

Arizona State Board of Homeopathic Medical Examiners

Minutes of Regular Meeting

January 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 (left at 3:00 p.m.)
Martha Grout, MD, MD(H)
Les Adler, MD, MD(H)
David Rupley, Jr., MD(H)
Marie Stika

Absent:

Michelle Wood, Assistant Attorney General and Christine Springer, Executive Director and members of the public were also present. (Note: Ms. Springer was present by telephone)

II. Review, Consideration, and Action on Minutes

Regular Meeting Minutes November 13, 2007

This agenda item was tabled to the next regular meeting.

Executive Session Committee Minutes – November 13, 2007

Dr. Grout made a motion approving the Executive Minutes of November 13, 2007. Dr. Rupley seconded the motion. The motion passed unanimously.

III. Review, Consideration and Action on Applications

A. Physicians

There were no physician applications to review.

B. Medical Assistants

Aaron Means

Drs. Rowe and Grout were recused from this discussion. Mr. Farris chaired this part of the agenda. Dr. Rupley made a motion to approve Mr. Means' application to serve as a medical assistant under the supervision of Dr. Martha Grout. Dr. Adler seconded the motion that passed with a majority vote.

Vote: 4-0 Aye: Rupley, Adler, Farris, Stika

Recused: Rowe and Grout

IV. Review, Consideration and Action on Compliance Reports

Jeffrey J. Rutgard MD(H), License No. 0156 – Requesting Review and Consideration of Completion of Terms of Consent Agreement and Order

Mrs. Springer provided an update on Dr. Rutgard's request for release from probation of his homeopathic medical license. After verifying that there were no actions against any current medical licenses listed with the NPDB, she requested that additional time be allowed to obtain final confirmation regarding his Pennsylvania medical license.

Mr. Farris commented that although Dr. Rutgard had completed all CME requirements of the consent agreement, he had not been in the country for one of the quarters in which he was to have been in supervised practice with Dr. Dan Harper.

Dr. Rowe made a motion to extend the term of the consent agreement to require that Dr. Rutgard complete an additional three months of supervised practice. Ms. Stika seconded the motion.

During discussion, Mr. Farris expressed displeasure with the fact that Dr. Rutgard had not complied completely with the terms of the consent agreement and that in November, 2006 he had been out of the country and unable to complete supervised practice. Dr. Rowe inquired about the options available to the Board regarding Dr. Rutgard's non-compliance.

Mr. Farris made a motion to adjourn to executive session at 9:25 a.m. for legal advice. Dr. Adler seconded the motion that passed unanimously. The Board returned to the regular session at 9:45 a.m.

Dr. Rowe reminded the Board that there was a pending motion to extend Dr. Rutgard's compliance term by three months and require that he complete additional supervised practice with Dr. Dan Harper. At the conclusion of the additional supervised practice Dr. Rutgard must request that the Board re-evaluate his request for release from probation of his homeopathic medical license. Dr. Rowe also requested that information be obtained regarding the status of the doctor's license in Pennsylvania.

Vote: Extend term of probation by an additional three months
6-0: Grout, Stika, Farris, Adler, Rupley, Rowe

V. Board Member Training

Board member training was held following discussions on Dr. Gary Page, MD(H), Dr. Elliott Schmerler, MD(H), and Agenda Item VIII.2. physician protocols filed by Dr. Martha Grout, MD, MD(H).

VI. Complaints and Investigations

A. Review, Consideration, and Action - Ongoing Investigations
Case No. 08-01 Gary Page, MD(H)

And

Case Nos. 08-02, 08-03, 08-04 (agendized under VI. B – Initial Review(s))

Mrs. Springer summarized the allegations in Case No. 08-01 and explained that the voluntary summary suspension issued against the homeopathic medical license held by Dr. Page would expire unless extended for an additional period of time.

Dr. Rowe made a motion to adjourn to executive session at 9:58 a.m. for legal advice. Mr. Farris seconded the motion that passed unanimously. The Board returned to the regular session at 11:07 a.m.

The Board tabled the discussion of Case No. 08-01, as well as the next agenda matter involving Case Nos. 08-02, 08-03, and 08-04 to allow time for Dr. Page to confer with his attorney by phone regarding an extension of the summary suspension against his homeopathic medical license.

NOTE: ***In this interim, the Board continued with the meeting agenda and reviewed the matter of Elliott Schmerler MD(H).*

The Board reconsidered Case 08-01 after completing its review of other matters. Dr. Page agreed to a 60 day extension of the summary suspension of his homeopathic medical license, with the 60 days effective the date of this board meeting. The extension will allow the board to complete its investigative report in Cases 08-02, 08-03, and 08-04 and consolidate all matters for judicial economy.

Dr. Rupley made a motion to extend the current summary suspension of Dr. Page's homeopathic medical license for an additional 60 days. Motion seconded by Mr. Farris and passed unanimously.

Roll Call Vote: 6 – 0 Aye: Rowe, Farris, Rupley, Adler, Stika, Grout

Dr. Rowe requested that discussion of Case Nos. 08-02, 08-03, and 08-04 be tabled and that the investigative report be amended to include responses to the following:

Was homeopathic treatment provided; was there documentation relating to the recording of vital signs during surgery; were the procedures within the scope of practice; and was pre-operative workup present and adequate; what was the frequency and quality of follow-up visits; who provided follow-up care; and were other medical practitioners present during the surgical procedures.

Dr. Grout requested that the executive director obtain additional information relating to a recent article published in the *North Scottsdale Times* alleging a 1993 incident involving Dr. Page.

B. Review, Consideration, and Action – Initial Review(s)
Case No. 08-07 Elliott Schmerler MD(H)

Mrs. Springer summarized the case stating that the American Board of Cosmetic Surgery (ABCS) had written a letter to Dr. Schmerler requesting that he cease using or referring to his former certification by the ABCS on his web site advertising. Her investigation and subsequent written confirmation from Dr. Schmerler as well as the director of the ABCS indicated that Dr. Schmerler had complied with their request and removed all references to the ABCS from his website and had updated his business cards to ensure that they were not misleading.

Dr. Adler commented that it is a licensee's responsibility to ensure that all advertising is timely and correct.

Mr. Farris made a motion to issue a letter of concern. The motion was seconded by Mrs. Stika. During discussion Mr. Farris noted that although there did not appear to be intentional deception which would have been a violation of A.R.S. §32-2933(21), it was Dr. Schmerler's responsibility to ensure that all advertising materials were timely and accurate.

Roll Call

6-0 Unanimous vote to issue a non disciplinary letter of concern
Rowe, Grout, Stika, Farris, Rupley, Adler

V. Board Member Training

AAG Wood conducted a training session on the following topics:

Exparte Communication

Conflict of Interest

Confidentiality and impartiality in pending matters

Recusals

She noted that a member of a board may not discuss agenda items outside of the public meeting either with another board member or with a professional community. If a member does discuss a matter outside of the board meeting it must be disclosed to the full board that the communication occurred. She also discussed email communications. A board member may not communicate by email on board business with another board member. Communication on a pending board matter must be in an open meeting or committee meeting session. A board member may communicate with staff about pending matters.

With regard to recusal, the AAG noted that if a board member has a proprietary or pecuniary interest on an agenda matter it must be disclosed in writing and on the meeting record. The board member should make an announcement and move to either leave the meeting room or sit in the audience during deliberation.

AAG Wood briefly discussed media matters noting that if a matter is dismissed a board member's best response to a media question is "no comment". If a matter is pending one individual, usually a staff person, should handle all inquiries. She indicated that no comment can be offered if the matter is pending before the board.

One of the board members inquired about records destruction once a matter was concluded. AAG Wood indicated that staff can safely destroy confidential records. Mrs. Springer confirmed that the state had a destruction bin available for safe disposal. Finally, there was a question regarding whether or not case investigators had to abide by the exparte or conflict of interest prohibitions. AAG Wood explained that they may not talk privately with board members. However, they may communicate in a public meeting format subject to executive session for the discussion of confidential medical records.

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

A. Rules

Discussion of the medical assistant rulemakings was deferred to the next regular meeting.

B. Legislation

Mrs. Springer informed the board that a folder had been opened at the Legislative Council and that Senator O'Halleran had agreed to sponsor the omnibus bill that adds necessary legislation to the board's statutes in accordance with recommendations made in the auditor general's report.

There was a brief discussion of additional language on page eighteen of the omnibus bill in § 32-2933 related to prescribing, dispensing or furnishing a prescription medication or prescription-only device to a person unless the licensee conducts a comprehensive physical examination. The Board requested that additional language be inserted to also include a mental health status examination consistent with the standard of practice.

C. Substantive Policy Statement(s)

Mrs. Springer stated that the Substantive Policy Statement elaborating on the Pain Management Guidelines adopted by the Board on September 11, 2007, had been filed at the Office of the Secretary of State and were available on the Board's website.

VIII. Review, Consideration and Action on Professional Business

1. The update on the progress of the opening of the American Medical College of Homeopathy was deferred to a future meeting.
2. Dr. Grout recused herself from this discussion. Dr. Rowe noted that the protocols and informed consents filed by Dr. Grout were consistent with the work of Dr. Doris Rapp and Dr. Rea and that they are thorough and complete. There was further brief discussion and Dr. Adler made a motion to approve the consents and protocols as submitted for the following procedures:
 - a) preparation/manufacture of preservative-free antigens
 - b) Informed consent for preservative free extracts
 - c) Patient Informed Consent Testing (allergy)
 - d) IV Nutrient Antigen Testing
 - e) Patient informed consent for preservative-free chemicals

Mr. Farris seconded the motion that passed with a majority vote 5 - 0. Dr. Grout recused.

IX. Review, Consideration and Action on Other Business

1. A brief overview of the December 31, 2007 financial report was presented by the executive director. She stated that the ending cash balance is at \$35,910 and 49% of the \$97,500 appropriation had been expended. The 2008 renewal is ongoing.
2. Meetings previously scheduled to March 18 and May 20 are in conflict with the availability of AAG Wood who represents ten other small boards and commissions. After discussion, the board consensus was to reschedule the March meeting to the afternoon (1:00 p.m.) of March 11, 2008. The May 20 meeting was rescheduled to the afternoon of May 13, 2008. Dr. Rupley indicated he may have a scheduled conflict with the afternoon of May 13.

X. Call to the Public

No members of the public requested an opportunity to make a statement.

XI. Future Agenda Items

Continuing Medical Education Rules – development of proposed language
Informed Consent – consider sample form relative to professional conduct statute
Board member training and investigator training

XII. Future Meeting Dates

Scheduling of the matter involving Dr. Gary Page would be done in conformance with the conclusion of the 60 day extension of the voluntary summary suspension. Mrs. Springer will inform the Board of the date at the conclusion of their investigation.

A meeting of the rules committee will be scheduled when Mrs. Springer confers with the committee members to ascertain a date convenient to all.

XIII. CLOSE OF BUSINESS/ADJOURNMENT

The meeting adjourned at 12:40 p.m. following a motion by Dr. Rupley. Mr. Farris seconded the motion that 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, 1:00 P.M. on March 11, 2008.

Respectfully Submitted,

Christine Springer
Executive Director

Approved in Regular Meeting on March 11, 2008