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BEFORE THE
OREGON BOARD OF OPTOMETRY
STATE OF OREGON

In the Matter of the Dispensing or Selling of) AGENCY CASE NO:09-10-03
Ophthalmic Contact Lens:)
Gen X Clothing #80) STIPULATED FINAL ORDER
Respondent.)
_____)

7 TO: Gen X Clothing #80
8 Hermiston, OR

9 The Oregon Board of Optometry (Board) is the state agency responsible for licensing and
10 disciplining optometrists and for regulating the practice of optometry. Gen X Clothing #80
11 (Respondent) is under the jurisdiction of the Board pursuant to ORS 683.180 and 174.100.

12 **Findings of Fact**

13 Gen X Clothing #80 operates a retail store located at 930 B Highway 295 South,
14 Hermiston Oregon. During the fall of 2009 it came to the Board's attention that Gen X Clothing
15 was selling contact lenses to consumers at this store without a valid contact lens prescription.

16 On October 12, 2009 when the Board became aware of these sales, the Board wrote to
17 Gen X Clothing at the Hermiston location and told them that selling these contact lenses without
18 a prescription violated Oregon law. The letter also warned that they should immediately
19 discontinue the practice of selling corrective, plano or decorative contact lens without a valid
20 prescription. Respondent was notified it was also outside of FDA regulations to sell the lenses.

21 On November 9, 2009, the Board telephoned the Gen X Clothing store and inquired if
22 colored contact lenses were for sale. The women who answered the phone indicated they were
23 but that stock was currently low. A specific lens was requested by the Board and the woman
24 said they had those and they would cost \$14.50 a pair. The Board investigator asked if a
25 prescription would be required and they said no, that these lenses are FDA approved. The
26 woman said these lenses were not previously FDA approved, but they were now.

1 On November 28, 2009 a Board investigator went to the Gen X Clothing store in
2 Hermiston and looked at a display of colored contact lenses. The display had a label stuck on it
3 that said FDA approved. There were several different colors available in the display case. The
4 investigator then bought a pair of turquoise contacts. The investigator asked if there were any
5 brochures on the lenses or any other information and the clerk said no. The Board has in their
6 possession the lenses purchased by the investigator.

7 **Conclusions of Law**

8 The Board finds that the acts and conduct of Respondent described above constitute a violation
9 of ORS 683.180(9) (dispense or sell an ophthalmic contact lens without a valid prescription.) Selling
10 contact lenses to patients without a valid prescription poses a risk of harm to the public.

11 **Stipulation**

12 Respondent and the Board wish to resolve this disciplinary matter. Respondent agrees
13 that the following Stipulated Final Order be entered:

14 1. Respondent's acts and conduct in selling contact lenses without a valid prescription
15 constitutes a violation of ORS 683.180(9) (dispense or sell an ophthalmic contact lens without a
16 valid prescription)

17 2. Respondent agrees to pay a civil penalty in the sum of \$5,000 payable to the Board
18 within 30 days of this order.

19 3. Respondent agrees that at Gen X store #80, he agrees to no longer dispense or sell
20 ophthalmic contact lenses in this store location or any other store locations for which he has
21 ownership or management responsibility.

22 4. This Stipulated Final Order resolves all matters between Respondent and the Board.

23 5. This Stipulated Final Order shall be a public record subject to disclosure.

24 IN SIGNING THIS STIPULATED FINAL ORDER, RESPONDENT
25 ACKNOWLEDGES:

26 ///

1 That by entering into this Stipulated Final Order, I wave any contested case rights or rights
2 in appeal.

3 No promises, representations, duress or coercion have been used to induce me to sign this
4 final stipulated order.

5 I have read and understand this Stipulated Final Order.

6 **IT IS HEREBY ORDERED:**

- 7 1. Respondent admits that the acts and conduct in selling contact lenses without a valid
8 prescription constitutes a violation of ORS 683.180(9) (dispense or sell an ophthalmic
9 contact lens without a valid prescription)
- 10 2. Respondent agrees to pay a civil penalty in the sum of \$5,000 within 30 days of this
11 final order.
- 12 3. Respondent agrees that at Gen X store #80, he will no longer dispense or sell
13 ophthalmic contact lenses in this store location or any other store locations for which he
14 has ownership or management responsibility.
- 15 4. This final order memorializes the entire agreement between Respondent and the Board
16 and supercedes any prior offers, negotiations or settlement discussions.

17 IN WITNESS THEREOF, Respondent and the Board have entered into and signed this
18 Stipulated Final Order.

19
20 DATED this 13 day of Feb 2010.

21 OREGON BOARD OF OPTOMETRY

22
23 By: 
24 Gen X Clothing #80, Hermiston, OR

25 By:  March 1, 2010
26 David W. Plunkett, Executive Director