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

In the Matter of

Case No. 19-005 \_\_\_\_\_

**SOUTHWESTERN EYE CENTER  
1121 S. GILBERT ROAD, SUITE 103  
MESA AZ, 85204;**

**CONSENT AGREEMENT/  
ORDER**

**SOUTHWESTERN EYE CENTER  
7435 E MAIN STREET  
MESA, AZ 85207;**

**SOUTHWESTERN EYE CENTER  
3192 WILLOW CREEK ROAD  
PRESCOTT, AZ 86301,**

**Respondents.**

**RECITALS**

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements, and responsibilities of the Arizona State Board of Dispensing Opticians ("Board"), and under A.R.S. §§ 32-1671, et seq., and 41-1092.07(F)(5), Respondents Southwestern Eye Center, 1121 S. Gilbert Road, Suite 103, Mesa, AZ, 85204; Southwestern Eye Center, 7435 E Main Street, Mesa, AZ, 85207; and Southwestern Eye Center, 3192 Willow Creek Road, Prescott, AZ, 86301, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

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

2. Respondents understand they have the right to a public administrative hearing

1 concerning this matter, at which they could present evidence and cross-examine  
2 witnesses. By entering into this Consent Agreement, Respondents knowingly and  
3 voluntarily relinquish all rights to such an administrative hearing, as well as all rights of  
4 rehearing, review, reconsideration, appeal, judicial review or any other administrative  
5 and/or judicial action, concerning the matters set forth herein. Respondents affirmatively  
6 agree that this Consent Agreement shall be irrevocable.

7  
8 3. Respondents understand that this Consent Agreement or any part of the Agreement  
9 may be considered in any future disciplinary action by the Board against Respondents.

10 4. Respondents understand that this Consent Agreement deals with Board Case No.  
11 19-001. The investigation into this case against Respondents shall be concluded upon the  
12 Board's adoption of this Consent Agreement.

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

19 6. Respondent acknowledge and agree that, upon signing this Consent Agreement  
20 and returning this document to the Board's Executive Director, Respondents may not  
21 revoke acceptance of the Consent Agreement or make any modifications to the document,  
22 regardless of whether the Consent Agreement has been issued by the Board's Chairman.  
23 Any modification to this original document is ineffective and void unless mutually  
24 approved by the parties in writing.

25  
26 7. Respondents understand that the foregoing Consent Agreement shall not become

1 effective unless and until adopted by the Board and signed by its Chairman.

2 8. Respondents understand and agree that if the Board does not adopt this Consent  
3 Agreement, they will not assert as a defense that the Board's consideration of this  
4 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

5 9. Respondents understand that this Consent Agreement is a public record that may  
6 be publicly disseminated by the Board.  
7

### 8 **FACTUAL ALLEGATIONS**

9 10. None of the Respondents were licensed by the Board at any time relevant to the  
10 allegations of this Consent Agreement/ Order, and none of the Respondents is presently  
11 licensed by the Board.

12 11. On or about July 12, 2019, Board staff became aware that Respondent  
13 Southwestern Eye Center, 7435 E Main Street, Mesa, AZ, 85207, may have been  
14 operating without a valid license in violation of Arizona statutes.

15 12. Board staff investigated, and determined the location was operating an  
16 establishment without being licensed as required under Arizona statutes.

17 13. Additionally, in the course of investigation Board staff discovered Respondent  
18 Southwestern Eye Center, 1121 S. Gilbert Road, Suite 103, Mesa, AZ, 85204 and  
19 Respondent Southwestern Eye Center, 3192 Willow Creek Road, Prescott, AZ, 86301  
20 were operating establishments without being licensed as required under Arizona statutes.  
21

### 22 **ALLEGATIONS OF VIOLATION**

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

26 15. Pursuant to A.R.S. 32-1684.01(A), "[a]ny person, corporation, company,

1 partnership, firm, association or society that wishes to operate an optical establishment  
2 shall submit a verified application to the board on a form prescribed by the board.”

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

6 17. The conduct and circumstances above constitute cause for a civil penalty against  
7 each Respondent.

8  
9 DATED AND EFFECTIVE this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

10 ARIZONA BOARD OF DISPENSING OPTICIANS


11 **ORDER**

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

14 1. Each Respondent shall pay a civil penalty in the amount of five-hundred dollars  
15 (\$500.00) for a total civil penalty amount of one-thousand, five-hundred dollars  
16 (\$1,500.00). This entire amount shall be paid within thirty (30) days of the effective date  
17 of this consent agreement, and shall be paid in the form of a cashier’s check or money  
18 order made payable to the Board.

19  
20 2. This Consent Order is effective upon its acceptance by the Board and by  
21 Respondents as evidenced by the respective signatures thereto. The effective date of this  
22 Consent Order is the date the Agreement is signed by the Board and by Respondents. If  
23 the Agreement is signed on different dates, the later date shall be the effective date. The  
24 parties may execute this Consent Order in counterparts, and the parties understand and  
25 agree that copies of this Order, including facsimile or e-mail signatures thereto, shall have  
26 the same force and effect as originals.

- 1 3. The failure of any Respondent to complete or comply with any of the requirements  
2 or provisions of this Consent Order may be a violation of this Consent Order and A.R.S.  
3 § 32-1693(A)(3) (“[v]iolation of any Board order or rule”).
- 4 4. This Consent Order is subject to the Board’s approval and will be effective only  
5 when the Board accepts it. In the event the Board in its discretion does not approve this  
6 Consent Order, it shall be deemed withdrawn and shall be of no evidentiary value, nor  
7 shall it be relied upon or introduced into evidence in any disciplinary action or legal  
8 matter by any party hereto, except that Respondents agree that should the Board reject  
9 this Consent Order and this case proceeds to hearing, Respondents shall assert no claim  
10 that the Board was prejudiced by its review and discussion of this document or of any  
11 records relating thereto.
- 12 5. The Board has determined that this Consent Order protects the public safety and  
13 welfare and is more likely to rehabilitate Respondent than formal disciplinary  
14 proceedings.  
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18 By:   
19 Dale Nyblade  
20 Chairman  
21 Licensed Optician

22 **CONSENT TO BOARD DECISION AND ORDER OF SOUTHWESTERN EYE**  
23 **CENTER 1121 S. GILBERT ROAD, SUITE 103 MESA AZ, 85204;**  
24 **SOUTHWESTERN EYE CENTER 7435 E MAIN STREET MESA, AZ 85207;**  
25 **AND SOUTHWESTERN EYE CENTER 3192 WILLOW CREEK ROAD**  
26 **PRESCOTT, AZ 86301,**

I, DEBORAH BALON, am an authorized signer signing on behalf

1 of Respondents in the above-entitled matter pending before the Arizona State Board of  
2 Dispensing Opticians ("Board").

3 I have read and understand everything contained in the foregoing Findings of Fact,  
4 Conclusions of Law and Order. If this Consent Order is approved by the Board,  
5 Respondents agree to its immediate issuance and to be bound by its terms.

6 I am aware of the right to consult legal counsel prior to entering into the Order,  
7 and such consultation has either been obtained or is waived. I am aware of the right to  
8 an administrative hearing in this matter and, except as otherwise provided by the Consent  
9 Order, waive the same. No promises of any kind or nature whatsoever were made by the  
10 Board to induce consent to this Consent Order. I waive all rights on behalf of  
11 Respondents to challenge the foregoing Consent Order on appeal, or otherwise to the  
12 Board or any other court or tribunal.

13 I understand that a failure of Respondents to comply with any of the provisions of  
14 this Consent Order will be considered non-compliance and may constitute grounds for  
15 further disciplinary action; that the Consent Order may be considered in any future  
16 disciplinary action against Respondents; and that acceptance of this Consent Order does  
17 not preclude any other agency, subdivision or officer of this State or another city, county,  
18 state or federal agency from instituting other civil or criminal proceedings with respect to  
19 the conduct in issue as may be appropriate now or in the future.

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

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

23 Dated this 06 day of September, 2019.

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Authorized Signer

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**Original** of the foregoing filed  
this 2nd 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 same day to:

Southwestern Eye Center  
1121 S. Gilbert Road, Suite 103  
Mesa, AZ, 85204

Southwestern Eye Center  
7435 E Main Street  
Mesa, AZ, 85207

Southwestern Eye Center  
3192 Willow Creek Road  
Prescott, AZ, 86301

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

By: \_\_\_\_\_

