

Minutes
Arkansas State Board of Optometry
State Board Office
Searcy, AR

August 28, 2003

Dr. Robert Smalling, President of the Board, called the meeting to order with all Board members present. Mr. William Trice, Board's attorney was present as well as Dr. Howard Flippin, executive director, and Ann Booker, state employee. Other guests included Mrs. Barbara Martin, executive director with the Arkansas Optometric Association, Sara Israel, attorney, Randy Thurman with Government Solutions, Dr. Angela Howell, Dr. Edwin Dunaway, Dr. James Stuckey, and Dr. Huel Heath, Robert Hubbard, Pam Mize, John Rollins, Optical District Manager with Wal-Mart, and Stephanie Spivey also with Wal-Mart.

The Board was prepared to review the practice plan for Dr. Roy Ashabranner. The doctor was not present for the Board meeting which is a violation of a previous order. Mr. Trice and the Board members reviewed an investigative report done by Mr. Jim Bona. After much discussion, Dr. Hubbard made a motion that Dr. Ashabranner be served with an emergency order of suspension and notice of hearing based on his failing to comply with the Order dated 2nd of July 2002, as well as the allegations contained in the investigative report. This suspension is on emergency basis pending a disciplinary hearing or further orders of the Board. Dr. George Haas seconded the motion. Motion carried.

The Board then discussed Kim's Fashion investigative report to determine compliance with the Order not to sell cosmetic contact lenses. Investigator, Mr. Jim Bona, received word that perhaps Kim's Fashion, in Little Rock, was selling contacts. The Board had previously disciplined this establishment, at which time a fine was paid in the amount of \$2000.00. A second investigation was conducted and submitted, stating that Kim's Fashion was not selling contacts and had no contacts in the store to be sold.

Mr. Trice continued a review of complaints against Dr. Rocky L. Heath. The complaints were dealing with the patients' ability to get a copy of their records, and or received their contacts or glasses. Four out of the six complaints have been resolved; therefore Mr. Trice felt that there are more serious allegations concerning Dr. Heath. At this point, Dr. Flippin stated that there is an ongoing investigation file with Mr. Bona concerning Dr. Heath and DEA problems. There was another allegation against Dr. Heath concerning the doctor using an alias name when interviewing for a position. Mr. John Rollins, Optical District Manager with Wal-Mart, was asked to share any information he might have concerning this matter. Mr. Rollins stated that he personally interview Dr. Rocky Heath at which time the doctor was requesting to do fill-in work at Wal-Mart. Mr. Rollins did not have any fill-in work at that time, so he referred Dr. Heath to another doctor. At the time Dr. Heath interviewed with the second doctor he used the name Dr. Ricky Lane. Mr. Rollins presented to the Board a written statement of these events regarding Dr. Heath. Dr. Hubbard made a motion that the Board vote charges to have a hearing based on the information presented today against Dr. Rocky L. Heath. Dr. Dale Morris seconded the motion. Motion carried.

Mr. Trice continued a review of complaints against Dr. Malcolm Hutchins. This packet of complaints involves discrepancies forwarded to the Board office from Blue Cross /Blue Shield. Mr. Trice had made the suggestion, at the last Board meeting, that Blue Cross/Blue Shield be contacted and the Board request a copy of the billings of the patients in question. Mr. Bona has tried to help the Board collect this information and as of this date, the Board has not received any data from Blue Cross/Blue Shield. Dr. Flippin shared that since the last hearing involving Robert Hamilton; it has been extremely hard for Dr. Hutchins to obtain his records. Dr. Flippin then went through the different steps the Board office takes when receiving a complaint on any doctor. Dr. George Haas made a motion that the Board vote to bring charges against Dr. Malcolm Hutchins for violation of the record rule. Dr. Dale Morris seconded the motion. Motion carried.

Dr. Flippin presented a survey on the different verification fees charged by other states. There had been a motion at the last Board meeting to increase the Arkansas fee from \$125.00 to \$150.00. Dr. Flippin asked for reconsideration from the Board on that motion. Dr. Haas moved to expunge the other motion. The Arkansas fee will remain at \$125.00. Dr. William Coffee seconded the motion. Motion carried.

Mr. Trice brought the Board up to date on the status of the Order served on Mr. Robert Hamilton dated July 9, 2003. Mr. Hamilton was required to pay a civil penalty of \$14,000.00 within 30 days from July 9, 2003. Mr. Hamilton appealed on the 18th of July and the record on appeal was filed with the circuit court clerk's office on July 28, 2003. We are waiting on a hearing from Judge John Putman.

Mr. Trice also reviewed Mrs. Susan Witherspoon appearing before the Board on May 1, 2003. There was a written order entered on May 8, 2003 requiring Mrs. Witherspoon to pay a civil penalty of \$5,000.00, to be paid within 90 days from May 1, 2003. Mrs. Witherspoon has failed to make that payment but she has not appealed the Order. Dr. Hubbard made a motion that Mr. Trice be given the authority to go to the circuit court and register the Order and turn it into a Judgment. Dr. Haas seconded the motion. Motion carried.

Dr. Angela Howell presented to the Board the mutual protective agreement and all the details. After much discussion, Mr. Trice informed Dr. Howell that the Board could not approve or disapprove of this program because it is not a State program. But it is always good for the Board to receive information of this type.

Mr. Trice had a copy of a Wal-Mart consent form and presented it to the Board at which time Stephanie Spivey helped to clarify the intent of this form. Ms. Spivey stated that the form was not drafted with the intent that the doctors would actually use it. After much discussion, Mr. Trice requested Ms. Spivey to forward to him a copy of the leasing contract between the optometrists and Wal-Mart. After being able to review the contract, Mr. Trice would report back to the Board concerning this form's language and understanding the contract relationship.

Mr. Trice reviewed and discussed the prescribing habits and prescription forms being utilized by the Family Vision Clinic located in Little Rock, AR. The three doctors, whose names appear on the prescription forms, were present for discussion. (Those doctors being, Edwin Dunaway, O.D., James Stuckey, O.D., and Huel Heath, O.D.) The Board was concerned about DEA numbers and the doctors' names not coinciding on the prescription pad. The forms in question have already been corrected and this matter settled with the doctors. No action taken.

Dr. Flippin reported that all ten of the applicants passed the examination, with seven already licensed and three still working on their logbook hours.

Mr. Trice presented two newspaper advertisements concerning a doctor licensed in Oklahoma and owning and optical store in Little Rock, AR. Dr. Presley and Dr. Nuckles are the doctors named in the article. Dr. Ken Hubbard made a motion that the Board ask Dr. Nuckles to come to the next Board meeting to discuss his arrangement with Dr. Presley. Dr. George Haas seconded the motion. Motion carried.

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

The next Board meeting is scheduled for Friday, October 17, 2003 at 1:30 P. M in Dr. Hubbard's office located in Harrison, AR.

Meeting adjourned.

Robert W. Smalling, O.D., President

Kenneth Hubbard, Jr., O.D. Secretary