STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,
BOARD OF OPTICIANRY,

Petitioner,

vs. Case No. 20-3419PL

DAVID ALLEN BRESSETTE, L.D.O.,

Respondent.
_____/

RECOMMENDED ORDER

On September 17, 2020, a final hearing was held by Zoom conference, before E. Gary Early, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rose L. Garrison, Esquire
Alexander Ciupalo, J.D.
Prosecution Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Douglas D. Marks, Esquire
Douglas D. Marks, P.A.
Post Office Box 33790
Indialantic, Florida 32903

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent's plea of nolo contendere to the crime of Aggravated Assault relates to the practice of or ability to practice opticianry, and, therefore, constitutes a violation of section

484.014(1)(q), Florida Statutes, as alleged in the Administrative Complaint and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On March 3, 2020, Petitioner, Department of Health (Department or Petitioner), filed its Administrative Complaint (Administrative Complaint) against Respondent, David Allen Bressette, a licensed optician. The complaint charged Respondent with having pled nolo contendere to one count of Aggravated Assault, a third-degree felony violation of section 784.021(1)(a), Florida Statutes (2018), alleged to be a crime that relates to the practice of, or the ability to practice, opticianry, in violation of section 484.014(1)(q).

On March 26, 2020, Respondent filed a Statement Requesting Administrative Hearing (Petition) in which he disputed several issues as alleged by the Department, including whether the crime pled in the Administrative Complaint related to the practice of opticianry, and requested an administrative hearing.

On July 30, 2020, the Petition was referred to the Division of Administrative Hearings. The final hearing was scheduled for September 17, 2020.

On September 11, 2020, the parties filed their Joint Pre-hearing Stipulation, and on September 15, 2020, filed an Amended Joint Pre-hearing Stipulation (JPS), which contained seven stipulated facts. Those facts have been incorporated in this Recommended Order. The JPS also contained five stipulations regarding issues of law on which there was agreement. Those stipulations, which are determined to accurately set forth applicable issues of law, are incorporated in this Recommended Order.

The final hearing was convened on September 17, 2020, as scheduled.

At the commencement of the final hearing, Petitioner's Motion in Limine, which sought to exclude the testimony of five witnesses and the introduction of four exhibits as constituting inadmissible character evidence, was taken up. Ruling on the Motion in Limine was deferred, pending the decision by Respondent to call the witnesses or offer the exhibits. The five witnesses and four exhibits were not offered by Respondent. Therefore, the Motion in Limine is denied as moot.

At hearing, the Department offered the testimony of Ethan Kersey, an agent with the Brevard County Sheriff's Office; and Gloria Aeh, a licensed optician who, after a discussion of the factors set forth in Charles W. Ehrhardt, *Ehrhardt's Florida Evidence*, § 702.4, fn. 37 (2020 Edition), was accepted as an expert in opticianry. The Department offered Petitioner's Exhibits 1 through 3 and 5 through 8 in evidence. Petitioner's Exhibits 2 and 3 are a deposition transcript and audio interview of Respondent. The use of the deposition is authorized by Florida Rules of Civil Procedure 1.330(a)(2) and Florida Administrative Code Rule 28-106.206. The transcript and the audio interview are admissions of a party and, therefore, subject to the exception from the hearsay rule in section 90.803(18), Florida Statutes.

Respondent testified on his own behalf, and offered no exhibits in evidence.

Petitioner indicated that one of its witnesses, Joyce Anderson, was not available to appear at the hearing due to an unexpected medical emergency. The inability to appear for that reason is grounds for accepting otherwise admissible testimony by deposition. Fla. R. Civ. P. 1.330(a)(3)(C).

The deposition of Ms. Anderson was taken, and the transcript was filed on October 7, 2020, as Petitioner's Exhibit 9. A review of the transcript reveals

that the circumstances described by Ms. Anderson occurred in August 2008. They were not so similar in nature or so close in time to make them indicative of Respondent's acts in this case. The evidence would only be relevant to prove the bad character or propensity of Respondent. It is, therefore, not admissible. Charles W. Ehrhardt, *Ehrhardt's Florida Evidence*, § 404.9 (2020 Edition). Furthermore, section 120.57(1)(d), Florida Statutes, provides that

> ... similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

First, Ms. Anderson's deposition provided no evidence related to Respondent's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident as related to the 2017 incident that is the subject of the Administrative Complaint. Second, Petitioner did not provide notice of its intent to use Ms. Anderson's character or propensity evidence 10 days prior to the final hearing. Such notice is statutorily required, and cannot be disregarded. Third, Petitioner's argument that the evidence is rebuttal to statements in Respondent's deposition overlooks the fact that the deposition was put in evidence by Petitioner during its case-in-chief.

Respondent's case-in-chief was extremely limited, and contained nothing that Ms. Anderson's testimony would "rebut." Finally, given the lack of specificity in what Ms. Anderson observed (drop-down menu descriptions - not images), the fact that others had access to the computer at issue, and the length of time between the allegedly similar acts and the facts of this case, the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, and is, therefore, inadmissible. § 90.403, Fla. Stat. For the reasons set forth herein, Petitioner's Exhibit 9 is not received in evidence. Nonetheless, Petitioner's Exhibit 9 will be accepted as a proffer, and will accompany the record of this proceeding, but will not be used for any purpose in the development of this Recommended Order.

The one-volume final hearing Transcript was filed on October 7, 2020, and the record was closed. Both parties timely filed proposed recommended orders that were considered in preparation of this Recommended Order.

This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant discipline, i.e., Respondent's March 20, 2019, plea of nolo contendere. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441 (Fla. 5th DCA 2013). Thus, references to statutes are to Florida Statutes (2018), unless otherwise noted.

FINDINGS OF FACT

Stipulated Facts

1. At all times material to this proceeding, Respondent, David Allen Bressette, L.D.O., was a licensed optician within the State of Florida, having first been issued license number DO 3755 on or about May 1, 1992.

2. Respondent's address of record is 4545 Sweet Bay Avenue, Melbourne, Florida 32935.

3. On or about November 29, 2017, the Brevard County Sheriff's Office arrested Respondent for 10 counts of Possession/Viewing Materials Depicting Child Sexual Conduct, in violation of section 827.07(5), Florida Statutes (2017).

4. On or about March 2, 2018, Respondent was charged with four counts of Possession/Viewing Materials Depicting Child Sexual Conduct, in violation of section 827.07(5), Florida Statutes (2017), in Case No. 05-2017-CF-052816-AXXX-XX.

5. On or about March 20, 2019, Respondent pled nolo contendere to one count of Aggravated Assault, a third-degree felony, in Case No. 05-2017-CF-052816-AXXX-XX.

6. The ability to practice or the practice of opticianry requires interacting with children built on trust and maintaining social boundaries.

7. A special condition of Respondent's order of probation for his plea to the crime of Aggravated Assault requires that Respondent have "no unsupervised contact with a child under the age of eighteen (18) unless supervised by the child's parent or legal guardian or by a court order."

Evidentiary Findings of Fact

8. Respondent owned a practice with Dr. Ronald Ryan, an ophthalmologist. Dr. Ryan sold his interest in the practice in 2016 to Dr. David Hendrix. Respondent sold his interest in April 2018. He has not practiced opticianry since that time.

9. Respondent intends to resume practicing opticianry when this case is resolved.

10. During the investigation of the complaint that led to Respondent's arrest and his ultimately being charged with four counts of Possession/Viewing Materials Depicting Child Sexual Conduct in Case No. 05-2017-CF-052816-AXXX-XX, Respondent submitted to a recorded interview. In the interview, Respondent alluded to the possibility of his having used his devices to view images of girls in their mid-teens -- 14 or 15

years of age -- though his description of what may have been on his devices was insufficient, in itself, to support a finding that they were unclothed or engaged in sexual conduct. Nonetheless, Respondent admitted to masturbating to, and deriving sexual gratification from those images.

11. At the conclusion of the interview, Agent Kersey seized Respondent's iPad and iPhone. A warrant was subsequently executed at Respondent's home where other devices were seized.

12. Agent Kersey testified that he personally observed images of what he described as child pornography, depicting sexual acts or genitalia of what he believed to include pre-teen juveniles, retrieved from Respondent's electronic devices. Agent Kersey's employment since 2014 as an agent for the Special Victims Unit, charged with investigating, *inter alia*, child abuse, child sex crimes, and possession of child pornography, provides weight to his testimony that the images were of juveniles, and his testimony is accepted.

13. Agent Kersey prepared a Case Supplement Report dated January 2, 2019, in which he provided a more detailed description of the images he observed. His descriptions are substantiated by his testimony, and are sufficient to support a finding that the images retrieved from Respondent's electronic devices were of under-aged girls engaged in sexual acts or exposing their genitalia.

14. Respondent argues that, as a matter of law, the crime to which he pled nolo contendere, Aggravated Assault, is not a "lesser included offense" to the crime of Possession of Material Depicting Sexual Conduct by Child. He further argues that he did not commit the crime of Aggravated Assault: i.e., there was no intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent, involving a deadly weapon without intent to kill. *See* §§ 784.011 and 784.021, Fla. Stat.

15. The Court Minutes that accompanied Respondent's plea of nolo contendere to one count of Aggravated Assault in Case No. 05-2017-CF-052816-AXXX-XX, including the Judgment/Order of Probation and the Plea Offer accepted by Respondent, establish the parameters under which Respondent understood and accepted his plea agreement. The Court Minutes establish that the charge of Possession of Material Depicting Sexual Conduct by Child was "Reduced" to Aggravated Assault. The Court Minutes further provide that "[t]he Defendant withdrew the previously entered plea of not guilty," and that "[t]he Defendant entered a plea of nolo contendere to the lesser included offense of AGGRAVATED ASSAULT."

16. There are countless reasons why a person would chose to accept a plea to a crime, not all of which constitute a direct expression of culpability. Nonetheless, regardless of whether Aggravated Assault is a "lesser included offense" to the crime of Possession of Material Depicting Sexual Conduct by Child, his plea, made in open court and with representation of counsel, was made with the intent that it be accepted as a lesser included offense. The plea was accepted by the circuit court on those terms. The Court Minutes demonstrate the link between the offense to which he pled, and the offense for which he was charged.

17. The terms of Respondent's probation included a number of Special Sex Offense conditions in addition to that identified in the Stipulated Facts. For example, the terms of probation included a psycho-sexual re-evaluation and, if recommended by the re-evaluation, "participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders"; annual polygraph examinations by a polygrapher trained in the use of the polygraph "for the monitoring of sex offenders" and for the purpose of obtaining "information necessary for risk management and treatment"; a restriction on accessing materials "that are relevant to the offender's deviant behavior pattern"; and restrictions against distributing candy to children at Halloween, dressing as Santa Claus or the

Easter Bunny "or other costume to appeal to children," entertaining at children's parties, or visiting schools, child care facilities, parks, and playgrounds.

18. Section 120.569(2)(g) allows for the consideration of "evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs" in a proceeding under chapter 120. The terms of the plea and of the terms of probation, and Respondent's agreement with those terms, are admissible and persuasive evidence that the crime to which Respondent pled nolo contendere is one that supports a finding that Respondent poses a sexual threat to children.

19. Dr. Aeh testified that opticians operate from a position of trust, and that there is an expectation of professionalism and good judgment on the part of persons holding a license to practice opticianry. As stipulated by the parties, opticianry requires interacting with children built on trust and maintaining social boundaries. Upon her review of the police reports and court documents related to Respondent's crime, Dr. Aeh opined that the acts described therein evince an erosion of the interests of trust and safety between the healthcare provider and the patient. Although she did not state that Aggravated Assault, per se, affects the ability to practice opticianry, when coupled with the evidence that the crime was a direct offshoot of child pornography, she had no hesitation in opining that Respondent's crime did affect the ability to practice opticianry.

20. Under the specific facts of this case, including the circuit court's minutes demonstrating that the judgment of Aggravated Assault and the conditions of probation related to the charge of Possession of Material Depicting Sexual Conduct by Child, the evidence clearly and convincingly demonstrates that Respondent's plea of nolo contendere to Aggravated Assault relates to his ability to practice opticianry.

CONCLUSIONS OF LAW

A. Jurisdiction

21. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 456.073(5), 120.569, and 120.57(1), Fla. Stat. (2016).

22. The Department of Health, Board of Opticianry, is the state agency charged with regulating the practice of opticianry in the state of Florida, pursuant to section 20.43, and chapters 456 and 484, Florida Statutes. The Department has authority to investigate and file administrative complaints charging violations of the laws governing opticians. § 456.073, Fla. Stat.

B. Standards

23. Section 484.014(1)(q) provides, in pertinent part, that:

> (1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):
>
> * * *
>
> (q) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, in a court of this state or other jurisdiction, a crime which relates to the ability to practice opticianry or to the practice of opticianry.

24. Section 456.072(1)(c) provides that:

> (1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:
>
> * * *
>
> (c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

C. Burden and Standard of Proof

25. The Department bears the burden of proving the specific allegations that support the charges alleged in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987); *Fox v. Dep't of Health*, 994 So. 2d 416 (Fla. 1st DCA 2008); *Pou v. Dep't of Ins. & Treas.*, 707 So. 2d 941 (Fla. 3d DCA 1998).

26. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). The clear and convincing evidence level of proof:

> [E]ntails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.
>
> > Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); *see also In re Henson*, 913 So. 2d 579, 590 (Fla. 2005). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is

ambiguous." *Westinghouse Electric Corp. v. Shuler Bros.*, 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

27. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. *State ex rel. Vining v. Fla. Real Estate Comm'n,* 281 So. 2d 487, 491 (Fla. 1973). Penal statutes must be construed in terms of their literal meaning and words used by the Legislature may not be expanded to broaden the application of such statutes. Thus, the provisions of law upon which this disciplinary action has been brought must be strictly construed, with any ambiguity construed against Petitioner. *Elmariah v. Dep't of Prof'l Reg., Bd. of Med.*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990); *see also Griffis v. Fish & Wildlife Conserv. Comm'n,* 57 So. 3d 929, 931 (Fla. 1st DCA 2011); *Beckett v. Dep't of Fin. Servs.,* 982 So. 2d 94, 100 (Fla. 1st DCA 2008); *Whitaker v. Dep't of Ins. & Treas.,* 680 So. 2d 528, 531 (Fla. 1st DCA 1996); *Dyer v. Dep't of Ins. & Treas.*, 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

28. The allegations of fact set forth in the Administrative Complaint are the grounds upon which this proceeding is predicated. *Trevisani v. Dep't of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); *see also Cottrill v. Dep't of Ins.,* 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Thus, the scope of this proceeding is properly restricted to those matters as framed by Petitioner. *M.H. v. Dep't of Child. & Fam. Servs.,* 977 So. 2d 755, 763 (Fla. 2d DCA 2008).

D. Case Supplement Report as Evidence

29. The Case Supplement Report constitutes hearsay. Though hearsay is admissible in administrative proceedings, it can only be used to explain or supplement other admissible evidence; a finding of fact cannot be based on hearsay alone unless that evidence would be admissible in a civil action over objection. § 120.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 28-106.213(3).

30. The Case Supplement Report, and the circumstances under which it was prepared, was described by its author, Agent Kersey. Under section

90.803(8), records based on "a public official's first-hand observation of an event" are admissible. *Yisrael v. State*, 993 So. 2d 952, 959 (Fla. 2008). Although section 90.803(8) excludes reports in criminal cases of matters observed by law enforcement personnel, this case is not a criminal proceeding. Thus, the Case Supplement Report, to the extent it reflects Agent Kersey's first-hand observations, is admissible as an exception to the hearsay rule pursuant to section 90.803(8).

31. Even if the Case Supplement Report did not fall under the exception in section 90.803(8), it serves to explain and supplement other non-hearsay evidence. Thus, the report has evidentiary value in this proceeding. The weight to be given such evidence is left to the undersigned's discretion.

E. Analysis

32. The Administrative Complaint alleges that:

> Respondent entered a plea of nolo contendere to the reduced charge of one count of Aggravated Assault, a third-degree felony violation of Section 784.021(1)(a) Florida Statutes (2018). ... The conviction stemmed from the investigation by BCSO and the original charges for Possession/ Viewing Materials Depicting Child Sexual Conduct. ... [and] Aggravated Assault is a crime that relate to the practice of, or the ability to practice, Opticianry.

Based thereon, Petitioner alleged that Respondent committed a crime that "relates to the practice of opticianry" in violation of section 484.014(1)(q).

33. The recorded interview of Respondent in which he admitted, *inter alia*, viewing and masturbating to images of 14- and 15-year-old (and possibly younger) girls (a party admission that would be admissible over objection in a civil action, thus allowing its use in making findings of fact pursuant to sections 90.803(18) and 120.57(1)(c)), combined with the observations of Agent Kersey, described both in his testimony and in the Case Supplement

Report, and the terms and conditions of the plea agreement and probation are, taken as a whole, clear and convincing evidence that Respondent engaged in acts related to the sexual exploitation of children.

34. As set forth in *Doll v. Department of Health*, 969 So. 2d 1103, 1106 (Fla. 1st DCA 2007):

> Several cases demonstrate that, although the statutory definition of a particular profession does not specifically refer to acts involved in the crime committed, the crime may nevertheless relate to the profession. In *Greenwald v. Department of Professional Regulation*, the court affirmed the revocation of a medical doctor's license after the doctor was convicted of solicitation to commit first-degree murder. 501 So. 2d 740 (Fla. 3d DCA 1987). The Fifth District Court of Appeal has held that although an accountant's fraudulent acts involving gambling did not relate to his technical ability to practice public accounting, the acts did justify revocation of the accountant's license for being convicted of a crime that directly relates to the practice of public accounting. *Ashe v. Dep't of Prof'l Regulation, Bd. of Accountancy*, 467 So. 2d 814 (Fla. 5th DCA 1985). We held in *Rush v. Department of Professional Regulation, Board of Podiatry*, that a conviction for conspiracy to import marijuana is directly related to the practice or ability to practice podiatry. 448 So. 2d 26 (Fla. 1st DCA 1984). These cases demonstrate, in our view, that appellee did not err by concluding [Respondent's] conviction was "related to" the practice of chiropractic medicine or the ability to practice chiropractic medicine.

35. Respondent now disclaims commission of the acts leading to his plea and judgment, going so far as to argue that he did not commit the acts necessary to sustain the charge to which he pled. However, the decision of the circuit court to accept the plea to Aggravated Assault as a reduced charge to Possession of Material Depicting Sexual Conduct by Child, and imposing conditions of probation suitable to a sex offender, including restrictions on being near children, is sufficient to demonstrate that Aggravated Assault, under the facts of this case, is a crime that relates to the practice of, or the

ability to practice, opticianry, especially since, as stipulated by Respondent, "[t]he ability to practice or the practice of opticianry requires interacting with children built on trust and maintaining social boundaries."

F. Penalty

36. Pursuant to section 456.072(2), the Board of Opticianry may impose one or more of the following penalties: suspension or permanent revocation of a license; restriction of practice of license; imposition of an administrative fine; issuance of a reprimand or letter of concern; placement of the licensee on probation for a period of time; corrective action; and remedial education.

37. Florida Administrative Code Rule 64B12-8.020 establishes the range of penalties against an existing license for a first offense of section 484.014(1)(q) as being "[f]rom reprimand to suspension of the license, and an administrative fine ranging from $500.00 to $750.00, or refusal to certify an application for licensure."

38. Rule 64B12-8.020(6) establishes the following aggravating and mitigating circumstances for consideration when deviation from the penalties established by rule is necessary:

> (a) The danger to the public;
>
> (b) The length of time since the violation;
>
> (c) The number of times the licensee has been previously disciplined by the Board;
>
> (d) The length of time licensee has practiced;
>
> (e) The actual damage, physical or otherwise, caused by the violation;
>
> (f) The deterrent effect of the penalty imposed;
>
> (g) The effect of the penalty upon the licensee's livelihood;

(h) Any effort of rehabilitation by the licensee;

(i) The actual knowledge of the licensee pertaining to the violation;

(j) Attempts by licensee to correct or stop violation or refusal by licensee to correct or stop violation;

(k) Related violations against licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
(l) Actual negligence of the licensee pertaining to any violation;

(m) Penalties imposed for related offenses under subsections (1) and (2), above;

(n) Any other relevant mitigating or aggravating under the circumstances.

Given the broad penalty range, deviation is not necessary. Furthermore, there are both aggravating and mitigating circumstances that, taken as a whole, balance each other.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health, Board of Opticianry, enter a final order:

a) determining that Respondent violated section 484.014(1)(q);

b) suspending Respondent's license for a period of 60 months, to run from the March 20, 2019, date of his Order of Probation in Case No. 05-2017-CF052816-A in the 18th Judicial Circuit Court in and for Brevard County, Florida;

c) placing Respondent's license on probation for a period of 60 months, to commence upon the expiration of the suspension, subject to such conditions as the Board may specify, including requiring Respondent to submit to

treatment or to work under the supervision of another optician as authorized by rule 64B12-8.020(7)(d); and

d) imposing an administrative fine of $750.00.

DONE AND ENTERED this 27th day of October, 2020, in Tallahassee, Leon County, Florida.

E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of October, 2020.

COPIES FURNISHED:

Rose L. Garrison, Esquire
Prosecution Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399
(eServed)

Douglas D. Marks, Esquire
Douglas D. Marks, P.A.
Post Office Box 33790
Indialantic, Florida 32903
(eServed)

Alexander Ciupalo, J.D.
Prosecution Services Unit
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
(eServed)

Janet Hartman, Interim Executive Director
Board of Opticianry
Department of Health
4052 Bald Cypress Way, Bin C-08
Tallahassee, Florida 32399-3257
(eServed)

Louise St. Laurent, General Counsel
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.