

Arizona State Board of Homeopathic Medical Examiners

Minutes of Regular Meeting

July 8, 2008

I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 9:00 a.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)

Absent:

Marie Stika

Christine Springer, Executive Director and members of the public were also present.
Dan Christl, Assistant Attorney General arrived 9:15 a.m.

II. Review, Consideration, and Action on Minutes

Executive Session Minutes May 13, 2008

Mr. Farris made a motion approving the executive session minutes as amended. Dr. Adler seconded the motion that passed unanimously.

Regular Meeting Minutes – May 13, 2008

Dr. Grout moved to approve the regular meeting minutes and Dr. Adler seconded the motion. Hearing no discussion the motion passed unanimously.

III. Review, Consideration and Action on Applications

A. Physicians

Dr. Mary Grace Warner-Dunlop, M.D.

Dr. Rowe recused himself stating he had personal knowledge of the applicant. Dr. Grout led the discussion, serving as the interim chairman. Board members interviewed the applicant about her previous practice in cardiology and inquired about her plans to utilize the homeopathic license. Following the applicant's presentation of a clinical case Dr. Adler moved to grant Dr. Warner's request for a homeopathic medical license. Mr. Farris seconded the motion that passed with a majority vote.

Vote: 4-0 Dr. Adler, Mr. Farris, Dr. Grout, and Dr. Rupley
Rowe – recused

B. Medical Assistants

Eve Greenberg

Dr. Rowe began the discussion noting a concern with the physician's description provided in the application filed by Ms. Greenberg. He commented that Ms. Greenberg's credentials met the training requirements prescribed in the rules for nutritional counseling.

However, the physician's description of the job duties showed that Ms. Greenberg would provide nutritional counseling via telephone without being present at the same location as her supervisor, Dr. Zieve. Dr. Rowe stated he may be willing to support the application but had a concern about the long distance aspect of Ms. Greenberg's patient interaction.

Assistant Attorney General Christl stated he would research the definition the matter as it relates to the intent of "on-site" supervision and report to the Board at its next meeting.

The Board continued this discussion to the next scheduled meeting.

IV. Complaints and Investigations

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

Case No. 08 – 14 David Rupley, Jr. MD(H)

Dr. Rupley recused himself from this discussion and left the meeting room. Ms. Springer stated that a complaint had been filed concerning Dr. Rupley and that an investigation was ongoing. Dr. Rowe suggested the Board consider meeting in August to review this case and the Greenberg application. A possible meeting date will be determined during Agenda Item XI.

The Board continued this matter to the next scheduled meeting.

Dr. Rupley re-joined the meeting.

Case No. 08-16 Edward Gogek, MD, MD(H)

Dr. Rowe requested the Board adjourn for legal advice. Mr. Farris made a motion to move to executive session at 9:45 a.m. Dr. Grout seconded the motion that passed unanimously. The Board returned to the regular meeting at 10:00 a.m.

Dr. Rowe noted on record that Dr. Gogek is as an unpaid faculty member at the American Medical College of Homeopathy owned by Dr. Rowe. He further stated that to his knowledge no students of the medical college were present at the behavioral health facility during the timeframe noted in the complaint. Dr. Rowe stated he would recuse from the discussion if further investigation shows that students were present.

Ms. Springer provided a brief review of the case and explained that her investigation is ongoing and that jurisdiction must be determined since Dr. Gogek is also licensed by the Arizona Medical Board. Dr. Rowe commented that the preponderance of the allegations involve informed consent and management of the patient by conventional means.

Dr. Grout moved to table the Board's investigation and grant primary jurisdiction to the Arizona Medical Board. Mr. Farris seconded the motion that passed unanimously.
Vote: 5-0

B. Review, Consideration and Action – Ongoing Investigations

Case No. 08-11 Elliott Schmerler, MD(H) status update

Ms. Springer gave a short status report concerning her ongoing investigation. The Board agreed that medical records should be obtained and a medical investigator appointed.

C. Review, Consideration, and Action – Initial Review(s)

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

Ms. Springer informed the Board that the medical investigator's report had been completed but not received in time for this meeting. In addition, she explained that the Board had to determine whether or not to seek primary jurisdiction since Dr. Korn was also licensed by the Osteopathic Board of Examiners.

Dr. Grout made a motion to request primary jurisdiction since the type of care provided to patients involved homeopathic procedures. Dr. Rupley seconded the motion. During discussion Dr. Grout inquired if it was proper, as was the case in the instant matter, for the Board to accept anonymous complaints.

Mr. Farris made a motion to adjourn to executive session at 10:30 a.m. for legal advice. Dr. Grout seconded the motion that passed with a majority vote. Dr. Adler dissented. The Board returned to the regular session at 10:55 a.m.

Returning to the original motion to claim primary jurisdiction to conduct the investigation, the Board voted unanimously to assert primary jurisdiction and directed Ms. Springer to notify the Osteopathic Board of Examiners.

The matter was continued to the next regular meeting.

Case No. 08-12 Vimal Patel RPh

Ms. Springer explained that the case had been brought to the Board's attention when Dr. Patel was interviewed on television and the announcer introduced him as a 'homeopath' and he did not correct the announcer. The Board was concerned that he may have led the public to believe he was licensed by the Board when this is not the case. Ms. Springer stated Dr. Patel had fully complied, in writing, with the Board's concerns regarding the use of the designation 'homeopath'.

Dr. Rowe moved to close the investigation and Dr. Grout seconded the motion.

Vote: 5-0 Aye to close

Dr. Rowe, Dr. Grout, Dr. Rupley, Dr. Adler, Mr. Farris

Case No. 08-13 Doris Rapp MD(H)

The Board discussed whether to open an investigation into an anonymous complaint made regarding an assistant employed by Dr. Rapp. Dr. Grout pointed out that Dr. Rapp operates a non profit foundation and no longer sees patients. Dr. Adler expressed concern that the allegations made in the complaint indicate the assistant may be practicing medicine by advising patients on environmental issues.

Dr. Rupley made a motion to open an investigation. Mr. Farris seconded the motion that passed with a majority vote. Dr. Grout abstained.

The Board took a ten minutes break and returned to the meeting at 11:35 a.m.

V. Review, Consideration and Action on Previous Board Orders

1. Charles Crosby MD(H) License No. 0154

The Board reviewed the quarterly report submitted by Dr. Crosby as required in his consent agreement and order and noted his compliance.

2. Jeffrey Rutgard MD(H) License No. 0154

The Board reviewed and discussed the compliance report provided by Ms. Springer and noted Dr. Rutgard's written request for release from probation. Dr. Rowe confirmed Dr. Rutgard's completion of all of the terms of the consent agreement and recommended full license status. Dr. Grout seconded the motion that passed unanimously.

Vote: 5-0 Aye to grant license

Dr. Rowe, Dr. Adler, Dr. Rupley, Dr. Grout and Mr. Farris

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

A. Rules

A future meeting date was discussed under agenda item *XI. Future Meeting Dates*. The purpose of the meeting will be to discuss proposed rules for continuing education.

B. Legislation – Status update regarding exemption language contained in SB1236 relating to the treatment of a spiritual vital force

Assistant AG Dan Christl stated that he is investigating the issue and will report to the Board at their next regular meeting.

C. Audit Implementation Status

Ms. Springer stated the second six-month report would be due in August showing the Board's progress in implementing the audit recommendations.

D. Substantive Policy Statement – Informed Consent

The Board reviewed and discussed the draft substantive policy statement on informed consent that Dr. Rowe had prepared. Dr. Grout agreed to review the draft in more detail and report to the Board at their next regular meeting.

Board members agreed that a newsletter should go to all licensees in September explaining the omnibus bill changes.

VII. Review, Consideration and Action on Professional Business

1. Board members agreed to schedule a committee meeting to discuss continuing education rules. Dr. Adler, Dr. Rupley, Dr. Rowe, and Dr. Grout were appointed to the committee.

2. Ms. Springer explained the Governor's proposal to consolidate smaller health regulatory boards and the advantages to the public by having all agencies in one convenient location, a reduction in staff positions and the resultant savings from that, and sharing of infrastructure. Mr. Farris pointed out that the Board already shares and pools resources for infrastructure with the State Board's Office. Board members expressed concerns over loss of their board autonomy within a larger regulatory structure, the lack of research documenting the cost savings that would be achieved, loss of staff personnel knowledgeable about Board processes, the budgeting process in a large regulatory structure, and possible legislative changes that may be necessary.

Dr. Rowe requested that a letter be sent to the Governor's Office indicating that they were still reviewing the concept.

3. The Board discussed an informed consent submitted by Dr. Constantine Kotsanis, MD(H). Dr. Adler stated that the consent did not provide sufficient explanation to be approved at this time and suggested wording changes that should be included. No action was taken at this meeting.

4. Draft language relating to the reporting of criminal charges was discussed. The Board requested that additional changes be made and resubmitted 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 June 30, 2008. She stated that the ending cash balance is \$55,441 and 98.2% of the \$97,500 appropriation had been expended.

1.b. Mrs. Springer presented the six month performance measure relating to processing complaints. The complaint processing target measure was 65% percent of complaints completed within 125 days. However, this target had not been met for the period. Dr. Rowe commented that the target measure should match the auditor general target time of 180 days and requested that the measure be changed to reflect the auditor general standard.

IX. Call to the Public

No members of the public wished to speak.

X. Future Agenda Items

Informed Consent – Substantive Policy Statement
Spiritual Exemption Language

XI. Future Meeting Dates

A Teleconference Meeting to discuss the application of Eve Greenberg and the complaint against Dr. Rupley was scheduled for Tuesday, August 5, 2008 at 8:00 a.m.

A Teleconference Rules Committee Meeting was scheduled for Wednesday, August 6, 2008, 7:30 a.m. to discuss proposed rules relating to continuing education.

XII. CLOSE OF BUSINESS/ADJOURNMENT

The meeting adjourned at 1:15 p.m. following a motion by Dr. Grout. The motion was seconded by Mr. Farris and passed unanimously. The next Regular Meeting of the Board will convene at the State Board's Offices, 1400 W. Washington, Basement Conference Room B-1, Phoenix, Arizona, 9:00 A.M. on September 9, 2008.

Respectfully Submitted,

Christine Springer
Executive Director