

1 BEFORE THE  
2 BOARD OF OPTOMETRY  
3 STATE OF OREGON

3 In the Matter of the License to Practice )  
4 as an Optometrist of: )

5 Richard Roth, O.D. )

6 Licensee. )  
7 \_\_\_\_\_ )

AGENCY CASE NO: 11-06-01,  
10-07-02, 10-11-01, 10-12-03 and  
11-02-02

NOTICE OF PROPOSED  
DISCIPLINARY ACTION &  
CONTESTED CASE RIGHTS

8 TO: Richard Roth, O.D.

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10 The Oregon Board of Optometry (Board) is the state agency responsible for licensing and  
11 disciplining optometrists and for regulating the practice of optometry. Richard Roth, O.D.  
12 (Licensee) is licensed by the Board to practice as an optometrist in the State of Oregon.

13 The Board proposes to issue a Revocation of Licensee's license for violations of the  
14 Board's statutes and rules. The events are described as follows:

- 15 • Licensee is licensed by the Board to practice in the State of Oregon as an  
16 optometrist and his license is currently valid through August 31, 2011.
- 17 • The Board received a complaint on July 30, 2010 regarding Licensee's failure to  
18 deliver contact lenses to a patient after payment was made. The patient, J.H.,  
19 complained that Licensee had examined his eyes in May 2010, but by the end of  
20 July 2010 the patient had not yet received the contact lenses he had ordered.  
21 When contacted by the Board, Licensee indicated he could not find patient J.H.'s  
22 file as he had "lost" it.
- 23 • On November 3, 2010, another complaint came in regarding the care of patient  
24 D.C. This patient had ordered contact lenses on August 19, 2010 and paid \$226  
25 for the lens supply. From August through October 2010, the patient returned to  
26 the clinic and on each occasion was told "they would arrive tomorrow" or that  
"Dr. Roth was having a dispute with the lab."

1 The patient was upset as he believed the lenses were never ordered by Licensee  
2 and that his money was used for other purposes. The patient finally demanded a  
3 refund and received that on October 26, 2010. The Board sent letters to Dr. Roth  
4 (November 4, 2010 and December 3, 2010) asking for his explanation and only  
5 received the patient file without a written explanation. It wasn't until January  
6 2011 that Licensee provided the full patient records.

- 7 • During this same time period, the Board became aware that Dr. Roth had closed  
8 his practice at Hollywood Vision Center located at 4000 NE Sandy Blvd.,  
9 Portland, Oregon 97212. Licensee had failed to tell the Board that he had  
10 closed one of his offices and consolidated it with another location.
- 11 • On January 25, 2011, another complaint came in regarding the care of patient  
12 J.M. He too was complaining that he had ordered contact lenses and had not  
13 received them. He was initially seen in July 2010 and picked up his contact for  
14 his right eye in January 2011 and had to reorder for the other eye. He never did  
15 get the other contact lens and switched to another optometrist. Between July 2010  
16 and January 2011, he would regularly stop by Licensee's office to see the status  
17 of his order and received a different excuse each time. Patient J.M. estimated he  
18 went to the office 10 times. Since the patient's insurance year had changed during  
19 this time, his insurance benefits had also expired. From January 2010 through  
20 April 2011, the Board requested records of J.M. from Licensee. Finally, on April  
21 1, 2011 the records were provided.
- 22 • On February 18, 2011, the Board received another complaint regarding the care of  
23 patient LH. She had ordered spectacles in August 2010 and had paid for them but  
24 had not received them by February 2011. Patient L.H.'s insurance expired for  
25 that year while she was waiting to receive her glasses and she was unable to use  
26 that benefit.

1 The Board requested the records from Licensee on February 18, 2011 and March  
2 14, 2011. The records were received by the Board from Licensee on March 21,  
3 2011.

- 4 • On March 17, 2011, Licensee received a letter from the Board asking for patient  
5 records on all the patients noted above. Licensee failed to respond. On April 1,  
6 2011, another letter was sent to him reminding him of the need for the records and  
7 of his obligation to comply under the laws and rules.
- 8 • On June 3, 2011, the Board became aware of issues regarding the care of patient  
9 F.H. This patient was attempting to contact Licensee, but in the meantime, he had  
10 put a sign on the office door saying that he had gone out of business. She had last  
11 talked to Licensee on May 21, 2011. Patient F.H.'s husband had ordered and paid  
12 for spectacles and was not able to pick them up. Patient F.H. also wanted a copy  
13 of her prescription from Licensee but was unable to get it.
- 14 • The Board became aware (from a third party) on June 7, 2011, that Licensee had  
15 left the state and closed his business location permanently. Licensee did not  
16 provide any notification to the Board or his patients. The Board became aware  
17 through Licensee's landlord who contacted them that Licensee had closed his  
18 location and was attempting to get another optometrist to take responsibility for  
19 the patient records and the business. The Board became concerned for the  
20 patients' ability to obtain their needed medical information.
- 21 • The Board obtained an email address for Licensee, and sent him an email on June  
22 9, 2011, asking him to send the Board his current contact information  
23 immediately. Licensee had been communicating with his landlord and with  
24 another optometrist, but, until July 5, 2011, did not communicate with the Board,  
25 and did not respond to the request for contact information until July 8, 2011.

- 1           • Licensee offered custody of his patient records to an optometrist on June 3, and  
2           then withdrew the offer on June 13, following objections by his landlord. On July  
3           5, Licensee informed the Board that custody of the records had been transferred to  
4           another optometrist, approximately one week after the clinic had reopened under a  
5           new name.

6  
7 Licensee's continued disregard for the legal requirements of his profession are very serious, and  
8 the ability for patients to obtain their medical information is important for the protection of the  
9 public of this state.

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11           The Board alleges that the acts and conduct of Licensee described above constitute  
12 violations of the following:

- 13           • ORS 683.140(1) (c) - unprofessional conduct or for gross ignorance or inefficiency in the  
14           profession;  
15           • ORS 683.140(1) (p) - any violation of the provisions of ORS 683.010 to 683.335;  
16           • OAR 852-010-0051(1) and 852-060-0027(19) failure to keep complete and accurate records for  
17           each patient;  
18           • OAR 852-010-0051(2) failure to keep all patient records for a minimum of seven years from the  
19           date of the last office visit;  
20           • OAR 852-060-0027(1) fraud, misrepresentation or dishonesty;  
21           • OAR 852-060-0027(10) willfully deceiving or attempting to deceive the Board, or an employee  
22           of the Board in reference to any matter under investigation by the Board;  
23           • OAR 852-060-027(11) - failing to respond in writing to the Board request for information as  
24           required;  
25           • OAR 852-060-027 (20) - failing to retain or make appropriate transfer of the care of patient  
26           records;

- 1 • OAR 852-050-018(1) - failure to notify the Board in writing of the practice location;
- 2 • OAR 852-050-018 (2) - failure to notify the Board in writing of the change in the Licensee's  
3 official address;
- 4 • OAR 852-010-051(3) - failure to retain records or transfer them to a practicing optometrist when  
5 closing a practice or changing practice locations; and
- 6 • OAR 852-010-051 (4) - failing to provide copies of records to a patient when requested.
- 7 • OAR 852-050-016(1) failure to notify the Board in writing of the termination of a practice  
8 location;

9 The Board proposes a revocation of Licensee's license.

10 The Board also proposes to assess costs of the disciplinary proceedings pursuant to ORS  
11 683.140(2)(e).

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13  
14 Licensee has the right, if Licensee requests, to have a formal contested case hearing before an  
15 Administrative Law Judge of the Office of Administrative Hearings, to contest the matter set out  
16 above. At the hearing Licensee may be represented by an attorney and subpoena and cross-  
17 examine witnesses. The request for hearing must be made in writing to the Board, must be  
18 received by the Board within twenty-one (21) days from the mailing of this notice (or if not  
19 mailed, the date of personal service).

20 Pursuant to OAR 852-060-070, Respondent's written request for hearing should include  
21 an answer admitting or denying each factual matter alleged in this Notice, and a short, plain  
22 statement of each relevant affirmative defense the Respondent may raise. Except for good cause,  
23 factual matters alleged in this Notice and not denied in Respondent's answer shall be presumed  
24 admitted. Defenses not raised by Respondent in the answer may be considered a waiver of such  
25 defense by the Board.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 11, 2011, I served the within Notice of Proposed Disciplinary Action and Contested Case Rights upon the Licensee hereto, a true and correct copy thereof, by certified mail, return receipt requested, postage prepaid to:

Richard W. Roth, OD  
3007 Masonic Drive  
Greensboro NC 27403

I HEREBY FURTHER CERTIFY that on the same date, I mailed a copy of the above-named document to the Assistant Attorney General assigned to represent the Oregon Board of Optometry hereto, a full, true, and correct copy thereof by first-class mail, postage prepaid to:

Lori H. Lindley  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, OR 97310-4096

  
OREGON BOARD OF OPTOMETRY