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

3 In the Matter of

Case No. 20-001 \_\_\_\_\_

4 **BARNET DULANEY PERKINS EYE**  
5 **CENTER**  
6 **1951 S. WHITE MOUNTAIN ROAD,**  
**SHOW LOW AZ , AZ 85901,**

**CONSENT AGREEMENT/  
ORDER**

7 Respondents.

8 **RECITALS**

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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 Barnet Dulaney Perkins Eye Center, 1355 W. White Mountain  
14 Blvd., Ste. A, Lakeside, AZ, 85929 ("Respondent") and the Board enter into the  
15 following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent  
16 Agreement") as the final disposition of this matter.

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

20 2. Respondent understands they have right to a public administrative hearing  
21 concerning this matter, at which they could present evidence and cross-examine  
22 witnesses. By entering into this Consent Agreement, Respondent knowingly and  
23 voluntarily relinquishes all rights to such an administrative hearing, as well as all rights  
24 of rehearing, review, reconsideration, appeal, judicial review or any other administrative  
25 and/or judicial action, concerning the matters set forth herein. Respondent affirmatively  
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1 agrees that this Consent Agreement shall be irrevocable.

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

4 4. Respondent understands that this Consent Agreement deals with Board Case No.  
5 20-001. The investigation into this case against Respondent shall be concluded upon the  
6 Board's adoption of this Consent Agreement.

7 5. All admissions made by Respondent in this Consent Agreement are made solely  
8 for the final disposition of this matter, and any related administrative proceedings or civil  
9 litigation involving the Board and Respondent. Any admissions made by Respondent in  
10 this Consent Agreement are not intended for any other use, such as in the context of  
11 another regulatory agency's proceedings, or civil or criminal proceedings, whether in the  
12 State of Arizona or in any other state or federal court.  
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14 6. Respondent acknowledges and agree that, upon signing this Consent Agreement  
15 and returning this document to the Board's Executive Director, Respondent may not  
16 revoke acceptance of the Consent Agreement or make any modifications to the document,  
17 regardless of whether the Consent Agreement has been issued by the Board's Chairman.  
18 Any modification to this original document is ineffective and void unless mutually  
19 approved by the parties in writing.

20 7. Respondent understands that the foregoing Consent Agreement shall not become  
21 effective unless and until adopted by the Board and signed by its Chairman.  
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23 8. Respondent understands and agrees that if the Board does not adopt this Consent  
24 Agreement, it will not assert as a defense that the Board's consideration of this Consent  
25 Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

26 9. Respondent understands that this Consent Agreement is a public record that may

1 be publicly disseminated by the Board.

2 **FACTUAL ALLEGATIONS**

3 10. Respondent was not licensed by the Board at any time relevant to the allegation of  
4 this Consent Agreement/ Order, nor is the Respondent presently licensed by the Board.

5 11. On or about December 9, 2019, Board staff became aware that Respondent may be  
6 operating without a valid license in violation of Arizona statutes.

7 12. Subsequent investigation by Board staff determined that Respondent is dispensing  
8 lenses and frames to an intended wearer.

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10 **ALLEGATIONS OF VIOLATION**

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12 13. Pursuant to A.R.S. § 32-1699, "The board may impose a civil penalty of not more  
13 than one thousand dollars against any person or entity acting without a license issued by  
14 the board in violation of this chapter."

15 14. Pursuant to A.R.S. 32-1684.01(A), "[a]ny person, corporation, company,  
16 partnership, firm, association or society that wishes to operate an optical establishment  
17 shall submit a verified application to the board on a form prescribed by the board."

18 15. Pursuant to A.R.S. 32-1671(4), "[o]ptical establishment" means a physical  
19 location in which lenses, contact lenses, frames, artificial eyes, optical devices,  
20 appurtenances thereto or parts thereof are dispensed to the intended wearer."

21 16. The conduct and circumstances above constitute cause for a civil penalty against  
22 Respondent.  
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3 **ORDER**

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

6 1. The Respondent shall pay a civil penalty in the amount of one thousand dollars  
7 (\$1,000.00). This entire amount shall be paid within thirty (30) days of the effective date  
8 of this consent agreement, and shall be paid in the form of a cashier's check or money  
9 order made payable to the Board.


10 2. This Consent Order is effective upon its acceptance by the Board and by  
11 Respondent as evidenced by the respective signatures thereto. The effective date of this  
12 Consent Order is the date the Agreement is signed by the Board and by Respondent. If  
13 the Agreement is signed on different dates, the later date shall be the effective date. The  
14 parties may execute this Consent Order in counterparts, and the parties understand and  
15 agree that copies of this Order, including facsimile or e-mail signatures thereto, shall have  
16 the same force and effect as originals.

17 3. The failure of Respondent to complete or comply with any of the requirements or  
18 provisions of this Consent Order may be a violation of this Consent Order and A.R.S. §  
19 32-1693(A)(3) (“[v]iolation of any Board order or rule”).

20 4. This Consent Order is subject to the Board's approval and will be effective only  
21 when the Board accepts it. In the event the Board in its discretion does not approve this  
22 Consent Order, it shall be deemed withdrawn and shall be of no evidentiary value, nor  
23 shall it be relied upon or introduced into evidence in any disciplinary action or legal  
24 matter by any party hereto, except that Respondents agree that should the Board reject  
25 this Consent Order and this case proceeds to hearing, Respondents shall assert no claim  
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1 that the Board was prejudiced by its review and discussion of this document or of any  
2 records relating thereto.

3 5. The Board has determined that this Consent Order protects the public safety and  
4 welfare and is more likely to rehabilitate Respondent than formal disciplinary  
5 proceedings.

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8 By:   
9 Dale Nyblade  
10 Chairman  
11 Licensed Optician

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12 **CONSENT TO BOARD DECISION AND ORDER**  
13 **BARNET DULANEY PERKINS EYE CENTER,**  
14 **1951 S. WHITE MOUNTAIN ROAD,**  
15 **SHOW LOW AZ, AZ 85901,**

16  
17 I, Jennifer Barnes, am an authorized signer signing on behalf  
18 of Respondent in the above-entitled matter pending before the Arizona State Board of  
19 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 Order is approved by the Board,  
22 Respondent 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 Order,  
24 and such consultation has either been obtained or is waived. I am aware of the right to  
25 an administrative hearing in this matter and, except as otherwise provided by the Consent  
26 Order, waive the same. No promises of any kind or nature whatsoever were made by the

1 Board to induce consent to this Consent Order. I waive all rights on behalf of  
2 Respondent to challenge the foregoing Consent Order on appeal, or otherwise to the  
3 Board or any other court or tribunal.

4 I understand that a failure of Respondent to comply with any of the provisions of  
5 this Consent Order will be considered non-compliance and may constitute grounds for  
6 further disciplinary action; that the Consent Order may be considered in any future  
7 disciplinary action against Respondent; and that acceptance of this Consent Order does  
8 not preclude any other agency, subdivision or officer of this State or another city, county,  
9 state or federal agency from instituting other civil or criminal proceedings with respect to  
10 the conduct in issue as may be appropriate now or in the future.

11 I understand that the related investigation is a matter of public record.

12 By my signature, I verify that I have read and understand everything contained in  
13 the foregoing Consent Order.

14 Dated this 21<sup>st</sup> day of January, 2020.

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16 \_\_\_\_\_  
17 Authorized Signer

18 **Original** of the foregoing filed  
19 this 5<sup>th</sup> day of February, 2020, with:

20 The Arizona State Board of Dispensing Opticians  
21 1740 W. Adams Street  
22 Suite 3001  
23 Phoenix, AZ 85007

24 **Copy** of the foregoing mailed  
25 this same day to:

26 Barnet Dulaney Perkins Eye Center  
1951 S. Mountain Road,  
Show Low, AZ 85901

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By:

*F. P. Davis*

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