BEFORE THE
OREGON BOARD OF OPTOMETRY
STATE OF OREGON

In the Matter of the License to Practice As an Optometrist of: David A. Biggar, O.D. Licensee.	AGENCY CASE NO: 13-09-02, 13-09-03, 13-09-04 FINAL ORDER BY DEFAULT

TO: David Biggar, O.D.

The Oregon Board of Optometry (Board) is the state agency responsible for licensing and disciplining optometrists and for regulating the practice of optometry. David Biggar, O.D. (Licensee) is licensed by the Board to practice as an optometrist in the State of Oregon. At all times material herein, Licensee was an optometrist at a reported primary practice location at 2 CenterPointe Drive, Suite 150, Lake Oswego, Oregon 97035.

On August 7, 2014, the Board proposed to issue a formal reprimand and a Civil Penalty of $1,500 to Licensee for violations of the Board's statutes and rules.

FINDINGS OF FACT

1.

On September 18, 2013, the Board received written complaints from three patients in the same family who had received examinations by Dr. Biggar on September 3, 2013. These persons will be referred to as Complainants 1, 2, and 3. The Board opened three complaint investigations. The Board investigated these complaints and reviewed the patient records received from the doctor at its November 2, 2013 meeting. The Board determined the records were incomplete, and requested additional information and records.

The Board considered the three cases at its February 21, 2014 meeting. The Board found no optometric error or other violations of Oregon laws and administrative rules, and closed the three cases.

2.

On April 11, 2014, Complainant 1 contacted the Board to report a telephone call from Licensee on April 3, 2014. Complainant 1 reported harassment, unprofessional conduct, a potential HIPAA violation, and other actions believed to be retaliatory for filing complaints with the Board. Complainant 1 reported that his adult daughter, now referred to as Complainant 4, received an eye examination from Licensee on March 27, 2014 in which Licensee disclosed patient information about her father to her. Based on this new information, the Board reopened the three complaints.

In an interview with Complainant 4, she described Licensee's treatment of her as unprofessional and that he had disclosed to her information about her father during the examination and had questioned her as to why she came to the practice for an examination when her family had filed complaints against Licensee with the Board. She requested that her issues be included in Complaint 13-09-02 instead of opening a new complaint. The Board finds Licensee's conduct to be unprofessional under OAR 852-060-0025(2)(d), and conduct contrary to recognized standards of ethics of the optometric profession under OAR 852-060-0027 (17), for violating patient confidentiality.

3.

In a scheduled interview with the Board on May 9, 2014, Licensee arrived late and with his infant son in attendance. During this interview, Licensee admitted and described his April 3, 2014 telephone call to Complainant 1. Licensee reported that during this phone call, he discharged the family from care in his practice. Licensee reported that Complainant 1 discussed the patient records being mailed to the complainants by Licensee. The Board finds this telephone call escalated to harassment of the complainant and Licensee's conduct was unprofessional under OAR 852-060-0025(2)(d).

During the May 9, 2014 interview, Licensee also admitted he initiated a discussion about Complainant 1 during Licensee's examination of Complainant 4 and that Licensee did divulge

information about Complainant 1 to her. The Board finds this conduct is unprofessional and a violation of OAR 852-060-0025(2)(d) and ORS 852-060-0027(17) in disclosing protected information contrary to recognized standards of ethics of the optometric profession.

4.

Complainant 1 attests that he requested the three complainants' patient records verbally during Licensee's telephone call to him on April 3, 2014. Complainant 1 offered to pick up the records at Licensee's office, but Licensee said he would mail them. When their patient records were not received by the complainants, Complainant 1 followed up with a formal written request for the family's patient records on May 28, 2014.

Given the requirements of OAR 852-010-0051(5) to release patient records within 14 business days of the request, the deadline for Licensee providing the records was April 23, 2014 for the first verbal request made on April 3, 2014; and June 17, 2014 for the written request made on May 28, 2014.

Licensee did not mail the patient records to the Complainants until June 27, 2014, as evidenced by the postmarked envelope retained by Complainant 1. This is 65 days past the deadline for the first request, and 10 days past the deadline for the second, written request. The Board finds this delay egregious, and a violation of OAR 852-010-0051(5) and unprofessional conduct under OAR 852-060-0025(2)(d).

5.

The Proposed Notice of Disciplinary Action was sent to Licensee via certified mail on August 7, 2014. The Proposed Notice notified Licensee that he was required to request a hearing within a 21 day time period. Licensee failed to timely request a hearing and is now in default. In the Proposed Notice, Licensee was notified if he failed to request a hearing that the Board would use the evidentiary record of the Board for a default and the purpose of proving a prima facie case.

CONCLUSIONS OF LAW

6.

The Board finds paragraphs 1-4 above are in violation of the following:

- Three violations of ORS 683.140(c) unprofessional conduct in the profession; OAR 852-010-0051(5) Records, and OAR 852-060-0025(2)(d) Unprofessional conduct, for failure to timely release requested patient records to three complainants within 14 business days of the request.
- One violation of ORS 683.140(c), unprofessional conduct in the profession; OAR 852-060-0025(2)(d) Unprofessional conduct, and OAR 852-060-0027(17) Conduct contrary to recognized standards of ethics of the optometric profession, for violating patient confidentiality.
- One violation of ORS 683.140(c); OAR 852-060-0025(2)(d) Unprofessional conduct for harassment of a complainant.

7.

The Board orders that Licensee is issued a Formal Reprimand and is required to pay a Civil Penalty in the sum of $1500 to the Board for the above violations. The civil penalty is due within 30 days this order becomes final.

DATED this 5th day of September 2014.

OREGON BOARD OF OPTOMETRY

By: _____
Nancy DeSouza, Executive Director

Appeal Rights:
You are entitled to judicial review of this order in accordance with ORS Chapter 183.480. You may request judicial review by filing a petition in the Court of Appeals in Salem, Oregon within 60 days from the date of this order.