 1719
10 3400 Gateway Blvd.
11 Prescott, AZ, 86303

12 Scott Donald
13 Assistant Attorney General
14 License and Enforcement Section
15 2005 N. Central Ave.
16 Phoenix, Arizona 85004

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By: M. Davan