

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Minutes of Regular Meeting

January 13, 2009

I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 1:30 p.m.

Roll Call

Present:

Todd Rowe, MD, MD(H)
Don Farris
Martha Grout, MD MD(H)
Les Adler, MD, MD(H)
David Rupley, Jr., MD(H)
Marie Stika

Absent:

Christine Springer and Seth Hargraves, Assistant Attorney General and members of the public were also present.

II. Review, Consideration, and Action on Minutes

Executive Session Minutes November 18, 2008

Dr. Grout made a motion approving the executive session minutes. Dr. Rupley seconded the motion that passed unanimously.

Regular Meeting, November 18, 2008

Dr. Grout moved to approve the regular meeting minutes. Dr. Rupley seconded the motion that passed unanimously.

III. Review, Consideration and Action on Applications

A. Physicians

There were no physician applications for review.

B. Medical Assistants

Sarah Swerdfeger

Dr. Grout recused herself from this discussion.

Following a short presentation of the applicant's file Dr. Rowe moved to approve the application. Ms. Stika seconded the motion that passed with a majority vote.

Vote: 5-0 Approve

Grout Recused

Michelle LaBlonde

Bonnie Phelps

Dr. Rowe recused himself from the discussions of the applications filed by Michelle LaBlonde and Bonnie Phelps.

Following a presentation of the application criteria by Mrs. Springer, Ms. Stika moved to approve Michelle LaBlonde's application. Dr. Rupley seconded the motion that passed with a majority vote.

Vote: 5-0 Approve

Rowe Recused

Dr. Rupley made a motion approving the application submitted by Donnie Phelps. Ms. Stika seconded the motion that passed with a majority vote.

Vote: 5-0 Approve

Rowe Recused

IV. Review, Consideration and Action on Complaints and Investigations

A. Review, Discuss – Tracking Log Notification of New Complaints Filed

Case No. 09-04 Thomas Lodi MD(H)
Case No. 09-05 Thomas Lodi MD(H)

In response to a question from Dr. Rowe, Mrs. Springer explained that investigations on the referenced case numbers were ongoing and that she was requesting board recommendations relating to a medical consultant who would have a familiarity in alternative cancer therapies. Dr. Rowe suggested that Ms. Springer contact board members following the meeting to obtain suggestions.

B. Informal Interview pursuant to ARS 32-2934(G)

Case No. 08-10 David Korn DO, MD(H)

Dr. Korn was present at 2:30 p.m. for an informal interview pursuant to A.R.S. §32-2934(G). Also present were Stephen Myers, Dr. Korn's attorney, and Dr. Charles Schwengel, DO, MD(H), the Board's medical consultant. A court reporter was present to transcribe the proceedings.

Mrs. Springer read a statement summarizing the complaint that was originally referred by the Arizona Industrial Commission, Division of Occupational Safety and Health from an anonymous complainant. In November, the Board had considered six allegations made in the complaint. At that time, the Board voted to dismiss four of the allegations as unsubstantiated. The informal interview was scheduled to address two remaining issues that alleged medical assistants were performing procedures only a registered nurse may perform.

Board members Grout and Adler referred to the current medical assistant rules and noted that there were no specific rules addressing the question of whether a medical assistant may draw blood and perform IV therapies. Dr. Korn stated that his wife, the medical assistant noted in the original complaint, had completed standard medical assistant training in Ohio, had multiple course work related to the provision of chelation and IV therapies, and was completing nursing studies at a nearby community college. He confirmed that Mrs. Korn was not currently registered as a medical assistant but had a pending application before the Board. In addition, Dr. Korn noted he had employed another medical assistant in his clinic and was in compliance with supervision aspects regarding medical assistants.

Mr. Farris questioned Dr. Korn about Mrs. Korn's usage of the term "nurse" on an in-service training record. At this point, Mr. Myers requested permission to address the Board and stated that Mr. Farris' concern had not been listed as one of the allegations in the informal interview notice.

Dr. Korn concluded his statement to the Board.

Assistant Attorney General Hargraves directed Board member's attention to the definition of 'medical assistant' as defined in A.R.S. §32-2901(15) and a review of the current medical assistant rules in *AAC R4-38-301-311*.

Dr. Adler stated that current medical assistant rules do not clearly specify who should be registered to provide these types of therapies. It was his opinion that the medical assistant had been adequately supervised and trained and was qualified to provide the therapy.

Both Drs. Rowe and Grout agreed that the current rules create a gray area and that could lead to various interpretations of the need for registration. Dr. Rowe went on to state that the new proposed rules specify that any medical assistant providing a technical homeopathic function will be subject to registration. He expressed concern that Dr. Korn appeared to have been aware that Mrs. Korn did not correctly designate her title on an in-service training record.

Dr. Rupley indicated he would be comfortable with a letter of concern relating to the titling of office personnel, specifically the use of the term 'nurse' by Mrs. Korn on the in-service training record.

Mr. Myers asked to address the Board regarding this issue and stated that he and his client were unaware of the Board's concern with the use of the term 'nurse' and were unprepared to discuss the issue and had not been provided notice of the Board's concern in the '*Notice of Informal Interview*'. He directed their attention to the listed allegations in the Notice.

Mr. Farris and Dr. Adler stated they were comfortable with the discussion of the allegations as indicated on the notice of informal interview. Dr. Adler moved to dismiss the case. Mr. Farris seconded the motion that passed with a majority vote. Dr. Rowe voted 'No' stating his continued concern with the usage of the term 'Nurse' on the in-service record.

Roll Call: Dismiss 5 aye, 1 nay
Aye: Rupley, Farris, Grout, Stika, Adler
Nay: Rowe.

At this point the Board adjourned for a short 10 minute break

C. Review, Consideration and Action – Ongoing Investigations

Case No. 09-03

Edward Kondrot MD, MD(H)

Mrs. Springer was directed to provide the background of this complaint. She stated that the complaint was filed by a patient who attended a three day therapy program offered by Dr. Kondrot for individuals with macular degeneration. While taking part in the therapy,

the complainant alleged that staff was rude and care was ineffective because of the stress and worry created by the unpleasant atmosphere.

Mr. Farris noted similarities in a previous complaint which had alleged office staff had been rude. In that matter, the Board issued a Letter of Concern. He inquired if the Board could consider past complaints in weighing the current matter.

Assistant Attorney General Hargraves stated that the Board could consider a prior matter, but that it would not be the basis of any discipline the Board may issue in the current complaint. He indicated that for the Board to consider action in the instant matter, a specific violation of the professional conduct codes within A.R.S. 32-2933 must be substantiated.

Mrs. Stika noted that the complaint indicates that staff was rude. Dr. Rupley commented that the available information did not provide enough background for the Board to move forward in their review. Acknowledging the comments of the other members, Dr. Rowe stated that he was concerned that HIPPA laws may have been violated if any conversations about the complainant's condition had been conducted in front of other patients or their families in the waiting area. He asked Mr. Hargraves if HIPPA laws would be violated if the Board were to interview other patients that may have been present in the wait area. Assistant Attorney General Hargraves stated he would research the question and provide the information to the executive director.

Dr. Rupley moved to dismiss allegations 1, 2, and 4 and table allegation 3 until the HIPPA question could be researched by Mr. Hargraves. Dr. Rowe seconded the motion and discussion continued.

Dr. Rowe commented that if Mr. Hargraves' research found that no violation of HIPPA would occur, then other patients or their families should be interviewed to determine if patient information was divulged by staff in front of others. Dr. Adler noted that one of the references in the original complaint referred to "A". He suggested that Mrs. Springer obtain the office schedule for the day in question and conduct interviews of those that may have been present in the wait area. All Board members agreed that further investigation was necessary.

The motion to dismiss allegations 1,2, and 4 and to table allegation 3 for additional investigation was approved with a unanimous vote.

Case No. 09-07

Murray Susser MD(H)

At the request of Dr. Rowe, Mrs. Springer provided an overview of this matter stating that a written referral was sent to the Board from the Division of Public Health, Department of Health Services concerning the use of a drug typically prescribed for the treatment of TB, in an off-label manner.

The members of the Board noted the therapy was successful and the patient had not made the complaint. Mrs. Springer confirmed she had phoned the patient to discuss informed consent and whether or not the physician had provided appropriate informed consent to the patient regarding the possible side effects of the drug. Dr. Rupley commented the therapy was very effective. He also noted that the investigative report incorrectly referred to streptomycin and izoniazid as controlled substances and requested that Mrs. Springer correct the report. There was additional discussion relative to informed

consent and the extent to which physicians should detail all possible therapies. Other board members commented they would like to see informed consent relative to any prescribed drug. Other Board members disagreed with the approach noting that pharmacies provide adequate information relative to side effects.

Dr. Rupley moved to dismiss the complaint. Dr. Grout seconded his motion that passed with a unanimous vote.

Roll Call: Dismiss 5 -0
Rupley, Grout, Stika, Farris, Rowe, Adler

D. Review, Consideration, and Action – Ongoing Reviews

Case Nos. 08-11 and 09-06 Elliott Schmerler, MD(H)

Review, Consider and Action Concerning Consent Agreement and Order for Voluntary Surrender of License

Dr. Schmerler's attorney, Stephen Myers was present for this discussion. Mrs. Springer presented a short summary of the two matters and directed the Board's attention to the Consent Agreement and Order for Voluntary Surrender that Dr. Schmerler signed on January 6, 2009. She explained that if the Board approved the terms of the Consent Agreement, the surrender of Dr. Schmerler's license would be effective on the date of their vote.

Dr. Grout inquired about the length of the license surrender and Mrs. Springer directed the Board's attention to A.R.S. §32-2912, subsection E that requires any applicant whose license was revoked or surrendered to wait five years after the conduct has been corrected and/or full legal restitution has been made.

Mr. Farris stated his concern that future Board members would not have access to the disciplinary record. Mrs. Springer explained that there are several permanent records kept on all physicians holding a homeopathic medical license. In addition, the action is reportable to the Federal National Practitioners Data Bank (NPDB).

Mr. Myers requested an opportunity to address the Board. He confirmed that the action against his client's license is reportable to the NPDB.

Assistant Attorney General Hargraves (AAG) also addressed Mr. Farris' concerns and indicated that the official record is permanent and would reflect all disciplinary action against the physician.

Dr. Rowe moved to approve the Consent Agreement and Order for Voluntary Surrender of Dr. Schmerler's homeopathic medical license. Dr. Rupley seconded the motion that passed with a majority vote.

Roll Call: Accept License Surrender 6-0
Rowe, Rupley, Stika, Grout, Farris, Adler

Note: agenda Items D.ii. and D.iii. relating to Dr. Elliot Schmerler were not discussed by the Board as they became moot after the acceptance of The Consent Agreement and Order for Voluntary Surrender.

V. Review, Consideration and Action on Previous Board Orders

Charles Crosby, MD(H)

The Board reviewed the most recent quarterly report from Dr. Crosby's psychologist and found it to be in compliance with the terms of the Consent Agreement and Order.

VI. Review, Consideration and Action on Rules, Legislation, Substantive Policy Statements

A. Rules

1. Mrs. Springer informed the Board that rulemaking to adopt changes to *A.A.C., Chapter 38, Article 2, Dispensing of Drugs and Natural Substances* was pending a Notice of Docket Opening. She indicated this would occur following the completion of the Notice of Proposed Rulemaking relative to Article 1 regarding continuing education.

2. The Board discussed a letter from the Arizona Homeopathic and Integrative Medical Association relative to changes in *A.A.C., Chapter 38, Article 3*, concerning medical assistants. Dr. Adler commented about the scope of the new rules and indicated concerns relative to whether medical assistants not currently subject to registration may be subject to registration under the new rules. Dr. Rowe stated that the new rules would provide greater public protection and would clarify that only those assistants providing homeopathic modalities would be subject to the new rules. Staff serving in a capacity normally considered providing duties common to the allopathic or osteopathic community would not require registration.

A number of Board members commented that the association's letter stating that the designation "Homeopathic" should be added in front of each instance in which "medical assistant" was used may be correct. Mrs. Springer stated that a definition of medical assistant existed in the statute at A.R.S. 32-2901 and was quite extensive and specifically notes that a medical assistant was one that performs delegated procedures. She further stated that the text of the rule defines a delegated procedure to mean those that are "technical homeopathic function(s)". She asserted that standard medical assistant duties would not fall within that definition and would not subject a person performing standard medical assistant duties to registration.

Board members considered the draft response prepared by Mrs. Springer to the concerns expressed by the association.

Dr. Rowe made a motion to adopt the draft response. The motion was seconded by Dr. Grout and passed unanimously.

B. Performance Audit Implementation

A brief discussion of the auditor general's 12 month report of the Board's implementation of their recommendations was held. There were questions relative to one of the comments in Finding 1, Item 1.3.a. The auditor general states this finding was not implemented, but requires legislative action. Dr. Rowe requested that the executive director correspond with the auditor general to determine their intent.

VII. Review, Consideration and Action on Professional Business

1. Dr. Grout requested the discussion of Live Blood Cell Analysis (Dark Field) continue to the next regular meeting. She indicated she has not completed her statement for the Board's review.

2. Dr. Grout presented her research related to the educational criteria that would be expected from physicians offering Neurotherapy. She noted that the Board had approved this therapy as adjunct to neuromuscular integration therapy and that applicants would demonstrate proficiency under A.A.C. R4-38-103 (C). Dr. Grout suggested that the Board notice applicants of the recognition of the therapy modality by placing information on the web site and including information in a newsletter.

3. The Board considered the following continuing education seminar sponsored by AHIMA to be held January 22, 2009: *Spend a Day with Dr. Rowen to Learn Oxidative Therapy*, requesting 7 hours.

Dr. Grout made a motion to approve the program. Dr. Rupley seconded the motion that passed unanimously.

4. The Board considered the following continuing education program sponsored by Dr. Jodi Decker to be held as requested at various times during the year: *Professional Ethics*, requesting 4 hours.

Dr. Grout made a motion to approve the program. Mrs. Stika seconded the motion that passed unanimously.

5. The Board considered the following education program sponsored by Dr. Jodi Decker to be held as requested at various times during the year: *Ethics and Boundaries*, requesting 3 hours. In response to a question from Dr. Rowe, Dr. Decker stated the program related to boundary issues in a professional setting.

Dr. Rupley made a motion to approve the program. Dr. Adler seconded the motion that passed unanimously.

6. Mrs. Springer updated board members on the written examination's validation and bid process. The Board agreed that Mrs. Springer should work with the consultant to determine the make-up and number of committee members relative to each therapy modality. Dr. Rowe requested that additional information be provided at the next regular meeting.

VIII. Review, Consideration and Action on Other Business

1.a. Mrs. Springer gave a brief overview of finances as of December 31, 2008. She stated that the current appropriation balance is \$62,183 from the \$117,300 appropriation. \$55,116 has been expended.

IX. Call to the Public

No comments were received from the public

X. Future Agenda Items

Regular Minutes January 13, 2009

Darkfield Analysis – Dr. Grout
Newsletter
Examination Committee Membership
Medical Assistant application – Shena Korn

XI. Future Meeting Dates

A meeting of the Five Year Review Committee will be scheduled.
February 20, 2009 Formal Hearing regarding Dr. Elliott Schmerler is cancelled

XII. Adjournment

The meeting adjourned at 5:00 p.m. following a motion by Dr. Rupley. The motion was seconded by Mr. Farris and passed unanimously. The next Regular Meeting of the Board will convene at 1400 W. Washington, in the Conference Room located in Conference Room B-1, Phoenix, Arizona, at 9:00 a.m. on March 10, 2009.

Respectfully Submitted,

Christine Springer
Executive Director

Approved in Regular Meeting on 3-10-09