

BEFORE THE KANSAS STATE BOARD OF EXAMINERS IN OPTOMETRY

In the Matter of)
)
MICHAEL HATTAN, O.D. and) Case No. 2022-09
NICHOLAS MONDERO, O.D.)
)
Respondents.)

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Board of Examiners in Optometry (the "Board") and Michael Hattan, O.D. and Nicholas Mondero, O.D. (the "Respondents") as follows:

1. The Board is represented herein by its attorneys, Timothy D. Resner of Frieden & Forbes, LLP 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondents are represented herein by their attorney N/A, 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.*, ("Optometry Law"), including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice optometry.
3. Respondent Hattan, became licensed to engage in the practice of optometry in the State of Kansas by virtue of the Board issuing license number 1169-3. Respondent Mondero

became licensed to engage in the practice of optometry in the State of Kansas by virtue of the Board issuing license number 1954.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondents have committed an act or acts that violate the Optometry Law.

5. Respondents hereby admit and waive any further proof in this proceeding before by the Board and the Board finds that:

A. On or about December 2, 2021, Respondent Michael Hattan, O.D. submitted a trade name application to the Board for approval of “Hattan and Mondero Family Eye Care” for use at 1517 E 27th St., Hays, KS 67601.

B. Following a trade name audit and after further investigation by the Board it was discovered that Respondents have been practicing optometry under the trade name “Hattan and Mondero Family Eye Care” or “Family Eye Care” at 1517 E 27th St., Hays, KS 67601 since at least the beginning of 2020 without Board approval, including utilizing the trade name on the practice website and on the exterior of the practice’s building.

C. Pursuant to K.S.A. 65-1522 and K.A.R. 65-9-1, a licensee may practice optometry in the State of Kansas using a trade or assumed name; however, a licensee is prohibited from practicing optometry under a trade name until an application to use a trade name at a specific location has been approved by the Board.

D. Respondents used a trade name without Board approval for at least two (2) years at 1517 E. 27th St., Hays, KS 67601.

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6. The Board hereby finds and concludes that Respondents' conduct, as described above, violates K.A.R. 65-9-1, and therefore constitutes grounds for discipline pursuant to K.S.A. 65-1517(l) for violating a lawful regulation of the Board.

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

A. ADMINISTRATIVE FINE. Respondents agree, and the Board further orders Respondents to pay to the Board an administrative fine in the amount of Four Hundred Dollars (\$400.00) within ten (10) calendar days of the entry of this Stipulation and Final Agency Order.

B. CONDITIONAL APPROVAL. Respondents agree, and the Board further orders that upon signing this Stipulation and Final Agency Order, Respondents shall obtain conditional approval of the trade name "Hattan and Mondero Family Eye Care" for the 1517 E 27th St., Hays, KS 67601 location from December 2, 2021 through July 22, 2022. In the event the Board approves the trade name application, then its approval of the trade name shall become final and without condition.

C. OTHER REQUIREMENTS. Respondents hereby acknowledge and agree that as a condition of this Stipulation and Final Agency Order, they 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. Respondents hereby agree that all information 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 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 Respondents or their 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 Respondents further waive any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agree 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 Respondents acknowledge 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 Respondents agree 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 Respondents further agree 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.

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12. The Respondents acknowledge that they have the following rights:
 - A. To have formal notice of charges served upon them;
 - 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 Respondents freely waive these foregoing rights and acknowledge 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 Respondents further waive 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 Respondents acknowledge that they enter into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of their choosing or after having had the opportunity to do so. The Respondents further acknowledge that they have read this Stipulation and Final Agency order in its entirety, that they understand its legal consequences and that they agree that none of its terms are unconscionable, arbitrary or capricious.

15. Time is of the essence to this Stipulation and Final Agency Order. Respondents acknowledge and agree 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 them. 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 Respondents to comply with all terms and conditions of this Stipulation and Final Agency Order.

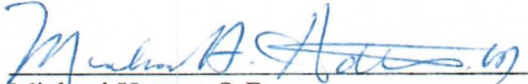
16. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this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

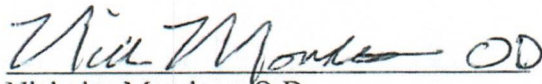
18. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

19. The Respondents acknowledge that they have been advised by the Board that they 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 6th Street, Suite B, Lawrence, Kansas 66049. The Respondents hereby waive those rights.

AGREED AND ACCEPTED BY:

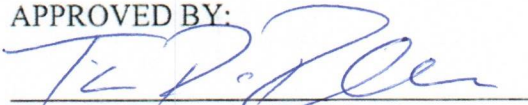

Michael Hattan, O.D.

7/11/22
Date


Nicholas Mondero, O.D.

7/11/22
Date

APPROVED BY:


Timothy D. Resner, #25064

7.18.2022
Date

FRIEDEN & FORBES, LLP

1414 SW Ashworth Place, Suite 201

Topeka, KS 66604

785.354.1100

785.354.1113 facsimile

Attorneys for Kansas State Board of Examiners In Optometry

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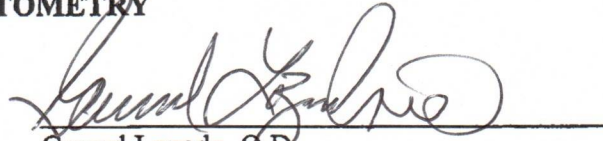
FINAL ORDER

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 22 day of July, 2022.

**KANSAS STATE BOARD OF EXAMINERS IN
OPTOMETRY**

By:



Gerard Lozada, O.D.
President

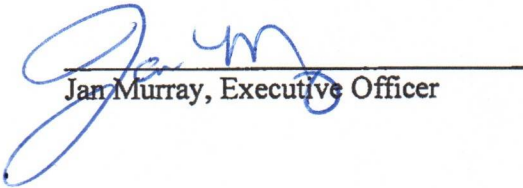
CERTIFICATE OF SERVICE

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 25 day of July, 2022 addressed to:

Michael Hattan, O.D.
1517 E 27th St.
Hays, KS 67601
Respondent

Nicholas Mondero, O.D.
1517 E 27th St.
Hays, KS 67601
Respondent

Timothy D. Resner
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
Attorneys for Kansas State Board of Examiners In Optometry



Jan Murray, Executive Officer