

Minutes
Arkansas State Board of Optometry
Office of Dr. Kenneth Hubbard
Harrison, AR

October 17, 2003

Dr. Robert Smalling, President of the Board, called the meeting to order. The Board members present were Dr. George Haas, Vice President, Dr. Kenneth Hubbard, Secretary/Treasurer, Dr. Dale Morris, Dr. William Coffee, and Mr. Herman Shirley. Mr. Jaime Guerra was not in attendance due to a death in the family. William Trice, Board's attorney was present as well as Dr. Howard Flippin, executive director, and Ann Booker, state staff. Also present was the Board's investigator, Mr. Jim Bona. Other guests included Mrs. Barbara Martin, executive director with the Arkansas Optometric Association, and Stephanie Spivey with Wal-Mart. The continued list of guests is as follows: Drs. DeAnna and David Witherspoon, Jim Davis, O.D., Tice White, Merle Mohler, Pauline Tureman, Annette Weiss, O.D., Tammy Grammer, O.D., Tim Norton, O.D., Harry Denisen, O.D., Bryan Looney, and Mrs. Sandy Ashabranner.

Mr. Trice reviewed the charging documents involving Dr. Rocky Heath. At this time, Dr. Heath has retained an attorney and has requested a continuance, which has been granted. The Board has rescheduled the hearing until the meeting of December 11, 2003.

Mr. Trice gave an update on Dr. Charles Nuckles. Dr. Nuckles has retained an attorney who has asked for a continuance. In the mean time, Dr. Nuckles has amended the advertising and will appear at the next board meeting to explain not only the advertising and how he changed it, but also his relationship with Dr. Presley. This will be an informal visit with the Board.

Mr. Trice reviewed the appeal concerning Mr. Robert Hamilton. The hearing has been scheduled for November 24, 2003 in Harrison, Arkansas. Mr. Trice explained how both sides will submit briefs to the judge based on the record that was made. Mr. Trice shared that before the November hearing, Mr. Hamilton is appearing before another State agency on these same facts.

Mr. Trice updated the Board on the complaints on Dr. Malcolm Hutchins. There was much discussion about Dr. Hutchins being in violation of the record rule, being able to maintain control of the patient record. Mr. Trice wanted the Board to realize that the complaints had been condensed to a one issue file. Dr. George Haas made a motion, seconded by Dr. Kenneth Hubbard and carried.

That there will be a hearing involving Dr. Malcolm Hutchins. The hearing will be at the next Board meeting, scheduled for December 11, 2003.

Mr. Trice brought the Board up to date on Mrs. Susan Witherspoon. A civil suit has been filed in Pulaski County, to turn the Board order for civil penalty into a judgment. Mrs. Witherspoon has, at this time, another six or seven days to file an answer.

Dr. Smalling presented the proposed meeting dates for the year of 2004. Everyone checked their calendars to check on any conflicting dates. Dr. Kenneth Hubbard made a motion, seconded by Dr. William Coffee and carried.

That the meeting dates of 2004 be approved as scheduled.

Dr. Smalling will be modifying the proposed meeting dates and supplying all Board members a schedule in the near future.

Dr. Smalling led a discussion on the Burr Bill. Mr. Trice reminded the Board that they are a State agency and not a professional association; therefore they should consider approaching the Governor first with their concerns with this bill. Dr. Smalling stated that the Board's biggest problem with the bill is that it has passive verification, which means the patient contacts the optometrist office and if the patient doesn't hear back in eight hours, it is presumed that the prescription is correct and current, then the prescription is filled. Dr. George Haas made a motion, seconded by Dr. William Coffee and carried.

That the Arkansas State Board of Optometry is in opposition to House Bill #3140 by Congressman Burr, as it is so written, at this particular time.

Mr. Trice will be advising the Board with a letter to the Governor on this matter.

Dr. George Haas informed the Board that he was still working on the rules and regulations for contact lens release.

Mr. Trice reviewed Wal-Mart's doctor agreement. There was a lengthy discussion with Stephanie Spivey from Wal-Mart, answering the questions of the Board, as to what the optometrists agree to do under this agreement.

After a break for lunch, Mr. Trice conducted a hearing concerning Dr. Roy L. Ashabranner. The doctor was not present. Dr. Hubbard made a motion, seconded by Dr. Dale Morris and carried.

That Dr. Roy L. Ashabranner is in violation of the rules and has failed to appear at meetings of the Board, as he was ordered to attend. Also Dr. Ashabranner has exhibited substance abuse, both alcohol and other substances. Third, he has violated the Laws of the United States, State of Arkansas more specifically, prescribing drugs outside his area of Optometry and diverting medication from patient use for his own.

The Board entered a discussion concerning the penalty phase of the hearing. Dr. Kenneth Hubbard made a motion, seconded by Dr. Dale Morris and Carried

That the emergency order of suspension remains in effect, until Dr. Ashabranner appears before the Board and can present advocacy from the Arkansas Medical Foundation with six months compliance. At that point, his licenses would be revoked and stayed for so long as he complies with his contract, for monitoring, for ten years.

The Board discussed future jurisprudence classes given in the year 2004. Dr. Dale Morris made a motion, seconded by Dr. Kenneth Hubbard and Carried

That the future jurisprudence classes be given at the two Association Meetings and correspondence courses only.

There was further discussion as to who would be allowed to conduct the jurisprudence classes. Dr. William Coffee made a motion, seconded by Dr. Dale Morris and Carried

That only Board members will be presenting any future jurisprudence classes.

Further discussion dealing with investigations conducted in the future. Dr. Dale Morris made a motion, seconded by Dr. George Haas, and Carried

That the Board would allow Dr. Robert Smalling, President, Dr. Howard Flippin, Executive Director, and Mr. William Trice, Board Attorney to proceed with investigations prior to any future Board meeting.

The Board would be given an update at each meeting as to any new or on going investigations.

Dr Dale Morris moved that the Board members be paid for one day of expenses plus mileage. (The exception being Mr. Herman Shirley, being paid two day expenses plus mileage.)
Seconded by Dr. Coffee. Motion carried.

The next Board meeting is scheduled for Thursday, December 11, 2003 at 1:30 P. M in the office of the Attorney General, Little Rock AR.

Meeting adjourned.

Robert W. Smalling, O.D., President

Kenneth Hubbard, Jr., O.D. Secretary