

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

3 In the Matter of

4 **CLEAR VISION EXPRESS TUCSON**
5 **LLC, 9630 N. ORACLE RD.,**

6 **Optical Establishment**
7 **License No. LOE-001411,**

8 Respondent.

Case No. 19-002

**CONSENT AGREEMENT/
ORDER**

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 Clear Vision Express Tucson LLC, 9630 N. Oracle Rd.,
14 holder of Optical Establishment License number LOE-001411, issued by the Board
15 ("Respondent"), 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.
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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 enters into this Consent Agreement.

22 2. Respondent understands that it has a right to a public administrative hearing
23 concerning this matter, at which it could present evidence and cross-examine witnesses.

24 By entering into this Consent Agreement, Respondent knowingly and voluntarily
25 relinquishes all rights to such an administrative hearing, as well as all rights of rehearing,
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1 review, reconsideration, appeal, judicial review or any other administrative and/or
2 judicial action, concerning the matters set forth herein. Respondent affirmatively agrees
3 that this Consent Agreement shall be irrevocable.

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

6 4. Respondent understands that this Consent Agreement deals with Board Case No.
7 19-002. The investigation into this case against Respondent shall be concluded upon the
8 Board's adoption of this Consent Agreement.

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

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 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, it will not assert as a defense that the Board's consideration of this Consent
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1 Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

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

4 **FINDINGS OF FACT**

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

7 11. At all times relevant to the allegations in this Complaint, Respondent held
8 Licensed Optical Establishment License LOE-001411 issued by the Board. LOE-001411
9 is currently expired.

10 12. In January of 2019, Board staff was notified that there was no licensed dispensing
11 optician working for Respondent on a full-time basis.

12 13. On or about February 21, 2019, Board Investigator James McClafferty
13 (“McClafferty”) verified there was not a licensed dispensing optician working on a full-
14 time basis at Respondent.

15 14. Respondent has notified the Board a licensed dispensing optician is scheduled to
16 begin working at Respondent’s location beginning October 7, 2019.

17 **CONCLUSIONS OF LAW**

18 19 15. The Board is authorized to revoke or suspend a license or impose lesser discipline
20 pursuant to A.R.S. § 32-1693 through A.R.S. § 32-1691.01(G).

21 16. The conduct and circumstances above constitute cause for a civil penalty pursuant
22 to A.R.S. § 32-1693(B)(5).

23 **ORDER**

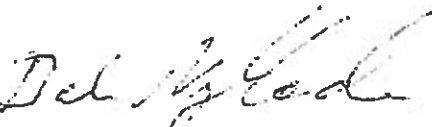
24 Based on the above Findings of Fact and Conclusions of Law, **IT IS ORDERED**

25 that:
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1 1. **PENALTY:** Respondent shall pay a civil penalty in the amount of two hundred
2 and fifty dollars (\$250.00). This entire amount shall be paid within thirty (30) days of the
3 effective date of this consent agreement, and shall be paid in the form of a cashier's
4 check or money order made payable to the Board.

5 DATED AND EFFECTIVE this 18th day of OCTOBER, 2019.

6
7 **ARIZONA BOARD OF DISPENSING OPTICIANS**

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

13 DATED this 18th day of OCTOBER, 2019.

14
15 By: 
16 Brian J. Moreno
17 Chief Operating Officer
18 Clear Vision Express Tucson, LLC
19 9630 N. Oracle Rd.
20 Tucson, AZ

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Original of the foregoing filed
this 21st day of October, 2019, with:

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

Copy of the foregoing mailed
this 21st day of October, 2019 to:

Clear Vision Express Tucson, LLC
9630 N. Oracle Rd.
Oro Valley, AZ 85704

Joel Wakefield
The Nelson Law Group
21 W. Coolidge Street
Phoenix, AZ 85013

Scott Donald
Assistant Attorney General
License and Enforcement Section
2005 N. Central Ave.
Phoenix, Arizona 85004

By: M. Dawson