

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

In the Matter of	)	
	)	
WADE ABBEY, O.D.	)	Case No. 2020-02
License No. 1387-3	)	
	)	
<u>Respondent.</u>	)	

**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 Abbey, O.D. (the "Respondent") 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 Respondent is represented herein by his attorney Diane L. Bellquist of Joseph, Hollander & Craft, LLC, 1508 SW Topeka Blvd, Topeka, KS 66612.

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 and/or a licensee.

3. At all times relevant hereto, Respondent has held a license to engage in the practice of optometry in the State of Kansas by virtue of the Board issuing license number 1387-3.

4. The Board previously convened an evidentiary hearing in this matter on August 4, 2021 in accordance with the Kansas Administrative Proceedings Act, K.S.A. 77-501 *et seq.* ("KAPA") and determined that the Respondent committed certain acts in violation of the

Optometry Law as recited in the Board's Final Order, entered on January 18, 2022. Pursuant to the Final Order, in relevant part, Respondent's license was suspended for a period of six months.

5. The Final Order was appealed to the Shawnee County District Court pursuant to the Kansas Judicial Review Act, K.S.A. 77-601 et seq. ("KJRA"), and the district court granted a stay of the effectiveness of the Final Order, including the suspension of Respondent's license, on March 31, 2022.

6. Respondent represents that he did not engage in the practice of optometry, including the provision of any services within the scope of K.S.A. 65-1501, while his license was suspended from January 18, 2022 through March 31, 2022, a period of two months and thirteen days.

7. On December 6, 2022 the district court entered its memorandum decision reversing the Final Order of the Board.

8. The Board appealed the decision of the district court to the Kansas Court of Appeals, which entered its Memorandum Opinion on March 15, 2024, affirming in part and reversing in part the decision of district court, finding that the evidence supported the Board's finding that Respondent violated K.S.A. 65-1516(b)(2) for engaging in the practice of optometry as an agent or employee of a person not licensed under the Kansas Optometry Law. All other violations found by the Board in the Final Order were found to not be supported by the necessary standard under KAPA.

9. Pursuant to the Memorandum Opinion, the court of appeals remanded this matter back to the Board to consider the appropriate discipline to be imposed, in light of the remaining violation found to be supported by the facts and the law.

10. Respondent appealed the court of appeals' Memorandum Opinion to the Kansas

Supreme Court, which denied review on July 9, 2024.

11. The mandate of the court of appeals was entered on July 31, 2024.

12. In full and due consideration of the Board's Final Order as modified by the Memorandum Opinion issued by the Court of Appeals, the Board hereby finds and the Respondent hereby consents and agrees that the following disposition is just and appropriate under the circumstances:

A. **SUSPENSION.** Respondent agrees, and the Board further orders that Respondent's license is suspended for a period of three months. During the period of suspension, Respondent shall not engage in the practice of optometry on his own behalf or through an entity which provides services within the scope of K.S.A. 65-1501. In reliance on Respondent's representation that Respondent in observation of the suspension imposed by the Final Order did not engage in the practice of optometry for a period of two months and thirteen days, Respondent shall serve the remaining suspension term of seventeen (17) days starting on the date after this Stipulation and Final Agency Order is adopted by the Board, *i.e.*, from October 16, 2024 through November 1, 2024.

B. **RETURN TO PRACTICE.** Respondent agrees, and the Board further orders that Respondent shall be eligible to return to practice after the suspension period ends on November 2, 2024. Respondent shall only engage in the practice of optometry in a practice setting which complies with the Optometry Law, including obtaining any and all necessary approvals from the Board in conjunction with any professional entity which Respondent may practice through. Respondent shall provide true and correct copies of any and all documents and/or produce for inspection any records or practice setup which the Board may request. The Board hereby

delegates to its President the authority to review Respondent's practice setting. Respondent may petition the Board for a determination as to whether his practice setting complies with the Optometry Law. Any and all proceedings relating to whether or not Respondent's practice setting complies with the Optometry Law shall be conducted in accordance with KAPA.

C. ADMINISTRATIVE FINE. Respondent agrees, and the Board further orders Respondent to pay to the Board an administrative fine in the amount of Two Thousand Dollars (\$2,000.00) within thirty (30) calendar days of the entry of this Stipulation and Final Agency Order.

D. 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.

13. Respondent hereby agrees 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 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. In accordance with K.S.A. 77-531(a)(3), Respondent consents to service of this Stipulation and Consent Order via electronic mail, addressed to Respondent at: [dbellquist@josephhollander.com](mailto:dbellquist@josephhollander.com). Service shall be complete upon transmission.

AGREED AND ACCEPTED BY:

DocuSigned by:  
*Wade Abbey*  
3222E92C94754EA...  
Wade Abbey, O.D.  
4615 E. Mark Twain Drive  
Derby, KS 67037  
wade\_abbey@yahoo.com

10/14/2024  
Date

APPROVED BY:

Signed by:  
*Diane Bellquist*  
3D9F2DFC28B042D...  
Diane L. Bellquist, #20969  
Joseph, Hollander & Craft, LLC  
1508 SW Topeka Blvd  
Topeka, KS 66612  
(785) 329-1223 Direct  
(855) 955-1318 Fax  
[dbellquist@josephhollander.com](mailto:dbellquist@josephhollander.com)  
*Attorney for Wade Abbey O.D.*

10/14/2024  
Date

s/ Timothy D. Resner  
Timothy D. Resner, #25064  
FRIEDEN & FORBES, LLP  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604  
785.354.1100  
785.354.1113 facsimile  
[tresner@fflawllp.com](mailto:tresner@fflawllp.com)  
*Attorneys for Kansas Board  
of Examiners In Optometry*

10/14/2024  
Date



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

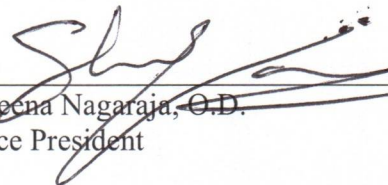
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	)	
<u>Respondent.</u>	)	

**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 15<sup>th</sup> day of October, 2024.

**KANSAS BOARD OF EXAMINERS IN OPTOMETRY**

By:  \_\_\_\_\_  
 Sheena Nagaraja, O.D.  
 Vice President

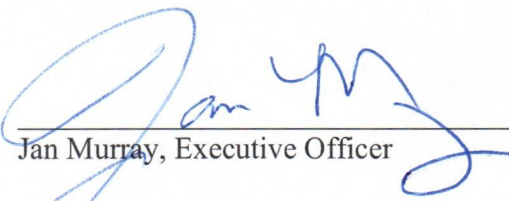
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by electronic mail only on this 5 day of October, 2024 addressed to:

Wade Abbey, O.D.  
4615 E. Mark Twain Drive  
Derby, KS 67037  
wade\_abbey@yahoo.com

Diane Bellquist  
Joseph, Hollander & Craft, LLC  
1508 SW Topeka Blvd  
Topeka, KS 66612  
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*Attorney for Wade Abbey, O.D.*

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*Attorneys for Kansas State Board of  
Examiners In Optometry*

  
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Jan Murray, Executive Officer