

BEFORE THE ARIZONA STATE BOARD OF OPTOMETRY

IN THE MATTER OF:

Case No.: 2017223

**DAVID ANDERSON, O.D.,**

**ORDER OF PROBATION**

Holder of License No. OPT-000822  
For the Practice of Optometry  
In the State of Arizona.

**INTRODUCTION**

On November 8, 2019, the Arizona State Board of Optometry (Board) held an Administrative Hearing in the above referenced matter. Assistant Attorney General Ms. Mona Baskin represented the State. David Anderson, O.D. (Respondent) appeared and represented himself. Assistant Attorney General Marc Harris, of the Licensing and Enforcement Section of the Attorney General’s Office, appeared in person to provide independent legal advice to the Board.

After hearing all of the evidence and arguments presented by the parties, the Board issues the following Findings of Fact, Conclusions of Law and Order (Order):

**FINDINGS OF FACT**

1. Respondent is the holder of License No. OPT-000822 for the practice of optometry in the State of Arizona.

2. On or about March 7, 2016, the Board received a complaint from 1-800 CONTACTS, INC. (1-800 Contacts), alleging that Respondent was noncompliant with A.R.S. § 32-1771(A) that requires, “All sales of and prescriptions for contact lenses in this state must conform to the federal fairness to contact lens consumers act (15 United States Code sections 7601 through 7610).” In support of their complaint, 1-800 Contacts provided a list of 74 facsimile requests for prescriptions, with an associated RXCapture ID, however, they did not include any patient names. According to 1-800 Contacts, the RXCapture ID number was associated with a specific facsimile request that was sent to Respondent for a copy of a prescription on behalf of a specific patient. 1-800 Contacts further stated that whenever an eye

1 care provider responds to a prescription request by providing a copy of the customer's  
2 prescription an electronic copy of the prescription is tied to the customer information and saved  
3 in the data base. According to 1-800 Contacts, they did not receive a response to any of the  
4 requests for Respondent's patients' prescriptions.

5 3. On or about March 15, 2016, the Board requested that 1-800 Contacts  
6 supplement their complaint and provide a list of the optometrists and the corresponding patient  
7 names associated with the RXCapture ID number in order for the Board to process and  
8 investigate each complaint.

9 4. On or about August 29, 2016, 1-800 Contacts responded to the Board's request  
10 for the patient names associated with complaints. In their response, 1-800 Contacts stated that  
11 they would provide supplemental documentation matching the RXCaptureID numbers with  
12 patient names. Subsequently, 1-800 Contacts amended their complaint and provided the Board  
13 with a list of the patient names that were associated with the RXCapture ID number. According  
14 to 1-800 Contacts, the patients identified in the complaint had designated 1-800 Contacts to act  
15 as their agent and obtain their contact lens prescriptions from Respondent in order to purchase  
16 contact lenses. According to 1-800 Contacts, Respondent did not provide a response to any of  
17 the requests for his patients' prescriptions.

18 5. On or about June 21, 2017, the Board advised Respondent of the complaint and  
19 required that Respondent submit a written response to this complaint and the allegations  
20 contained therein no later than twenty days after the receipt of the letter. A.R.S. § 32-1744(C).  
21 The Board also requested that Respondent send copies of all documents (including patient  
22 records) pertaining to the above-named patients. A.R.S. § 32-1747.

23 6. On or about July 21, 2017, Respondent provided the Board with a portion of the  
24 patient records that were the subject of the Complaint. Respondent failed to provide a written  
25 response to the complaint as requested by the Board and required pursuant to A.R.S. § 32-  
26 1744(C).

1           7.       On or about November 7, 2017, the Executive Director sent Respondent a  
2 follow-up email to the original request that again requested a narrative response to the  
3 allegations. Respondent failed to provide a written response and failed to communicate with the  
4 Board in any manner regarding the complaint.

5           8.       On or about December 8, 2017, the Board reviewed the complaint against  
6 Respondent's license. They reviewed Respondent's submitted medical records and noted  
7 Respondent's lack of written response to complaint. The Board voted the matter to an informal  
8 interview.

9           9.       Board staff reviewed the medical records provided by Respondent in response to  
10 the complaint. Respondent failed to provide any medical records for 27 complaints involving  
11 eight patients contained in Exhibit A. (Attached and incorporated by reference herein.)  
12 Respondent provided a portion of medical records for the following 47 complaints involving  
13 twenty-six patients contained in Exhibit B. (Attached and incorporated by reference herein.)  
14 Respondent failed to provide any documentation relating to the request from 1-800 Contacts or  
15 any documentation evidencing a response to 1-800 Contacts' requests for copies of the patients'  
16 contact lens prescriptions.

17           10.     On or about January 22, 2018, the Board sent Respondent a notice of Informal  
18 Interview scheduled for March 9, 2018, pursuant to A.R.S. § 32-1744 (D). On March 1, 2018,  
19 the Executive Director notified Respondent in writing that his Informal Interview was  
20 rescheduled to the April 20, 2018 Board meeting, due to a lack of a quorum for the original  
21 meeting. Respondent failed to appear or respond in any way to the Informal Interview requests  
22 by the Board. At the April 20, 2018 meeting, the Board voted the case to a Formal Hearing.  
23 A.R.S. § 32-1744 (D).

24   **CONCLUSIONS OF LAW**

25           1.       The Board has jurisdiction over Respondent pursuant to A.R.S. § 32-1701 *et.*  
26 *seq.* and the rules promulgated by the Board relating to Respondent's professional practice as a  
27 licensed optometrist.

1           2.       The conduct and circumstances described in the above paragraphs constitute  
2 grounds for disciplinary action in accordance with A.R.S. §32-1743 (12), “any violation of any  
3 statutes, laws, or rules regulating the practice of optometry in this state or any other jurisdiction  
4 in the United States” and A.R.S. §32-1744 (C), “the board, its designee or the executive director  
5 shall require a licensee to provide a written response to a complaint within twenty days after the  
6 licensee receives the notification of complaint.”

7           3.       The conduct and circumstances described in the Findings of Fact constitute  
8 grounds for disciplinary action in accordance with A.R.S. §32-1743 (A)(4) unprofessional  
9 conduct as defined in A.R.S. §32-1701 (8)(g), any conduct or practice, including incompetency,  
10 that constitutes a danger to the health, welfare or safety of patients or the public.

11           4.       The conduct and circumstances described in the Findings of Fact constitute  
12 grounds for disciplinary action in accordance with A.R.S. §32-1743 (12), “any violation of any  
13 statutes, laws, or rules regulating the practice of optometry in this state or any other jurisdiction  
14 in the United States” and A.R.S. §32-1771, Dispensing contact lenses; conformity with federal  
15 law; requirements: (A) All sales of and prescriptions for contact lenses in this state must  
16 conform to the federal fairness to contact lens consumers act (15 United States Code sections  
17 7601 through 7610) ; (15 U.S. §7601 (a) (2) When a prescriber completes a contact lens fitting,  
18 the prescriber shall, as directed by any person designated to act on behalf of the patient, provide  
19 or verify the contact lens prescription by electronic or other means.). (B) Contact lenses used to  
20 determine a prescription for contact lenses are considered to be diagnostic lenses. After the  
21 diagnostic and trial period and after the contact lenses have been adequately fitted and the  
22 patient has been released from immediate follow-up care by a person who is licensed pursuant  
23 to this chapter or chapter 13 or 17 of this title, the prescribing optometrist shall provide a  
24 prescription for contact lenses at no cost to the patient. (C) Contact lenses may not be sold or  
25 dispensed except pursuant to a prescription order that conforms to state and federal regulations  
26 governing prescriptions.  
27

1           5.       The conduct and circumstances described in the Findings of Fact constitute  
2 grounds for disciplinary action in accordance with A.R.S. §32-1743(12), “any violation of any  
3 statutes, laws, or rules regulating the practice of optometry in this state or any other jurisdiction  
4 in the United States” and A.A.C. R4-21-304, Vision Examination Standards, A licensee shall  
5 conduct an eye examination in accordance with the standards of care prevalent in the  
6 community and consistent with current industry practice.

7           6.       The conduct and circumstances described in the Findings of Fact constitute  
8 grounds for disciplinary action in accordance with A.R.S. §32-1743 (12), “any violation of any  
9 statutes, laws, or rules regulating the practice of optometry in this state or any other jurisdiction  
10 in the United States” and A.A.C. R4-21-305, Recordkeeping, (A) A licensee shall create and  
11 maintain a complete and legible record of each examination including all findings. A licensee  
12 shall ensure that a patient record is maintained for at least six years after the licensee's last  
13 contact with the patient and includes: 1. Patient's name and contact information; 2. Date on  
14 which an entry is made in the patient's record; 3. Identification of the person making the entry in  
15 the patient's record; 4. Complete health history; 5. Visual acuity of each eye: entering and best  
16 corrected; 6. Ocular health examination; 7. Assessment of intraocular and extra-ocular muscle  
17 function; 8. Objective or subjective refraction of the eyes; 9. Diagnosis, treatment, and  
18 disposition; 10. Type and dosage of each use of a pharmaceutical agent; 11. Final optometric  
19 prescription given, if any; 12. Corrective procedure program prescribed, if any; and 13.  
20 Signature of licensee providing diagnosis, treatment, and disposition. (B) A licensee may create  
21 and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic  
22 format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this  
23 Chapter to electronic format. A licensee who converts a record to electronic format shall ensure  
24 that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this  
25 Chapter. (C) A licensee who discontinues practice for any reason shall arrange for a patient's  
26 record to be available to the patient for six years from the date the licensee discontinues  
27 practice. Before discontinuing practice, a licensee shall notify the Board of the location at which

1 patient records from the practice will be maintained. (D) A licensee who acquires the patient  
2 records of a licensee who discontinued practice, either with or without succeeding to the  
3 practice of the other licensee, shall ensure that the records are available to the patients for six  
4 years after the licensee from whom the records were acquired discontinued practice. (E) A  
5 licensee shall provide a tangible or electronic copy of a patient's record within five business  
6 days after receiving a written request from the patient. The licensee shall provide the copy to  
7 any person designated by the patient. The licensee may charge a fee to cover the costs of  
8 providing the copy. The licensee shall maintain a record of providing the copy for six years. (F)  
9 Regardless of the form in which a licensee creates and maintains patient records, the licensee  
10 shall comply with all laws regarding security, confidentiality, maintenance and release of the  
11 records.

12 **ORDER**

13 Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY**  
14 **ORDERED:**

15 Respondent's license, OPT-000822, will be placed on probation for two years subject to  
16 the following terms and conditions.

17 **Practice Monitor**

18 1. While on probation, Respondent shall establish and maintain a relationship with a  
19 Professional Compliance Auditor (Practice Monitor) who is a licensed optometrist. The Practice  
20 Monitor shall conduct monthly monitoring site visits to include medical record reviews to ensure  
21 that Respondent is compliant with the all of the laws and rules that govern the practice of  
22 optometry.

23 2. Within 30 days of the effective date of this Order, Respondent shall submit the  
24 name of a Practice Monitor for pre-approval by the Board Chair or designee. Also within  
25 30 days of the effective date of this Order, the Proposed Practice Monitor shall submit a letter to  
26 the Board disclosing their prior relationship to Respondent, if any. In that letter, the Practice  
27 Monitor shall address why they should be approved and acknowledge that they have reviewed

1 the Order. Within 30 days of being approved, the Practice Monitor shall, among other things,  
2 conduct a general audit of Respondent's practice, conduct a review of ten (10) randomly selected  
3 patient medical records and submit to Respondent and the Board the results of their an initial  
4 assessment. The assessment shall include a monitoring plan that minimally includes monthly  
5 monitoring site visits. At the monthly site-visits, the Practice Monitor will randomly review  
6 ten (10) additional patient medical records for audit. The focus of the audit shall be on  
7 Respondent's compliance with A.A.C. R4-21-305 and the laws and rules that govern the practice  
8 of optometry.

9 **Monitoring Quarterly Reports**

10  
11 3. The Practice Monitor shall submit reports every 60 days for review and approval  
12 by the Board Chair or designee. The reports shall include issues presented in this Order that need  
13 to be reported and the Practice Monitor shall notify the Board if more frequent monitoring is  
14 needed. After the first year, and at the recommendation of Practice Monitor, Respondent may  
15 request that the Board change the frequency of audits from monthly to quarterly. The Practice  
16 Monitor shall submit a final summary report for review and approval by the Board Chair or  
17 designee. The final summary report submitted by the Practice Monitor shall address  
18 Respondent's compliance with the Order and in particular his record keeping.

19 **Change of Practice Monitor During Probation**

20  
21 4. If, during the period of Respondent's probation, the Practice Monitor determines  
22 that they cannot continue to serve in this capacity, they shall notify the Board within  
23 ten (10) days of the end of monitoring and provide the Board with an interim final report.  
24 Respondent shall advise the Board Chair or designee within 30 days of cessation of monitoring  
25 by the approved Practice Monitor of the name of a new proposed practice monitor. The proposed  
26 Practice Monitor shall provide the same documentation to the Board as was required of the initial  
27 practice monitor.

1 **Continuing Education**

2 5. In addition to the continuing education requirements of A.R.S. § 32-1726, within  
3 60 days of the effective date of this Order, Respondent shall complete six (6) clock hours of  
4 continuing education in the area of ethics for healthcare professionals and six (6) clock hours of  
5 continuing education in the areas of recordkeeping and documentation. All required continuing  
6 education shall either be pre-approved by the Board Chair or designee or be COPE approved.  
7 Upon completion, Respondent shall submit certificates of completion of the required continuing  
8 education.

9 **Hearing Costs**

10 1. Respondent shall be charged all costs incurred for the formal hearing, including,  
11 but not limited to, the court reporter and expert witness used by the State. Under separate cover,  
12 Respondent will be sent an invoice for these costs. Respondent will have 30 days to remit  
13 payment to the Board.

14 **Early Release**

15 2. After completion of the stipulations set forth in this Order, and upon the Practice  
16 Monitor's recommendation, Respondent may request early release from the Order after at least  
17 12 months.

18 **GENERAL PROVISIONS**

19 1. Respondent shall bear all costs required to ensure his compliance with this Order  
20 to include, but not limited to, the cost for the probation monitor and all audits.

21 2. The Board retains jurisdiction over Respondent and may take additional remedial  
22 or disciplinary action against him if it determines that he has committed subsequent violations  
23 of this Order or of the optometric practice act.

24 3. Respondent shall appear in person before the Board to respond to questions or  
25 concerns regarding his compliance with this Order when requested.

26 4. Prior to the release of Respondent from probation, Respondent must submit a  
27 written request to the Board for release from the terms of this Order at least 30 days prior to the



1 date they would like to have this matter appear before the Board. Respondent shall appear  
2 before the Board in person. Respondent must provide evidence that they have successfully  
3 satisfied all terms and conditions in this Order. The Board has the sole discretion to determine  
4 whether all terms and conditions of this Order have been met and whether Respondent has  
5 adequately demonstrated that they have addressed the issues contained in this Order. In the  
6 event that the Board determines that any or all terms and conditions of this Order have not been  
7 met, the Board may conduct such further proceedings as it determines are appropriate to address  
8 those matters.

9 5. Respondent shall be responsible for ensuring that all documentation required in  
10 this Order is provided to the Board in a timely manner.

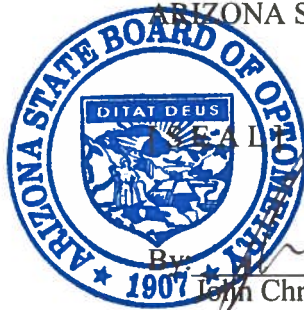
11 6. This Order shall be effective on the date of entry below.

12 7. This Order is conclusive evidence of the matters described herein and may be  
13 considered by the Board in determining appropriate sanctions in the event a subsequent  
14 violation occurs.

15 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

16 Respondent is hereby notified that he has the right to request a rehearing or review of the  
17 Decision and Order by filing a motion with the Board's Executive Director within 30 days after  
18 service of this Decision and Order. Service of the Decision and Order is effective five (5) days  
19 after the date of mailing to Respondent. A.R.S. §41-1092.09. The motion must set forth legally  
20 sufficient reasons for granting a rehearing or review. A.A.C. R4-21-309. If a motion for  
21 rehearing or review is not filed, the Board's Decision and Order becomes final 35 days after it is  
22 mailed to Respondent. Respondent is further notified that failure to file a motion for rehearing  
23 or review has the effect of prohibiting judicial review of the Decision and Order, according to  
24 A.R.S. § 41-1092.09(B) and A.R.S. § 12-904, et seq.

1 DATED this 10<sup>th</sup> day of December, 2019.



ARIZONA STATE BOARD OF OPTOMETRY

By: John Chrisagis, O.D., Board President

8 ORIGINAL of the foregoing filed  
this 10<sup>th</sup> day of December, 2019 with:

9 Arizona State Board of Optometry  
10 1740 West Adams St., Suite 3003  
Phoenix, AZ 85007

11 EXECUTED COPY of the foregoing mailed by Certified Mail  
this 10<sup>th</sup> day of December, 2019 to:

12 David Anderson, O.D.  
13 Arcadia Eye Care  
14 4350 E Camelback Rd, Ste. B120  
Phoenix, AZ 85018

15 USPS tracking number: 9405 5036 9930 0190 2558 69

16 EXECUTED COPY of the foregoing mailed  
this 10<sup>th</sup> day of November, 2019 to:

17 Mona Baskin, Assistant Attorney General  
18 Office of the Attorney General-SGD/LES  
19 2005 North Central Avenue  
Phoenix, Arizona 85067  
Attorney for the State

20 Marc H. Harris  
21 Licensing & Enforcement Section  
22 Office of the Attorney General-SGD/LES  
23 2005 North Central Avenue  
Phoenix, Arizona 85067  
Independent Attorney Advisor

24 By: M. Harris  
25 DOC#8350475

