

**BEFORE THE KANSAS BOARD OF EXAMINERS IN OPTOMETRY**

In the Matter of )  
 )  
WADE D. ABBEY, O.D. ) Case No. 2012-01  
Kansas License No. 1387-3 )  
 )

**STIPULATION AND FINAL AGENCY ORDER**

**IT IS HEREBY STIPULATED AND AGREED** by and between the Kansas Board of Examiners in Optometry (the "Board") and Wade D. Abbey, O.D. (the "Respondent") as follows:

1. The Board is represented herein by its attorneys, Randall J. Forbes and Timothy D. Resner of Frieden, Unrein & Forbes, LLP 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Stephen E. Robison of Fleeson, Gooing, Coulson & Kitch, LLC, 1900 Epic Center, 301 N. Main, PO Box 997, Wichita, Kansas 67201, or has been afforded the independent right of representation and examination, and acting upon the independent right of representation and examination voluntarily enters into this Stipulation and Final Agency Order.

2. The Board is a Kansas administrative agency vested with the authority, pursuant to K.S.A. 74-1501 and K.S.A. 74-1504, to carry out and enforce the provisions of the Kansas Optometry Act, K.S.A. 65-1501 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice optometry.

3. The Respondent is presently entitled to engage in the practice of optometry in the State of Kansas by reason of the Board having issued him Kansas license number 1387-3. At all times relevant hereto, the Respondent has held a current license to engage in the practice of optometry in the State of Kansas, and is a licensee as that term is defined by K.S.A. 65-1501a(c) and K.A.R. 65-4-1(i).

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts, in violation of the Kansas Optometry Act, K.S.A. 65-1501, *et seq.*

5. Respondent hereby admits and waives any further proof in this proceeding, case no. 2012-01, before by the Board that:

A. On or about March 1, 2012, Respondent was indicted by a United States District Court, District of Kansas Grand Jury on five (5) counts of wire fraud and one (1) count of theft in connection with health care. Specifically, the Grand Jury alleged:

i. That Respondent was employed by Vision Doctors of Optometry from 1995 through September 2, 2010, and by and through his employment provided professional optometric services to patients.

ii. That Respondent was compensated by Vision Doctors of Optometry with a base salary and an additional fee for each "full" eye exam performed.

iii. That Vision Doctors of Optometry recorded the number of "full" eye exams performed by each Licensee on calendars.

iv. That notwithstanding the information recorded on the calendars, Respondent usually notified Vision Doctors of Optometry's accountant by electronic mail on a bi-weekly basis of the number of "full" eye exams performed by himself and a fellow licensee.

v. "During the course of his employment, [Respondent] inflated the number of 'full' eye exams . . . performed. [Respondent] provided this information to the accountant who paid [Respondent] based upon this false information."

B. On or about February 27, 2013, Respondent entered into a plea agreement with the United States Attorney's Office, whereby he admitted to the following:

Count 1: On or about January 6, 2010, in the District of Kansas, and elsewhere, defendant **WADE D. ABBEY**, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, devised and intended to devise a scheme and artifice which transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signs and signals which provided false information concerning the number of patients the defendant provided "full" eye exams to, which information was used to falsely inflate the payment of wages to defendant Wade D. ABBEY and his wife, when the defendant knew and should have known that the information was false. Specifically, the defendant emailed information to another that he provided 177 full eye exams, and his wife provided 160 full eye exams, when defendant Wade D. ABBEY knew that this was false.

Count 2: On or about January 20, 2010, in the District of Kansas, and elsewhere, defendant **WADE D. ABBEY**, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, devised and intended to devise a scheme and artifice which transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signs and signals which provided false information concerning the number of patients the defendant provided "full" eye exams to, which information was used to falsely inflate the payment of wages to defendant Wade D. ABBEY and his wife, when the defendant knew and should have known that the information was false. Specifically, the defendant emailed information to another that he provided 197 full eye exams, and his wife provided 186 full eye exams, when defendant Wade D. ABBEY knew that this was false.

Count 3: On or about February 3, 2010, in the District of Kansas, and elsewhere, defendant **WADE D. ABBEY**, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, devised and intended to devise a scheme and artifice which transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signs and signals which provided false information concerning the number of patients the defendant provided "full" eye exams to, which information was used to falsely inflate the payment of wages to defendant Wade D. ABBEY and his wife, when the defendant knew and should have known that the information was false. Specifically, the defendant emailed information to another that he provided 206 full eye exams, and his wife provided 185 full eye exams, when defendant Wade D. ABBEY knew that this was false.

Count 4: On or about March 31, 2010, in the District of Kansas, and elsewhere, defendant **WADE D. ABBEY**, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, devised and intended to devise a scheme and artifice which transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signs and signals which provided false information concerning the number of patients the defendant provided "full" eye exams to,

which information was used to falsely inflate the payment of wages to defendant Wade D. ABBEY and his wife, when the defendant knew and should have known that the information was false. Specifically, the defendant emailed information to another that he provided 207 full eye exams, and his wife provided 185 full eye exams, when defendant Wade D. ABBEY knew that this was false.

Count 5: On or about June 23, 2010, in the District of Kansas, and elsewhere, defendant **WADE D. ABBEY**, for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses and representations, devised and intended to devise a scheme and artifice which transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signs and signals which provided false information concerning the number of patients the defendant provided "full" eye exams to, which information was used to falsely inflate the payment of wages to defendant Wade D. ABBEY and his wife, when the defendant knew and should have known that the information was false. Specifically, the defendant emailed information to another that he provided 187 full eye exams, and his wife provided 176 full eye exams, when defendant Wade D. ABBEY knew that this was false.

The defendant further admits that he received money from the scheme to defraud in the amount of \$583,060.00, and that this sum represents the amount of proceeds obtained from the scheme to defraud as alleged in the Indictment in Counts 1 through 5.

6. The Board hereby finds and concludes that Respondent's conduct, as described above, is grounds for disciplinary action in the State of Kansas, pursuant to K.S.A. § 65-1517(c) and K.S.A. § 65-1517(b), by and through K.S.A. § 65-1516(b)(8), (9) and (10). 7.

7. The Board hereby finds and the Respondent hereby agrees that the following disposition is just and appropriate under the circumstances:

A. **REVOCATION.** Respondent hereby agrees and consents to the Board's entry of an Order revoking his license (no. 1387-3) as that term is defined by K.S.A. 65-1501a(c) and K.A.R. 65-4-1(i), to practice optometry in the State of Kansas. Said revocation shall become effective as of the effective date of this Stipulation and Final Agency Order.

B. **OTHER REQUIREMENTS.** Respondent hereby acknowledges and agrees that as a condition of this Stipulation and Final Agency Order, he must:

- i. Comply fully with this Stipulation and Final Agency Order; and
- ii. Comply fully with the Kansas Optometry Act, the Board's rules and regulations and all state and federal laws relating to Kansas optometrists.

8. Respondent hereby agrees that all information relating to him in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation, which led to this disciplinary action, and all information relating to him, discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

9. The stipulations contained herein shall not become effective and/or binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter

the Final Order provided for herein. The Respondent further agrees that the Kansas Optometry Act, K.S.A. 65-1501, *et seq.*, is constitutional on its face and as applied in this case.

11. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

12. The Respondent acknowledges that he has the following rights:

- A. To have formal notice of charges served upon him;
- B. To file a response to the charges;
- C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing.
- D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Kansas Judicial Review Act.

13. The Respondent freely waives these foregoing rights and acknowledges that the said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against him to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

14. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing or after having had the opportunity to do so. The Respondent further acknowledges that he has read this Stipulation and Final Agency order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

15. Time is of the essence to this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

16. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

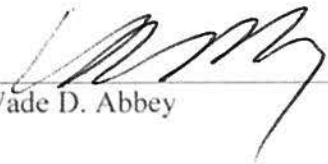
17. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

18. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

19. The Respondent acknowledges that he has been advised by the Board that he would have the right within fifteen (15) days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within thirty (30) days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas, in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601, *et seq.*, and to serve such a petition for


judicial review on the Kansas Board of Examiners in Optometry by serving Jan Murray at 3109 West 6<sup>th</sup> Street, Suite B, Lawrence, Kansas 66049. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:

  
\_\_\_\_\_  
Wade D. Abbey


3/28/13  
\_\_\_\_\_  
Date

APPROVED BY:

  
\_\_\_\_\_  
Stephen E. Robison  
FLEESON, GOOING, COULSON &  
KITCH, LLC  
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**Attorneys for Wade Abbey, O.D.**

3-29-13  
\_\_\_\_\_  
Date

APPROVED BY:

  
\_\_\_\_\_  
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**Attorneys for Kansas Board of Examiners In Optometry**

4-10-13  
\_\_\_\_\_  
Date



BEFORE THE BOARD OF EXAMINERS IN OPTOMETRY  
STATE OF KANSAS

In the Matter of )  
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FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Board of Examiners in Optometry (the "Board") hereby approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this the 18<sup>th</sup> day of ~~March~~<sup>April</sup>, 2013.

KANSAS BOARD OF EXAMINERS IN OPTOMETRY

By: , O.D.  
Douglas Ayre, O.D.  
President

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, on this the 22 day of April, 2013 addressed to:

Randall J. Forbes  
Timothy D. Resner  
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\_\_\_\_\_  
Jan Murray, Executive Officer

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