

Arizona State Board of Homeopathic Medical Examiners

Minutes of Regular Meeting

September 9, 2008

I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 9:02 a.m.

Roll Call

Present:

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

Absent:

Martha Grout, MD, MD(H)

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

II. Review, Consideration, and Action on Minutes

Executive Session Minutes July 8, 2008

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

Regular Session Minutes July 8, 2008

Dr. Rupley moved to approve the regular session minutes. Following a second from Ms. Stika the motion carried unanimously.

Teleconference Meeting Minutes – August 5, 2008

The Board deferred consideration of these minutes to the next regular meeting.

Rules Committee Meeting – August 6, 2008

Dr. Rupley made a motion approving the minutes of the rules committee meeting of August 6, 2008. Ms. Stika seconded the motion that passed unanimously.

III. Annual Meeting and Board Member Appointments

The Board congratulated Dr. Rowe on his reappointment by Governor Napolitano. His term will continue through June, 2011.

Mr. Farris moved to continue the current roster of officers serving the board. Dr. Adler seconded the motion with all in favor. Dr. Rowe, Dr. Grout, and Mr. Farris will continue in their officer roles as President, Vice-President, and Secretary-Treasurer respectively.

The Board members agreed that meetings shall continue to be held on the second Tuesday of the months of January, March, May, July, September, and November. Dr. Rowe requested and the other members agreed to reschedule the time of the January, 2009 meeting to 1:30 p.m.

No changes to fees were announced. A brief discussion was held regarding the need for an inactive fee however, noting that no law was in place to authorize an inactive status, the Board agreed to revisit the discussion at the next Sunset Review in the summer of 2010.

IV. Review, Consideration and Action on Applications

A. Physicians

Dr. Mary Beth Ackerley, M.D.

Board members interviewed the applicant about her application and current practice in psychiatry 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. Ackerley's request for a homeopathic medical license, pending receipt of license verification from the State of Maryland. Ms. Stika seconded the motion that passed unanimously.

Vote: 5-0 Dr. Adler, Mr. Farris, Dr. Rowe, Dr. Rupley, Ms. Stika
Dr. Grout – absent

Dr. Mark Laursen, M.D.

Dr. Adler recused himself from this discussion noting his personal knowledge of the applicant. The Board questioned Dr. Laursen on his application and noted that a verification of license status from California had not been received. After Dr. Laursen clarified circumstances relating to a previous malpractice, Dr. Rowe commented that recent statistics indicate ER physicians are 75% more likely to be subject to a malpractice charge versus 50% of other physicians. Dr. Rupley made a motion approving the application pending receipt of license verification from the State of California. Ms. Stika seconded the motion that passed with a majority vote.

Vote: 4 – 0 Dr. Rupley, Dr. Rowe, Mr. Farris, Ms. Stika
Dr. Adler recused.
Dr. Grout absent

Dr. Krystyna Wolski, M.D.

The Board reviewed Dr. Wolski's credentials noting that she had requested a waiver of the written examination based on her practice of homeopathic medicine in the last three years. Ms. Springer clarified that the applicant had been granted her M.D. license from the Arizona Medical Board in August. Dr. Rowe inquired about her practice of homeopathic medicine and the waiver request. Dr. Wolski stated her residency had been in alternative medicine and that it was widely known in the hospital residency program that she was an alternative practitioner.

Mr. Farris made a motion to move to Executive Session for legal advice pursuant to A.R.S. §32-38-431.03(A)(3) at 10:15 a.m. The motion was seconded by Ms. Stika and passed unanimously. The Board returned to the regular session at 10:35 a.m.

Assistant Attorney General Hargraves clarified the waiver provision for Dr. Wolski, noting that all of the reference letters submitted with in the application attest to her competent practice of homeopathy. Dr. Rowe asked about the percentage of patient care Dr. Wolski provided in the residency program that would have been alternative. In her response the applicant stated that her actual hands on care was less than 50% alternative, but that if the Board considered her discussions with the patient in which she provided all treatment avenues available to them, then the percentage would be closer to 50%.

Dr. Adler inquired how she was able to offer alternative treatment to her patients in the hospital residency setting. Dr. Wolski stated she was not able to provide the treatment, but that her discussions of all of the alternatives impacted the patient's right to choose.

Dr. Rowe directed that Ms. Springer prepare correspondence to the Nassau Community Hospital residency program director requesting clarification of the percentage of alternative patient treatments that the applicant provided during the three year residency. He cautioned the applicant that the Board must receive the additional information before the October 1, 2008 effective date of the new law barring future waivers of the written examination. Dr. Rowe explained that Dr. Wolski may have to complete the written examination should the information not indicate that she meets the criteria for a waiver of the written examination.

At this point in the meeting, Dr. Wolski was invited to complete the oral examination. Dr. Wolski reviewed Case No. 3 for the board.

Dr. Rowe made a motion approving the successful presentation of the oral examination and requesting additional correspondence from Nassau Community Hospital as explained in the forgoing discussion. Dr. Adler seconded the motion that passed unanimously.

Assistant Attorney General Christl inquired if the members of the Board were prepared to vote for the waiver or would they prefer to request additional information.

Dr. Rowe moved to grant the written examination waiver pending receipt of correspondence from Nassau Community Hospital residency program director attesting to the percentage of homeopathic treatments provided in the last three years. Mr. Farris seconded the motion that passed unanimously.

(At this point in the meeting, Dr. Rowe granted a call to the public. Additional information on the statement provided is provided under Agenda Item No. X. Call to the Public)

Christian Renna, D.O. (waiver request)

The Board discussed Dr. Renna's application noting his request for a waiver of the written examination. Mr. Farris made a motion to approve the waiver request noting the many years of practice utilizing alternative therapies. Dr. Rupley seconded the motion that passed unanimously.

Following Dr. Renna's presentation of the oral examination Dr. Rupley moved to grant the license application. Motion seconded by Mr. Farris and passed unanimously.

Vote: 5-0 to approve

Dr. Rupley, Dr. Rowe, Dr. Adler, Mr. Farris, Ms. Stika

Dr. Krystyna Wolski, M.D.

At this point in the meeting Dr. Wolski requested to speak to the Board. She indicated she wished to withdraw her request for waiver of the written examination. Dr. Rupley made a motion to vacate the previous motion granting a waiver pending receipt of correspondence from Nassau Community Hospital and moved to require Dr. Wolski complete the written examination. Ms. Stika seconded the motion that passed unanimously.

Vote: 5-0 to require written examination

Dr. Rupley, Dr. Rowe, Dr. Adler, Mr. Farris, Ms. Stika

B. Medical Assistants

There were no pending applications for medical assistant

V. Complaints and Investigations

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

Case No. 09-02 Frank Lobacz MD(H) inquiry

Ms. Springer presented a report of her investigation. She indicated an anonymous letter had been sent to the Board complaining of a sign in front of the doctor's New York clinic in which his name was listed with the initials M.D. Mrs. Springer explained that this matter had been discussed at the time Dr. Lobacz was licensed and that according to N.Y. law he was advertising in an appropriate manner.

The Board voted to close the inquiry without further investigation, noting no violation of law. The motion was made by Dr. Rowe, seconded by Ms. Stika and passed unanimously.

Vote: 5 - 0

B. Review, Consideration and Action – Ongoing Investigations

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

Ms. Springer gave a status report concerning her ongoing investigation. Board members requested that she obtain a medical consultant to review medical records. Noting the ongoing difficulty in obtaining the records the Board discussed alternative methods of requesting the information.

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

Ms. Springer stated she was in the process of conducting interviews and that the investigation should be complete by the next regular meeting.

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

Ms. Springer gave a status report concerning the status of the Board's request for primary jurisdiction noting that no decision had been made at the Osteopathic Board. The Board requested that upon notification of the jurisdictional determination, Dr. Korn be informed of the Board's intention to hold an investigational interview pursuant to A.R.S. 32-2934 (C), at the next regular meeting.

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

Dr. Rupley recused himself from this discussion and left the room. Ms. Springer reviewed the status of her written and oral requests made to the Arizona Department of Corrections for results of their internal review of the allegations made in the complaint. Dr. Rowe stated that the information was important and urged that Ms. Springer continue her efforts. Assistant Attorney General Hargraves noted he would contact the Department's legal counsel and inquire about the status of the Board's request.

VI. Review, Consideration and Action on Previous Board Orders

There were no previous board orders scheduled for review at this meeting.

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

A. Rules

1. The Board discussed language in the proposed rules relating to continuing education. Dr. Rowe made a motion to open a rulemaking docket. Dr. Rupley seconded the motion that passed unanimously.

2. Following a brief statement Dr. Rowe made a motion to adopt the language in the proposed rules relating to medical assistants and time frames in Chapter 38, Article 1 General, Article 3 Medical Assistants, and Article 4 Time Frames. As indicated in the Notice of Proposed Rulemaking a hearing to take comment has been scheduled as part of the November 18, 2008 regular meeting.

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

Assistant Attorney General, Dan Christl addressed board members noting that his research was not a formal opinion of the Attorney General, but was an informal legal opinion based on a review of case law. Mr. Christl noted that when the legislature enacted the law, they did not include a definition of terms used in the language of the exemption and that in his research he had relied upon the *Organon of Medicine* written by Samuel Hahnemann to help define terms. He stated that he had also reviewed the Safe Drinking Water Act with regard to the law's reference to *drinking water*, but found that the EPA standard of drinking water did not readily compare to potency requirements for homeopathic remedies nor the safety requirements comprising a 7 point criteria in the *Homeopathic Pharmacopeia*. Mr. Christl stated that of the 4000 remedies used that are mostly non-toxic, just 700 are regulated by the *Homeopathic Pharmacopeia*.

Mr. Christl concluded his review by stating that should a complaint be referred to the Board it would be necessary to consider whether the practitioner was practicing under the exemption. In as much as the exemption only allows the treatment of the spiritual vital force with substances diluted beyond that in drinking water any other type of patient treatment may subject the practitioner to sanctions from either this Board or any of the other regulatory boards. The other consideration is whether the exemption is overly broad and whether, in court, reliance on its limited language would enable a practitioner to prevail.

Assistant Attorney General Hargraves stated that in as much as the language provides an exemption it would be incumbent on the spiritual practitioner to seek their own legal counsel and that the legislature may have to provide additional guidance in future sessions.

C. Audit Implementation Status

Ms. Springer stated the twelve-month follow-up report had been submitted to the Auditor General, with the next report due in February, 2009. At 12 months the Board has implemented all of the recommendations in Finding 2. In Finding 1 three remaining recommendations are in process of implementation and in Finding 3 two remaining recommendations are in process of implementation.

In her report Ms. Springer informed the legislature that a supplemental appropriation had been granted effective July 1 to fund validation of the new written examination.

D. Substantive Policy Statement – Informed Consent

Assistant Attorney General Christl addressed the Board concerning his review of a draft substantive policy related to the new professional conduct standard requiring informed consent from patients informing them of homeopathic treatments before treatment is initiated. He stated the intent of a substantive policy was not to provide legal advice, but rather to suggest guidelines. In addition, a substantive policy may not impose additional regulatory requirements on the regulated entity. Mr. Christl suggested revising the draft policy and paring down descriptive language to include only the main topics an informed consent may want to include. In addition, he suggested removing language such as “must” and “shall”.

Dr. Rowe indicated he would redraft the policy for additional review before the next regular meeting.

VIII. Review, Consideration and Action on Professional Business

1. Board members discussed the Governor’s proposal to consolidate certain of the allied health boards and formulate a written response relative to the Board’s position on the matter. Dr. Adler inquired about the need for the consolidation. Dr. Rowe commented that the Governor was looking for ways to save money and modernize regulatory health board functions.

In formulating their written response Dr. Rowe noted the following points for inclusion: a) the proposal in its current form does not show a cost savings; b) the Board’s capacity to serve the public would not be enhanced and may be compromised; c) no research or data was provided with the proposal to show that a consolidation would better serve the public; d) there is a concern about the loss of knowledge the current executive director possesses; e) a larger administrative structure would compromise efficient operations to the public in that responsiveness of one executive director to a consolidated structure would strain the director’s available time and the needs of the public and homeopathic community would suffer; and f) the current system is working and public safety does not appear to be compromised.

The discussion also touched on a fear that the Board’s autonomy and control over the executive director functions would be lost in a consolidated structure with resultant funding compromised. Board members expressed interest in a modernized information system but noted that a consolidation of disparate professions did not automatically discount the ability of the Board to participate in modernization of information processing. Dr. Rowe noted that Special Assistant to the Governor, Tracy Hannah, had requested each allied health board appoint a board member to participate in formulating an alternative proposal to further explore the positive aspects of a modernized information processing system. Board members volunteered Dr. Grout to serve on the committee with Mrs. Springer.

Dr. Rupley made a motion directing that Mrs. Springer prepare correspondence outlining the Board’s position on the consolidation proposal. Ms. Stika seconded the motion that passed unanimously.

2. The Board reviewed and voted to accept the Consent for Treating Allergies submitted by Dr. Jacqueline Krohn, MD(H). The motion to approve was made by Dr. Rupley and seconded by Dr. Rowe. Motion passed unanimously.
 3. The Board reviewed and accepted revised language on the 2009 renewal form relating to the reporting of criminal charges pursuant to A.R.S. §32-3208.
 4. The Board reviewed and voted to accept the Consent for Homeopathic Procedures and Persons with Cancer and Protocols relating to IV Medications submitted by Dr. Sean Devlin, Dr. Frank George, Dr. Robert Zieve and Dr. Hayle Aldren. The motion to approve was made by Dr. Rowe and seconded by Dr. Adler. Motion passed unanimously.
 5. A discussion of EAV devices was held in which Dr. Rowe commented that the devices are not FDA approved. He questioned other members whether they would consider a board policy requiring that the devices be FDA approved. Dr. Rupley stated that the FDA would only approve the EAV as a Biofeedback Device which would not cover all of the applications in which they are utilized in a homeopathic practice. Dr. Adler commented that the issue should be between the FDA and an individual practitioner.
- Assistant Attorney General Hargraves noted that A.A.C. R4-38-109(A) states that the Board neither approves nor advocates specific experimental therapies. He also directed the Board's attention to A.A.C R4-38-109(C) which states that if a diagnostic method has been in beneficial clinical usage by legally qualified physicians for at least 10 years the method is not considered experimental. He noted the potential difficulty of reviewing the many questionable devices available on the market.
6. A discussion of live blood cell analysis (Dark Field Analysis) was deferred to a future meeting.
 7. Noting that prescribing or dispensing without first conducting a physical or mental health status examination is a professional conduct violation contained within the omnibus bill which becomes effective October 1, 2008 the Board did not further discuss this agenda item.

IX. Review, Consideration and Action on Other Business

1.a. Mrs. Springer gave a brief overview of finances as of August 31, 2008. She stated that the current cash balance is \$43,100 and of the \$117,300 appropriation, \$20,288, or 17% of the overall appropriation had been expended.

1.b. A discussion of the FY 2009-10 Strategic Plan and Budget was deferred to a future meeting date.

2. Mrs. Springer directed the Board's attention to correspondence from the Governor's Regulatory Review Council that stated a Five-Year Review of all of the Board's rules was due at the end of the year. She explained that the review of Article 3 relating to homeopathic medical assistants would likely be waived upon passage of new rules anticipated to occur in February, 2009. She also stated that the Council had granted an extension to April, 2009 for the remaining articles. Dr. Rowe suggested a rules review committee should be formed to review all of the remaining rules.

X. Call to the Public

At 10:55 a.m., Dr. Rowe acknowledged a request from Stephen Myers to make a five minute statement regarding the pending matter involving Dr. Elliott Schmerler, MD(H), Case No. 08-11. Mr. Myers stated that Dr. Schmerler served as the surgical assistant to Dr. Rick Shacket, DO, MD(H) and that receptionist staff denied the story published in the April issue of *New Times* alleging that cosmetic procedures were provided by Dr. Schmerler. Mr. Myers indicated that his client was unaware of any allegation of wrong doing and for that reason had objected to the burdensome aspect of the recent subpoena for medical records. He suggested the Board consider termination of the investigation. Thanking the Board for their time, Mr. Myers completed his public statement.

XI. Future Agenda Items

Live Blood Analysis Discussion

Enhancement of Web Site to Provide Additional Public Information

XII. Future Meeting Dates

A Teleconference Meeting to discuss the 2010 fiscal year budget will be scheduled for a future date.

XIII. Adjournment

The meeting adjourned at 2:20 p.m. following a motion by Mr. Farris. The motion was seconded by Dr. Adler and passed unanimously. The next Regular Meeting of the Board will convene at 1400 W. Washington, in the Conference Room located in Ste 280, Phoenix, Arizona, at 9:00 A.M. on November 18, 2008.

Respectfully Submitted,

Christine Springer
Executive Director

Approved in Regular Meeting on November 18, 2008