

MINUTES

NEVADA STATE BOARD OF OPTOMETRY SPECIAL MEETING

August 1st, 2008
Office of the Nevada State Board of Optometry
1000 East William
Suite 109
Carson City, Nevada

A special meeting of the Nevada Board of Optometry was called to order by Board President, Brad C. Stewart, O.D., at 8:00 a.m. on August 1st, 2008, at the office of the Board of Optometry, 1000 East William, Suite 109, Carson City, Nevada.

Identifying themselves as participating by phone were:

Brad C. Stewart, O.D., Board President
Geoffrey Chiara, O.D., Board Member
Vincent Gassen, O.D., Board Member

Participating and present at the Board office were:

Judi Kennedy, Executive Director
Cameron Vandenberg, Deputy Attorney General
Farnaz Khankhanian, O.D.
John Ohlson, Esq.

Dr. Stewart asked for public comment.

Mr. Ohlson stated he wished to make two objections. The first objection was the short notice of the meeting, contending he received only three days' notice. He continued, saying in the interim he had attempted to gather witnesses and evidence that

he wished to present to the Board. Second, he protested the venue. He wanted the Director and the Board members to know they were seated in the client chairs at the Board office, seated across from Ms. Kennedy, and the Board members were present by telephone, which he believed, inhibited his ability to proceed.

Dr. Stewart asked if that was all Mr. Ohlson wanted to say. Mr. Ohlson responded by saying it depended on how the Board intended to proceed. He noted he had filed a complaint with the Board on behalf of Ms. Khankhanian. Mr. Ohlson stated that if the Board were going to hear matters on the complaint, he would have more to say.

Dr. Stewart asked for comment from Ms. Kennedy and/or Ms. Vandenberg. Ms. Vandenberg stated Mr. Ohlson's objections could be noted, but there was nothing irregular with the physical setting of the meeting. Ms. Vandenberg continued, advising the Board it could proceed. Dr. Stewart asked if proper notice of the meeting had been given. Ms. Vandenberg replied in the affirmative.

Dr. Stewart stated the Board would proceed, and asked if Mr. Ohlson had any further comment. Mr. Ohlson responded by inquiring whether the Board would take testimony. Dr. Stewart replied that this meeting had been set for the purpose of considering the letter of complaint and documents Mr. Ohlson had submitted to the Board. Mr. Ohlson said that would inhibit the proceedings because he had planned to take testimony from Ms. Khankhanian and Ms. Kennedy, and that he had other

documents to present. Ms. Vanderberg interjected that Mr. Ohlson could take testimony from Dr. Khankhanian and the persons present if that was what he wanted to do. Dr. Stewart stated that was fine, and told Mr. Ohlson to proceed. Mr. Ohlson then asked if someone was present to administer the oath. Dr. Stewart responded this was not a formal hearing, and that he did not believe individuals making statements had to be under oath, but he would defer to Board counsel's advice. Mr. Ohlson continued, complaining that this was not a formal hearing, that there was no one to administer the oath, that the meeting was being held in somebody's little office, and contending that no record was being made of the hearing. Dr. Stewart interrupted, stating once again, it was not a hearing, it was a special meeting of the Board of Optometry. Ms. Vandenberg, at the request of Dr. Stewart, confirmed the proceeding was not a hearing, but was a meeting of the Board of Optometry. Mr. Ohlson then inquired of the purpose, and why they were notified of the meeting. Dr. Stewart responded that the meeting was being held to consider a complaint letter received from Mr. Ohlson on behalf of his client. Mr. Ohlson's retort was that he was not being allowed to proceed, and that if the Board had already arrived at a conclusion, he would just as soon hear it.

Once again, Dr. Stewart asked Mr. Ohlson if he had said all he had to say. Mr. Ohlson's response was that he had said everything as far as he had been allowed.

Ms. Kennedy stated she was happy to answer any question Mr. Ohlson had for

her. Dr. Stewart stated the Board was prepared to have Mr. Ohlson ask questions of Ms. Kennedy and/or Dr. Khankhanian. Mr. Ohlson's response was that he was prepared to ask Ms. Kennedy questions, but only under oath. Mr. Ohlson continued, stating that he was not willing to accept Ms. Kennedy's statement unless she were under oath. Ms. Kennedy cautioned Mr. Ohlson she would not tolerate any further statements from him that impugned her honesty and integrity.

Dr. Stewart moved forward to address the July 14th, 2008, letter from Mr. Ohlson in which he complained Ms. Kennedy disregarded statutory mandates, and implied she acted outside the purview of the Board's authority. Dr. Stewart confirmed all members had copies of the letter, and proceeded with a review of the exhibits that were attached to the letter. Dr. Stewart specifically addressed Exhibit 4 in which Mr. Ohlson cited NRS 636.310, quoting the portion requiring that a complaint must be signed and verified by the person making the complaint. Dr. Stewart noted, that in Exhibit 4, Mr. Ohlson had opined the Board could not consider any documents unless a complaint had been filed.

Dr. Stewart stated that after having consulted with legal counsel, the Board was relying on the provisions of NRS 636.305, which gives the Board the authority to employ investigators and NAC 636.490[1], which allows the Board to act on its own initiative, whether or not a complaint has been filed. Dr. Stewart continued, stating after having reviewed the statute and regulation with legal counsel, it was the Board's

opinion that Mr. Ohlson's letter of complaint was without merit. Dr. Stewart went on to state Mr. Ohlson's contention that the Board could not review documents unless a formal complaint had been filed, was based on either a misinterpretation, or an incomplete reading of our Chapter. Dr. Stewart concluded, addressing Mr. Ohlson's request that the Board discipline Ms. Kennedy. Dr. Stewart stated he would entertain a motion finding that Mr. Ohlson's letter of complaint lacked merit, that Ms. Kennedy acted properly, and with the advice of legal counsel. Dr. Chiara made the motion. Dr. Gassen seconded the motion. Dr. Stewart asked for discussion. There was none. The vote was unanimous.

Dr. Stewart stated he would like the record to show that since Dr. Khankhanian applied for licensure in the State, she had a history of expressing dissatisfaction with the Board, and challenging the Board's authority. Dr. Stewart continued, stating Dr. Khankhanian had appeared before the Board several times, and on one occasion she was publicly admonished by a Board member for the manner in which she addressed Board members. Additionally, Dr. Stewart stated that in December, 2005, Dr. Khankhanian filed suit against the Board of Optometry in District Court in Carson City, and in April, 2006, the Court issued an Order of Dismissal, upholding the Board's position. Dr. Stewart stated that in his mind, Mr. Ohlson's allegation that the Board or its Director was on some sort of a witch hunt, to use Mr. Ohlson's words, with regard to his client, was simply unsubstantiated, and without credibility.

Dr. Stewart then stated, based on advice of counsel, and in order to fulfill the

Board's statutory mandate to protect the public, he believed there should be further review of the documents and correspondence Mr. Ohlson had submitted as exhibits to his July 14th, 2008, letter of complaint. To that end, Dr. Stewart indicated he would entertain a motion to place the documents and correspondence, on the agenda for the Board's September 19th, 2008, regular meeting, in order to determine whether an investigation into witness tampering or other matters is warranted. Dr. Chiara made the motion. Dr. Gassen seconded the motion. Dr. Stewart asked for discussion. There was none. The vote was unanimous.

Dr. Stewart commented that as long as he had served on the Board, the Nevada State Board of Optometry had done its best to protect the citizens of the State by supervising its licensees, and ensuring they practice optometry in a professional, competent, and ethical manner. Dr. Stewart expressed his hope that the Board would be able to continue to do so, within the scope of its authority.

Dr. Stewart then asked for public comment. Mr. Ohlson stated his only comment, in light of the Board's decision that had been announced, was that he and his client would be monitoring further proceedings very carefully to determine whether any retaliation against Dr. Khankhanian ensued. Dr. Chiara inquired if Mr. Ohlson had said "further retaliation." Mr. Ohlson responded he had stated, "any retaliation." Dr. Chiara replied he wanted to make that clear.

Dr. Chiara moved the meeting adjourn. Dr. Gassen seconded the motion. The vote was unanimous. The meeting adjourned at 8:15.

