

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Minutes of the Regular Meeting

March 8, 2011

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) (left at 10:30 a.m.)
Martha Grout, MD, MD(H)
Don Farris
Mary Ackerley, MD, MD(H)(arrived 9:20 a.m.)
Dr. Les Adler, MD, MD(H)

Absent:

Alan Kennedy

Christine Springer, Executive Director and Mona Baskin, Assistant Attorney General and members of the public were also present.

II. Review, Consideration, and Action on Minutes

Regular Meeting Minutes –November 9, 2010

Dr. Grout made a motion approving the minutes. Mr. Farris seconded the motion that passed unanimously.

III. Complaints and Investigations

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

Case No. 11-02 Edward Gogek, MD, MD(H)

Dr. Rowe recused himself from this discussion and Dr. Grout assumed the chair. She noted that the discussion was commencing at 9:35 a.m. since the matter was a timed agenda item. Dr. Grout also stated that both Dr. Gogek and his attorney, Stephen Myers were present in the room.

Mrs. Springer provided a brief overview of the case for board members. Following this, Mr. Farris commented that, in his review of the matter, the treatment provided to the complainant for fibromyalgia was within the jurisdiction of the allopathic medical board. At this point in the discussion, Dr. Grout invited Dr. Gogek and Mr. Myers to speak with the Board.

Dr. Gogek indicated that the complainant had not correctly stated the facts of why she sought treatment from him. He commented that his treatment method for fibromyalgia

utilized an alternative method of treatment and for that reason he believed the Homeopathic Medical board would be the most appropriate reviewer.

Dr Grout commented that she was unable to find a consent form in the documentation provided that specified Dr. Gogek was providing an alternative treatment to the patient. She noted the informed consent form requirement was part of professional conduct statutes since October, 2008. Dr. Gogek responded that SEABUS prepares consent forms for their patients and that he has no control over these forms.

Mr. Farris noted that the documentation he reviewed showed that the patient had stated she was unaware whether the treatment provided by Dr. Gogek was alternative or traditional. Mr. Farris also commented that without written disclosure, a patient would have no indication that a particular type of treatment was being provided under the homeopathic medical license or the allopathic model.

Mr. Myers commented that in his opinion, what therapy was actually provided to a patient should be considered, rather than whether or not a consent form was signed with one disclosure or another.

Dr. Ackerley inquired about how Dr. Gogek advertised himself within SEABUS. He responded that although SEABUS is aware that he has an M.D.(H) he practices primarily within the M.D. scope.

At 9:50 A.M. Mr. Farris made a motion to adjourn to Executive Session for legal advice under A.R.S. §38.431.03(A)(1). The Board returned to the Regular Session at 9:55 A.M.

Dr. Grout stated that the Board must decide whether or not jurisdiction in this case belongs to the Board or to the Arizona Medical Board. After reviewing the available information provided in the initial complaint and in Dr. Gogek's initial response to the Board, Dr. Grout made a motion to cede jurisdiction pursuant to A.R.S. §32-2907 to the Arizona Medical Board. Dr. Ackerley seconded the motion that passed with a majority vote.

Roll Call: 3 Ayes, 1 Abstain
Aye: Grout, Ackerley, Farris
Abstain: Adler
Rowe recused
Kennedy absent

Case No. 10-09 William Rea MD(H)

Mrs. Springer provided a synopsis of the Consent Agreement Dr. Rea signed with the State of Texas. She noted that the agreement requires Dr. Rea to disclose to his patients by the means of an informed consent the type of therapy that he is providing. She stated a copy of the informed consent had been made part of the Consent Agreement.

Dr. Grout stated she had read the Consent Agreement Dr. Rea provided through his attorney and found that the type of therapy he offered to his Texas patients falls within the definition of the practice of homeopathic medicine in Arizona. She noted the Consent Agreement did not sanction Dr. Rea, but directed that he adjust his informed consent to indicate the therapy is considered an alternative therapy. She noted that the revised consent had been attached with the consent agreement. Dr. Grout moved to dismiss this matter. Mr. Farris seconded the motion.

Dr. Rowe commented that Dr. Rea's consent form did not include information that he was practicing as an MD(H) and that the therapy was being provided under the MD(H) license. He stated that this may violate the Arizona statute A.R.S. 32-2933(41).

Other Board members did not agree and stated that since Dr. Rea was residing and in practice within Texas, Arizona homeopathic and integrated medicine informed consent requirements would not supercede Texas jurisdictional laws.

Dr. Grout's motion to dismiss the complaint passed unanimously.

Roll Call to Dismiss: 5-0

Grout, Rowe, Farris, Ackerley, Adler

Mrs. Springer commented that Dr. Rea would be moving to Arizona in the near future. Board members requested she inform him of the complaint dismissal and of the Homeopathic Medicine laws in Arizona requiring informed consent before an examination or treatment is undertaken, as well as disclosure of the medical license under which the therapy is being provided.

Case No. 10-10 Edward Kondrot, MD, MD(H)

Following an overview of the complaint by Mrs. Springer, Board members considered the information submitted by the complainant, L.S.

Dr. Rowe made a motion to open an investigation and directed that the executive director conduct an investigative interview. Motion seconded by Dr. Grout.

Mr. Farris requested that Dr. Kondrot be asked to provide a copy of the same invoice provided by L.S. in his complaint. Dr. Rowe commented that the interview conducted by Mrs. Springer should include the following information: 1) why didn't Dr. Kondrot refund the three sessions to L.S.; 2) are there additional financial consent forms not previously provided; 3) what is the relationship of the return of the MCS Unit to the refund of the three unused follow-up visits?

Dr. Ackerley inquired where the cease and desist letter noted in Dr. Kondrot's response was in the packet materials. Mrs. Springer stated that the term "cease and desist" is not technically correct and that the reference is actually referring to a dismissal letter sent to the patient by Dr. Kondrot.

The motion passed unanimously directing the executive director to conduct an investigative interview.

Roll Call: 5 – 0 Open an investigation

Grout, Rowe, Farris, Ackerley, Adler

Case No. 11-01 Elliott Schmerler

Mrs. Springer gave a brief overview of information she received from an anonymous caller who had interviewed Dr. Schmerler (AKA: Dr. Elliott Dean) in contemplation of undergoing therapy at EuroMed, a North Phoenix clinic. The caller noted a concern with Dr. Dean when she was unable to verify he held a medical license in Arizona as either an MD or DO.

Mrs. Springer indicated Dr. Schmerler had surrendered his homeopathic medical license on January 13, 2009. She also noted that the Board's jurisdiction was limited in the matter commenting that information provided by the caller did not show Dr. Schmerler was advertising himself as a homeopathic physician. She stated that the Board may want to consider forwarding the information to the county attorney's office for their review.

Dr. Grout expressed concern that his previous licensure as a homeopathic physician necessitated some type of action by the Homeopathic Medical Licensing Board. Dr. Adler inquired if the information should be passed to the Arizona Medical Board. He noted that it appeared Dr. Schmerler (AKA Dean) appeared to be *servicing* as a medical director at the clinic rather than as a treating physician.

Dr. Adler made a motion to refer the matter to the Arizona Medical Board, Office of the Attorney General, and the appropriate criminal division of Maricopa County. Mr. Farris seconded the motion that passed unanimously.

Roll Call: 5 – 0 Close the investigation and refer to the authorities indicated in the motion
Rowe, Grout, Farris, Adler, and Ackerley

B. Ongoing Cases

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

Mrs. Springer explained that jurisdiction in this matter had been ceded to the Board of Osteopathic Medical Examiners and that no additional action had been taken by that Board as of the date of this regular meeting. The case remains tabled until the Board of Osteopathic Medical Examiners concludes their review.

Case No. 11-03 Frank Lobacz, MD(H)

Mrs. Springer updated the Board on the status of the federal case in New York District Court - Eastern Division. She indicated that the minute entry shows he is awaiting sentencing and remains incarcerated.

AAG Baskin stated that in order to craft a consent agreement the Board would need to have a copy of the final judgment imposed by the Court.

Following Dr. Rowe's motion to continue the investigation, that Dr. Adler seconded, the Board unanimously agreed to continue the investigation pending the Court's final judgment.

IV. Review, Consideration and Action on Applications

A. Physicians

There were no completed physician applications to review

B. Medical Assistants

The applications of Carolina Cavazos, Sophia Azadeh Saadat Cyrus, Bridget Abraham, Martha Aubey, Mechthild Gadau were reviewed and discussed by Board members. Mr.

Farris made a motion to approve the applications noting that the candidates were qualified to serve as homeopathic medical assistants. The motion was seconded by Dr. Adler and passed unanimously.

The application of Thomas Incledon was considered and approved following a motion by Dr. Adler and a second by Mr. Farris. Motion carried unanimously.

Discussion of Agenda item V. followed the discussion of Dr. Elliott Schmerler Case Review 11-01 in Agenda item III (A).

V. Review, Consideration, and Action on Previous Board Orders

Charles Crosby

Board members noted the quarterly report filed by Dr. Crosby's psychologist and found it to be in compliance with the terms of the Consent Agreement the doctor signed in 2007.

The Board took a ten minute break at this point in the meeting and resumed at 11:09 a.m.

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

A. Rules

1. Review, Discuss and Vote: Notice of Proposed Rulemaking on Chapter 38, Article 1, Sections 103 through Section 115

Mrs. Springer explained that with the Board's vote to approve the Notice of Proposed Rulemaking relative to Article 1, the Notice would be published in the *Arizona Administrative Register*. She indicated a public hearing is scheduled for the next regular meeting on May 10, 2011. Dr. Adler moved to approve the rules as proposed. Dr. Ackerley seconded the motion that passed unanimously.

2. Status of Article 2. Dispensing of Drugs by Homeopathic Physicians, Request to Lift Rulemaking Moratorium

Mrs. Springer informed the Board she had not yet received approval for an exemption to the Rulemaking Moratorium concerning revisions to Article 2. She stated she would resubmit the request.

B. Legislation

1. Status Update – SB1175 Doctor of Homeopathy license

Mrs. Springer indicated the next committee concerning the sunrise application for the regulation of homeopathic doctors was scheduled for March 16, 2011.

2. Discussion – other pending legislation

Mrs. Springer presented a memorandum informing Board members of the possible effects of the following bills that have been introduced in their respective chambers: House Bills 2102, 2501, 2520, 2615 and Senate Bills 1382 and 1458.

Board members engaged in discussion of some of the proposed bills, particularly HB2615 which, if passed, would hamper business opportunities for incoming residents to the State and possibly affect the medical profession with regard to opportunities for internships.

VII. Review, Consideration and Action on Professional Business

A. Continuing Education

1. The following seminars sponsored by Jeffrey Utter were approved following Board review:

Orthopedic/Neurological Examination of the Upper Extremities approved for 8 hours;
Orthopedic/Neurological Examination of the Head and Spine approved for 8 hours;
and *Orthopedic/Neurological Examination of the Lower Extremities* approved for 8 hours.

Dr. Adler made the motion to approve the three courses. Dr. Ackerley seconded the motion that passed unanimously.

2. A seminar sponsored by the Arizona Homeopathic and Integrative Medical Association entitled: *How to Incorporate Homeopathic and Integrative Medicine into Your Practice* was approved as follows: Main Program with attendance over 3 days: 17 hours; Each Breakout Session: 3 hours.

The motion was made by Dr. Ackerley and seconded by Dr. Adler. Motion carried unanimously.

3. Following a motion by Dr. Adler, second by Dr. Ackerley the seminar sponsored by the Healthy Medicine Academy entitled *Cancer Strategies Improving Outcomes and Quality of Life*, was approved for 20 hours. Motion carried unanimously.

B. Discussion and update – Medical Marijuana

Board members briefly discussed the new law regarding the dispensing and use of medical marijuana. Mr. Farris commented that the DEA does not recognize the prescribing of marijuana under Federal law. It is worrisome that while the use of medical marijuana is legal under State law, it is illegal under Federal law.

There was a discussion of physician duties and the need to examine each patient to determine if their condition meets the criteria necessary to prescribe marijuana. The importance of patient records was also discussed.

C. Approval of protocols and informed consents (A.R.S. 32-2933(27))

1. Board members discussed the Informed Consent and Protocol submitted by Dr. Mark Laursen, M.D., M.D.(H). for EDTA Chelation Therapy. Noting that a few changes were needed the Board requested that Mrs. Springer work with Dr. Laursen and request that he refile the forms with the suggested changes. Board members also requested that the doctor provide a copy of the actual ACAM protocol for this therapy.

2. Dr. Jeffrey Radoff's Informed Consent and Protocol for EDTA Chelation Therapy was reviewed and found to require some changes. Board members requested that the forms be revised and refilled at the next meeting.

VIII. Review, Consideration and Action on Other Business

Executive Director Report

1.a. Mrs. Springer presented a brief overview of finances as of February 28, 2011. Current cash balance is \$36,057 and 66.67% of the appropriation amount of \$119,100 has been spent. The current balance in the appropriated fund is \$48,004. She indicated that the Board had expenditures of \$71,150 as of February 28, 2011.

1.b. Discussion of the FY2013 Executive Budget recommendation and fund transfers was held to the next regularly scheduled meeting.

1.c. The fee survey, review and discussion was held to the next regularly scheduled meeting.

IX. Call to the Public

Following an invitation from Dr. Rowe, there were no members of the public that wished to make an oral statement to the Board.

X. Future Agenda Items

- Rules – Article 2 Dispensing of Drug
- Fee Survey
- Telemedicine Discussion

XI. Future Meeting Dates

XII. Adjournment

The meeting adjourned at 12:45 p.m. following a motion by Dr. Grout. 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 Conference Room B-1, Phoenix, Arizona, at 9:00 a.m. on May 10, 2011.

Respectfully Submitted,

Christine Springer
Executive Director

REVIEWED AND APPROVED IN REGULAR MEETING ON 7-12-11