

BOARD OF EXAMINERS IN OPTOMETRY

IN THE MATTER OF)
W. CHRISTOPHER ARENSBERG, O.D.) Case No. 1994-002
Kansas License No. 1319)

FINAL ORDER

On April 30, 1998 the Kansas Board of Examiners In Optometry (the "Board") took up the Motion To Dismiss filed herein by W. Christopher Arensberg, O.D. (the "Respondent") and the Motion For Summary Judgment filed herein by the Board's representative and disciplinary counsel Randall J. Forbes. Board member John W. Page II, O.D. recused himself from consideration of this matter.

FINDINGS OF FACT

Based upon the Motion To Dismiss, the Motion For Summary Judgment and the responses made thereto, the Board finds that the following facts are undisputed by the parties or otherwise established by the undisputed record:

1. At all times relevant hereto, the Licensee held a license, issued by the Board, to practice optometry in the State of Kansas.

2. By letter dated November 10, 1993, the Board, through its attorney, advised the Licensee it was investigating possible violations of the Optometry Law. By the same letter, the Board requested the Licensee produce certain documents and appear at its

January 21, 1994 meeting to answer questions in furtherance of the investigation.

3. By letter dated July 11, 1994, the Board, through its attorney, again contacted the Licensee concerning the investigation and again requested the production of documents and the Licensee's presence at the Board's August 19, 1994 meeting to answer questions in furtherance of the investigation. That letter also specifically advised the Licensee that K.S.A. 65-1517(p) made failure to furnish the Board, its investigators or representatives any information legally requested by the Board an independent basis for disciplinary action against an offending Licensee.

4. By letter dated July 28, 1994, the Licensee's attorney contacted the Board's attorney requesting that the Board members recuse themselves from the investigation because of bias or, alternatively, that the Board not be shown the requested documents because of the confidential nature of those documents.

5. By letter dated August 5, 1994, the Licensee was notified, through his attorney, that the investigative questioning to be done on August 19, 1994 would not be done at an open public meeting of the Board, but would be conducted in private by only the Board President and the Board's attorney.

6. By letter dated August 16, 1994, the Respondent was advised, through his attorney, that the Board's representatives who would be conducting the investigative questioning, did not believe the presence of a court reporter would be appropriate at the August 19, 1994 investigative meeting with the Board's

president and attorney and that they would prefer to not have a court reporter present.

7. On August 19, 1994 the Respondent appeared with his attorneys, but the Licensee refused to answer questions to be posed as part of the Board's investigation without the court reporter present.

The foregoing finding of fact number 7 is essentially the same as the uncontroverted statement number 9 contained in the Board representative's Motion For Summary Judgment. Although the Respondent indicated in his response to the motion for summary judgement that he controverted the statement, the Board had available to it a transcript of what occurred on that day. There is no controversy over the transcript and the transcript is sufficient, without other evidence, for the Board to reach its own conclusion regarding what transpired.

CONCLUSIONS OF LAW AND POLICY

1. The Kansas Administrative Procedures Act provides that the parties to a proceeding such as this one shall have a full opportunity to file motions to dismiss and motions for summary judgment. K.S.A. 77-519.

2. Resolving a matter on summary judgment is appropriate when there is no dispute as to the material facts and one party is entitled to judgment as a matter of law.

3. K.S.A. 65-1517(p) provides that an optometrist licensed in Kansas is subject to discipline, including public censure, upon a finding that the optometrist failed to furnish the Board or its

investigators or representatives any information legally requested by the Board.

4. The Respondent had no legal basis upon which to insist that a court reporter be present when the Board's attorney and representative asked him questions as part of a Board investigation and therefore had no legal basis to refuse to provide information without a court reporter present.

5. On August 19, 1994, when the Respondent refused to answer questions of the Board's attorney and representative, he failed to furnish the Board's investigator and representative information legally requested by the Board.

6. The policy of the Board is not to allow a licensee to refuse to answer investigative questions without a court reporter present, thereby directing how the Board will conduct an investigation.

DECISION

The Respondent's Motion To Dismiss should be and is hereby denied. The Motion For Summary Judgment submitted by the Board's representative should be and is hereby sustained.

The Respondent should be publicly censured for failing to furnish the Board's investigator and representative information legally requested by the Board. A letter of public censure, in the form attached hereto, shall be issued and placed in the Respondent's file.

NOTICES


Any party, within 15 days after service of this Final Order, may file a petition for reconsideration with the Board, stating

the specific grounds upon which relief is requested. Any party, within 30 days after service of this Final Order, may also file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq. If such a petition for judicial review is filed, service of the petition on the Kansas Board Of Examiners In Optometry should be made by serving Larry D. Stoppel, O.D., its president, at 318 C Street, Box 155, Washington, Kansas 66968.

BY THE BOARD IT IS SO ORDERED.

Dated this 4th day of June, 1998, at Topeka, Kansas.

KANSAS BOARD OF EXAMINERS
IN OPTOMETRY



Larry D. Stoppel, O.D.
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the foregoing FINAL ORDER was filed by depositing same in the United States mail, postage prepaid, this 4th day of June, 1998, addressed to:

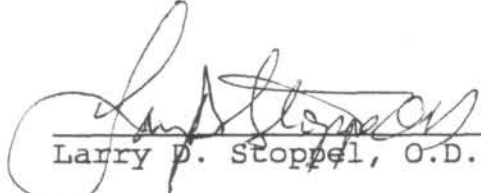
Kansas Board of Examiners In Optometry
3111 West 6th
Suite A
Lawrence, KS 66049

and copies mailed to:

W. Christopher Arensberg, O.D.
Towne East Square Mall
7700 E. Kellogg
Wichita, KS 67207

Brent Wright
Holbrook, Heaven & Fay
757 Armstrong
P.O. Box 171927
Kansas City, KS 67117-0924

Randall J. Forbes
Frieden, Haynes & Forbes
P.O. Box 639
Topeka, KS 66601

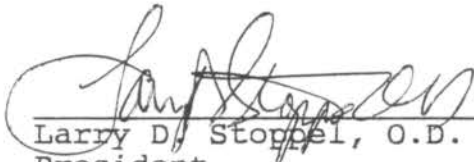

Larry D. Stoppel, O.D.

LETTER OF PUBLIC CENSURE OF
W. CHRISTOPHER ARENSBERG, O.D.

By order of the Kansas Board of Examiners In Optometry (the "Board") and pursuant to K.S.A. 65-1517(p), W. Christopher Arensberg, O.D., license number 1319, is hereby publicly censured for violating the Kansas Optometry Law by failing to furnish the Board's investigator and representative information legally requested by the Board.

ISSUED this 9th day of June, 1998.

KANSAS BOARD OF EXAMINERS
IN OPTOMETRY



Larry D. Stoppel, O.D.
President