

Minutes
Arkansas State Board of Optometry
Office of the Attorney General
Little Rock, Arkansas

November 7, 2002

Dr. Robert Smalling, President of the Board called the meeting to order with all Board members being present. Mr. William Trice, State Board attorney, was also present. Mrs. Barbara Martin with the Arkansas Optometric Association was present as well as Ann Booker, State Board staff. Jim Bona, PD and Mary Hudnall, RN from the Arkansas Department of Health, Division of Pharmacy Services and Drug Control also attended the disciplinary hearing.

Dr. Hubbard presented the minutes and made a motion that the minutes of the November 1, 2002 meeting be approved as is. Dr. Dale Morris seconded the motion. Motion carried.

The Board had planned to review Dr. Roy Ashabranner's practice plan, but due to illness, Dr. Ashabranner was unable to attend the Board meeting. The doctor will try to be present at the next Board meeting scheduled for December 12, 2002.

The Board meeting was then turned over to Mr. Trice in which he conducted a disciplinary hearing involving five different retail store managers and owners, with four being present.

First, Jee Hyon Choi was sworn in and appeared before the Board with her attorney, Mr. David Cannon. Mrs. Choi is a resident of Stuttgart, Arkansas and does business as Stuttgart Fashions. She has not been issued a license to practice optometry in the State of Arkansas. Mr. Bona, investigator with the Arkansas Department of Health, was sworn in and supplied information on the inventory found at the Stuttgart Fashions. Jee Hyon Choi d/b/a Stuttgart Fashions has sold contact lenses to members of the public on at least six occasions and had an inventory of nine pairs of contact lenses in the store available for sale to the public. Dr. Dale Morris made a motion finding Jee Hyon Choi guilty of violating the Optometry Practice Act in that she sold contact lenses to the public when not being licensed as an optometrist on at least six separate occasions. Dr. Ken Hubbard seconded the motion. Motion carried. As a result of the numerous violations, the Board of Optometry imposed a civil penalty requiring Jee Hyon Choi d/b/a Stuttgart Fashions to pay the monetary penalty amount of \$1,000.00 per violation for each of the six violations or \$6,000.00. Dr. Hubbard moved in favor of the penalty. Seconded by Dr. George Haas. Motion carried.

Second, Chon Berry d/b/a Jacksonville Sportswear appeared together with her attorney Mr. R. David Lewis and was sworn in. Chon Berry is a resident of Pulaski County, Arkansas and has not been issued a license to practice optometry in the State of Arkansas. Chon Berry d/b/a Jacksonville Sportswear has sold contact lenses to members of the public on at least twenty-five occasions and had an inventory of thirteen pairs of contact lenses in the store available for sale to the public. Dr. George Haas made a motion that Chon Berry be found guilty of violating the Optometry Practice Act in that she sold contact lenses to the public when not being licensed as an optometrist. Mr. Jaime Guerra seconded motion. Motion carried. As a result of the numerous violations, the Board of Optometry imposed a civil penalty requiring Chon Berry d/b/a Jacksonville Sportswear to pay a monetary penalty in the amount of \$1,000.00 per violation for each of the twenty-five violations or \$25,000.00. Dr. Dale Morris moved in favor of the penalty. Seconded by Dr. Kenneth Hubbard. Motion carried.

Third, Kevin Shamoon and John Safi d/b/a 99 Cents and Discounts located in Little Rock, Arkansas. Mr. Shamoon appeared before the Board, and was sworn in, but Mr. Safi failed to appear. Kevin Shamoon is a resident of Pulaski County, Arkansas as is John Safi. Neither Kevin Shamoon nor John Safi has been issued a license to practice optometry in the State of Arkansas. Mr. Bona was sworn in and supplied reports confirming the inventory found at 99 cents and discounts. From the admissions of Kevin Shamoon and the evidence introduced the Board finds that Kevin Shamoon and John Safi on at least six occasions have sold six pairs of contact lenses from their retail store and that they had one hundred and thirty two pairs of contact lenses available for sale to the general public. Dr. Dale Morris made a motion that Kevin Shamoon and John Safi be found guilty of violating the Optometry Practice Act in that they have sold contact lenses to the public when not being licensed as optometrists. Dr. George Haas seconded the motion. Motion carried. As a result of the numerous violations, the Board of Optometry imposed a civil penalty jointly and severely against Kevin Shamoon and John Safi d/b/a 99 cents and discounts to pay a monetary penalty in the amount of \$1,000.00 per violation for each of the six violations or \$6,000.00. Dr. William Coffee moved in favor of the penalty. Seconded by Dr. Dale Morris. Motion carried.

Fourth, Tony Vartenian appeared before the Board and was sworn in. Tony Vartenian is a resident of El Dorado, Arkansas and does business as Tony's Fashions, a retail store. Mr. Vartenian has not been issued a license to practice optometry in the State of Arkansas. Mr. Bona was sworn in and testified as to his findings in the investigation. After the evidence introduced, the Board finds that on at least ten occasions, Tony Vartenian has sold contacts lenses to members of the public and had an inventory of twenty-seven and one-half pairs of contact lenses in the store available for sale to the public. Dr. Dale Morris made a motion that Tony Varternian be found guilty of violating the Optometry Practice Act in that he has sold contact lenses to the public when not being licensed as an optometrist. Mr. Herman Shirley seconded the motion. Motion carried. The Board imposed a monetary penalty of \$1,000.00 per violation for each of the ten violations or \$10,000.00. Dr. Ken Hubbard moved in favor of the penalty. Seconded by Dr. George Haas. Motion carried.

Final charging document is Yura Hall and Kelly Hall d/b/a Kim's Fashions located in Little Rock, Arkansas. Yura Hall and Kelly Hall chose not to show for the hearing after being served with an Order and Notice with the date, time, and location of today's hearing, Therefore, the Board chose to proceed with the hearing in their absence. Yura Hall and Kelly Hall are residents of Pulaski County, Arkansas and do business as Kim's Fashions, a retail store. Neither Yura Hall nor Kelly Hall has been issued a license to practice optometry in the State of Arkansas. Mr. Jim Bona was called and sworn in to supply this reports of the investigation. He testified that in July he talked to Kelly Hall and she acknowledged having thirty-four pairs of contact lenses in inventory and available for sale to the public. She had no invoices for the merchandise and paid cash for the inventory. Mr. Bona had no evidence of how many contacts had been sold. Dr. Dale Morris made a motion that Yura Hall and Kelly Hall be found guilty of violating the Optometry Practice Act in that they sold contact lenses to the public without being licensed as optometrists. Dr. Kenneth Hubbard seconded the motion. Motion carried. As a result of the numerous violations of the Optometry Practice Act the Arkansas State Board of Optometry imposes a civil penalty requiring Yura Hall and Kelly Hall d/b/a Kim's Fashions to pay the Board a monetary penalty in the amount of \$1,000.00 per violation for each pair of contact lenses or \$34,000.00. Dr. Hubbard moved in favor of the penalty. Seconded by Dr. William Coffee. Motion carried.

After much discussion, all Board members agreed that these retail stores had violated the Optometry Practice Act. The Board reconsidered their previous ruling and Dr. George Haas made a motion that the civil penalty be reduced to the amount of \$2,000.00 for each individual business. Dr. William Coffee seconded the motion. Motion carried.

Mr. Trice presented two drafts to the Board members, to be considered in the future. The first draft dealing with licensure only at the top level and the other draft on documents and records. Mr. Trice had added a paragraph involving nursing homes and hospitals that he wanted the Board members to look over and consider. These drafts will be considered at the next hearing.

Dr. Flippin made a request that the Board approve two jurisprudence courses to be given in the future. One course at Southwest Council, Dallas in March, and the other at NSU at Branson in June 2003. Dr. George Haas moved that the Board approve both jurisprudence courses. Dr. Dale Morris seconded the motion. Motion carried.

Dr. Flippin reminded the Board members to be sure to turn in all expenses for the Springdale meeting that met on November 1, 2002. The tentative schedule for the calendar year of 2003 was gone over and will be revised accordingly.

After much discussion, Dr. Smalling ask the Board if anyone had any objection to inviting Susan Witherspoon to attend a future Board meeting. At which time, the Board would like to question Ms. Witherspoon about her sale of contact lenses. After no objection, Mr. Trice will handle the letter of invitation.

Dr. Dale Morris moved that the Board members be paid for one day of expenses plus mileage. Seconded by Mr. Jaime Guerra. Motion carried.

The time for the next Board meeting is scheduled for Thursday, December 12, 2002 in the office of the Attorney General, at 1:30 P.M.

Meeting adjourned.

Robert Smalling, O.D., President

Kenneth Hubbard, Jr., O.D., Secretary
