

BEFORE THE WEST VIRGINIA BOARD OF OPTOMETRY

**IN THE MATTER OF DAVID GOMEZ, O.D.
Certificate No. 926-OD**

CONSENT DECREE

THIS CONSENT DECREE is made and entered into this 10th day of May, 2007, by the West Virginia Board of Optometry ("Board").

WHEREAS the Board is a State entity created pursuant to W. Va. Code § 30-8-3, and is empowered to regulate the practice of optometry pursuant to W. Va. Code § 30-8-1 *et seq.*, relating to Optometrists, and W. Va. Code § 30-1-1 *et seq.*, relating to general provisions applicable to all state boards of examination or registration.

WHEREAS the Licensee currently holds a certificate of registration, Certificate No. 926-OD, issued by the Board to practice optometry within the State of West Virginia pursuant to W. Va. Code § 30-8-4, relating, in part, to registration prerequisites, W. Va. Code § 30-8-5, relating, in part, to qualifications of applicant for registration and 14 C.S.R. 1, relating to general rules of the Board.

WHEREAS West Virginia Code § 30-8-8 provides, in part, that the Board may suspend or revoke any certificate of registration ("license") for any one, or any combination, of causes including but not limited to violations of rules or regulations and alcohol or substance abuse.

WHEREAS West Virginia Board of Optometry Procedural Rule § 14-4-4 provides, in part, that the Board may suspend a license or revoke any license issued by the Board upon satisfactory proof that a licensee is in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or willful departure from accepted standards of professional conduct.

WHEREAS West Virginia Board of Optometry Procedural Rule § 14-4-6 provides that the Board may suspend a license if it determines there is probable cause to believe that the optometrist's conduct, practices or acts constitute an immediate danger to the public.

WHEREAS West Virginia Code § 30-8-3, relating, in part, to duties of the Board, provides, in part:

The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, which are not inconsistent with any other provision or section of this article:

(a) For the proper performance of its duties;

(b) To govern the ethical practice of optometry for the safety, protection and welfare of the public; and

(c) To provide for examinations, licensure requirements, continuing education requirements, fees, and to further effectuate the provisions of this article, article one of this chapter, and any other provisions set forth in state or federal law.

WHEREAS Title 14, Series 3 of the West Virginia Code of State Rules provides, in part:

Charges may be instituted against any licensee by the Board when probable cause exists for believing that the licensee may have engaged in conduct, practices or acts in such condition that his or her license should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code § 30-8-8 et seq.

WHEREAS West Virginia Code § 30-1-8(a), relating to the Board's regulatory authority generally, provides, in part, that the Board may "suspend or revoke the license of any person who has . . . engaged in conduct, practices or acts constituting . . . a willful departure from accepted standards of professional conduct."

WHEREAS West Virginia Code § 30-1-8(a) also provides, in part, that "[w]here any person has been . . . found to have engaged in such conduct, practices or acts, every board referred to in this chapter may enter into consent decrees, to reprimand, to enter into probation orders, to levy

fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board may also assess administrative costs.”

WHEREAS by correspondence dated October 12, 2005, David Gomez’s counsel, J. Timothy DiPiero, DiTrapano, Barrett& DiPiero, PLLC, advised the Board that David Gomez had been arrested by the Mabscott, Raleigh County, West Virginia Police Department on July 10, 2005 and charged with possession with intent to deliver cocaine, marijuana and crack cocaine and that David Gomez has a substance abuse problem but that he was seeking treatment for the same.

WHEREAS by correspondence dated December 19, 2005, David Gomez’s counsel, J. Timothy DiPiero, DiTrapano, Barrett & DiPiero, PLLC, made reference to possession charges in Cabell County and in Raleigh County and that he further advised that David Gomez voluntarily sought drug treatment in July 2005 at Florida Detox and later from Mount Regis Center in Virginia, where he was discharged on October 19, 2005,

WHEREAS on or about January 28, 2006, David Gomez voluntarily agreed to submit to a drug monitoring program and that the Board would be advised of testing results and that David Gomez did submit to the program and identified the Board as an agency authorized to receive testing results.

WHEREAS on or about February 2, 2006, David Gomez’s counsel, J. Timothy DiPiero, DiTrapano, Barrett & DiPiero, PLLC, advised the Board’s counsel, Christie S. Utt, Deputy Attorney General, that David Gomez had been arrested again on drug possession charges.

WHEREAS by letter dated February 13, 2006, David Gomez advised the Board that he had voluntarily suspended all activities relating to his license to practice optometry in the State of West Virginia and that he would not return to practice without approval of the Board.

WHEREAS, The Licensee agreed to surrender his license to the Board and agreed that his license shall remain in suspension indefinitely pending the resolution of all pending criminal charges.

WHEREAS, the Board is advised that all criminal charges pending against the Licensee have been concluded and in that certain criminal action entitled "United States of America v. Dr. David B. Gomez, Case No.5:06-cr-34", the Licensee entered a plea of guilty, pursuant to which the said licensee David Gomez was sentenced to a term of 10 months incarceration, which has been served, and by the imposition of a 3-year term of supervised release, the terms and conditions of which are set forth in said order, a copy of which is attached hereto as Exhibit A;

WHEREAS, Board agrees to restore the license to practice optometry to the Licensee, and does hereby restore said license under the following terms and conditions:

- a. Licensee shall comply with the terms and conditions of the Supervised Release provisions and the Standard Conditions of Supervision imposed in United States of America v. Gomez, Criminal Action No. 5:06-00034-01;
- b. at the conclusion of the supervised release the Licensee shall continue with drug counseling as may be determined appropriate by the Board at the time of the conclusion of said supervised release;
- c. the Licensee shall engage in the practice of optometry under the supervision of Dr. Janney until further order of this Board;
- d. that the Licensee shall submit to random drug testing as required by the Board, and any failure to submit to such testing shall constitute a violation of this order;
- e. that the Licensee shall not use or possess any controlled substance, and any violation of this condition or of any of the conditions of the Supervised Release

or the Standard Conditions of Supervision shall constitute a violation of this order
and shall be cause for immediate revocation of the Licensee's license to practice
optometry.

PRESENTED BY:



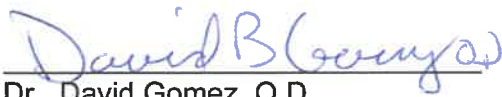
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(304) 558-2021

INSPECTED BY:



J. Timothy DiPiero
Counsel for Licensee
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604 Virginia Street, East
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AGREED:



Dr. David Gomez, O.D.

WEST VIRGINIA BOARD OF OPTOMETRY

