

# Arizona State Board of Homeopathic and Integrated Medicine Examiners

## Minutes of Regular Meeting

May 12, 2009

### 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)  
Marie Stika

##### Absent:

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

Mrs. Springer announced that public member, Marie Stika would not seek re-appointment to the Board. Members of the Board wished Ms. Stika well and thanked her for her service. She noted that her plans may allow her to be available for the July meeting, should a replacement for her position remain pending.

### II. Review, Consideration, and Action on Minutes

#### *Regular Minutes March 10, 2009*

Pending a spelling correction to the word ~~aminocinon~~ on page 4, Dr. Grout made a motion approving the regular session minutes. Ms. Stika seconded the motion that passed unanimously.

#### *Teleconference Meeting Minutes, April 16, 2009*

Mr. Farris moved to approve the teleconference meeting minutes. His motion was seconded by Dr. Adler and passed unanimously.

### III. Review, Consideration and Action on Applications

#### A. Physicians

There were no pending physician applications.

#### B. Medical Assistants

##### **Shelly Jenkins-Elliott**

Dr. Rowe recused himself from discussion of this agenda item.

Dr. Grout chaired the discussion that began with a review of the applicant's file. Dr.

Rupley made a motion to approve the application. Mr. Farris seconded the motion that passed with a majority vote.

Vote: 5-0 Rupley, Farris, Grout, Stika, Adler  
Rowe recused

**Rebecca Falkner**

Dr. Grout recused herself from discussion of this agenda item.

Dr. Rowe resumed his position as chairman and began the discussion of the applicant's past work history pointing out that Ms. Falkner was a licensed chiropractor. He expressed concern that there should be a clear delineation of job responsibilities on those work days in which Ms. Falkner was serving in a homeopathic medical assistant capacity.

Dr. Grout requested to speak to the Board and commented that Ms. Falkner would assist with nursing assistant duties to take on office workload created from one of the other staff attending nurse practitioner training. Dr. Grout indicated Ms. Falkner would wear a name tag to delineate her position as homeopathic medical assistant on those days she is serving in that capacity.

Board members requested an interview with Ms. Falkner who was not present during this portion of the discussion.

The phone interview with Ms. Falkner was held at 12:00 p.m. and Board members clarified to their satisfaction questions relating to the type of job duties she would perform and whether she would also work in her capacity as a chiropractor. Following the interview, Dr. Rowe moved to approve the application. Dr. Adler seconded the motion that passed with a majority vote.

Vote: 5-0 Rowe, Farris, Stika, Adler, Rupley  
Grout recused

**IV. Review, Consideration and Action on Complaints and Investigations**

**A. Review, Consideration, and Action - Ongoing Reviews**

**Case No. 09-03 Edward Kondrot MD MD(H)**

Assistant Attorney General Hargraves directed the Board's attention to the meeting agenda and stated that this item must be deferred as the case number is incorrect and may be misleading to the public. Board members deferred discussion and possible action to the next regular board meeting. Dr. Rowe stated that if a teleconference meeting is held in June the matter should be discussed at that time with the correct case number of 09-10 noted.

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

Mrs. Springer presented her review of the complaint allegations stating that the complainant, L.K. alleged that Dr. Lodi provided an inappropriate therapy for treatment of his medical condition, his records were disorganized and no review of previous medical records was provided, an unapproved, untested therapy was offered as an alternative treatment, and Dr. Lodi advertised that he was a licensed M.D. when he is not licensed by the Arizona Medical Board. Following her presentation, the Board questioned the assigned medical consultant, Dr. Charles Schwengel who was in attendance.

Dr. Rowe expressed concern about the general informed consent utilized by Dr. Lodi noting that while it indicated that alternative therapies would be utilized in patient treatment, references to specific therapies and their side effects were not included.

The Board discussed PME (aloe vera therapy) and questioned whether or not, as required by A.A.C. R4-38-109( C ), the therapy had been in beneficial clinical usage for at least ten years. Dr. Schwengel stated he was satisfied that the ten year guideline had been met and as such the therapy would not be experimental under homeopathic rules.

Dr. Rupley inquired whether, during his review of the records Dr. Schwengel believed reasonable recommendations to the patient had been provided and properly documented. Dr. Schwengel explained that he had found the medical record complete with treatment records dated and properly maintained.

Noting there was no substantiation that Dr. Lodi improperly using the professional designation of the MD, MD(H), Dr. Rowe made a move to dismiss *allegation three*. Dr. Rupley seconded the motion that passed unanimously.

Noting that the patient's medical history had been noted on the initial patient intake form dated November 26, 2007, Dr. Rowe moved to dismiss *allegation two*. Ms. Stika seconded the motion that passed unanimously.

Regarding *allegation 4* and the recommendation that the complainant take PME therapy the Board noted that the complainant did not agree to undergo the therapy. Noting that under A.A.C. R4-38-109 ( C ), the therapy has been in beneficial clinical usage for at least ten years and under the Board's rules is not considered experimental, the Board voted to dismiss this allegation following a motion by Dr. Rowe. Dr. Grout seconded the motion that passed unanimously.

In their review of L.K.'s complaint that Dr. Lodi provided an inappropriate therapy for his medical condition when he knew it would not be beneficial (*allegation one*), the Board found no evidence to support this. Information provided the complainant and in the medical record indicated that the therapy provided was the only therapy the complainant was seeking when he went to Dr. Lodi's clinic. The medical record documents that other therapies were offered and declined. Dr. Rupley made a motion to dismiss the allegation. Dr. Adler seconded the motion that passed unanimously.

Dr. Rowe reiterated his concern that the informed consent was not complete enough to provide adequate information to patients. He stated he would like to see a separate consent for each type of therapy provided, as well as an indication that the patient has been advised that there is a probability that a therapy may not address the patient's expectations as expected. Ideally the patient would initial and date the disclosure.

Dr. Rowe moved to dismiss the complaint but requested that the Board send correspondence to Dr. Lodi suggesting a separate informed consent should be obtained from patients if there are instances when, in the doctor's estimation, a therapy may be substandard, not effective, or limited in efficacy. Dr. Rowe suggested that the consent would further indicate any other therapies discussed that the doctor believes may be more effective. Dr. Adler seconded the dismissal and the correspondence regarding the

informed consent. Motion passed unanimously.  
Vote to Dismiss  
6 -0 Rowe, Adler, Rupley, Stika, Farris, Grout

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

At Dr. Rowe's request, Mrs. Springer presented her report regarding complaint allegations made by S.M. She stated that there were three allegations that alleged questionable billing practices, the use of a non FDA approved therapy and concern that Dr. Lodi did not complete her treatment as originally planned. Dr. Schwengel was present to respond to medical questions concerning his review of the complaint.

Dr. Rowe began the discussion with a review of allegation three alleging questionable billing practices. He stated that a review of the record showed that when office staff were apprised of a billing error an apology was made and action taken to rectify the mistake. Dr. Rowe moved to dismiss this allegation. His motion was seconded by Dr. Grout and passed unanimously.

The Board considered allegation two concerning the use of PME. As in Case No. 09-04 the Board found that under *A.A.C. R4-38-109 ( C )*, the therapy has been in beneficial clinical usage Ms Stika seconded his motion that passed unanimously.

Dr. Rowe moved to dismiss allegation one regarding S.M.'s therapy plan. He stated that the medical record shows that therapy was available to S.M. but that difficulty involved with long travel distances appeared to be a factor in her ability to complete therapy. Dr. Rowe's motion was seconded by Ms. Stika and passed unanimously.

Board members moved to dismiss the complaint and close the investigation. Dr. Rowe instructed Ms. Springer to include information about the enhanced informed consent in her correspondence to Dr. Lodi.

**B. Review, Consideration, and Action – Initial Reviews**

**Case No. 09-08 Gene Schroeder MD(H)**

Mrs. Springer provided a brief overview of the complaint which had been filed by the daughter of a long time patient of the physician. The complaint alleged that the patient was unable to reach the doctor in a timely manner for needed care after she experienced a reaction to a prescribed medication and that appropriate testing was not completed for follow-up related to a thyroid condition. At the conclusion of Mrs. Springer's report, Dr. Rowe stated his concern regarding the use of kinesiology to diagnose a thyroid condition and whether the technique was adequate as a standard of care. He indicated he would like additional information regarding the diagnostic technique, commonly referred to as CRA.

Dr. Rupley made a motion requesting that Dr. Schroeder appear for an informal interview at the next regular meeting. A.A.G. Hargraves inquired if Dr. Rupley intended the doctor appear for an investigative interview pursuant to A.R.S. §32-2934 ( C ) or if he intended an informal interview pursuant to A.R.S. §32-2934 (G).

Dr. Rupley clarified his motion to require that Dr. Schroeder attend an investigative interview pursuant to A.R.S. §32-2934 ( C ) to discuss his diagnostic technique (CRA) as it is related to hypothyroidism and hyperthyroidism. Additionally the Board requested that

the doctor be prepared to describe office policy relative to patient emergencies on those days Dr. Schroeder is not present at the clinic. Dr. Adler seconded the motion that passed unanimously.

Vote to conduct an investigative interview  
6-0 Rupley, Adler, Rowe, Grout, Stika, Farris

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

**Case No. 09-13 Todd Rowe, MD, MD(H)**

Dr. Rowe recused himself from this discussion and Dr. Grout presided over the meeting in the role of chairman.

Mrs. Springer provided a brief notice to Board members stating that a complaint had been received regarding Dr. Rowe's supervision of a homeopathic medical assistant. She indicated that she was pending Dr. Rowe's written response to the allegations.

Mr. Farris moved to table the matter until a response is received. Ms. Stika seconded the motion that passed with a majority vote.

**Case No. 09-12 Charles Schwengel, DO, MD(H)**

Mrs. Springer informed Board members that a decision regarding jurisdiction to conduct the investigation was pending determination. The matter was deferred to the next regular meeting.

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

Charles Crosby . Quarterly report

Dr. Rowe commented that his review of the most recent quarterly report from Dr. Crosby's treating psychologist shows him to be in compliance with the terms of the Board's Consent Agreement and Order. The other members concurred and no other action was taken on this item.

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

**A. Rules**

1., 2., and 3.

Mrs. Springer informed the Board of the continuation of the Governor's moratorium on rulemaking which remains in effect until June 30, 2009. The moratorium continues to block action on consideration of *A.A.C., Chapter 38, Article 2, Dispensing of Drugs and Natural Substances* ; *A.A.C., Chapter 38, Article 3*, concerning medical assistants; and *A.A.C., Chapter 38, Article 1, General*. She indicated that the continuation of the moratorium was delaying the timely implementation of certain recommendations made by the Auditor General in the recent Performance Audit.

**VII. Review, Consideration and Action on Professional Business**

1. Board members reviewed a legal memorandum on medical assistant qualifications prepared by Assistant Attorney General Hargraves. The general Board consensus was that Article 3 rules should be strengthened to provide greater public protection relating to

the moral character qualifications of homeopathic medical assistants. The current rules require the supervising physician to assume responsibility of the medical assistant in an employer-employee capacity and the professional conduct violations rest largely with the physician should a complaint action be initiated. Pending rules include additional professional conduct for medical assistants but the thrust of the rule is to ensure that the supervising physician is responsible for the conduct of the medical assistant.

2. An application requesting twelve hours of continuing education for the Lyme-Autism Connection Conference . From Roadblocks to Recovery scheduled from June 25, 2009 to June 28, 2009 was approved following a motion by Dr. Rowe. His motion was seconded by Dr. Rupley and passed with a majority vote. (Dr. Grout was not present during the discussion of this agenda item.)

3. Dr. Rowe reviewed his suggested changes for the website with the Board. Following a brief discussion, Dr. Rowe indicated he would revise his original proposal relative to including the Board's name for the speaker's bureau and inserting a disclaimer to the Links+page and provide additional information at the July 14 regular meeting.

4. The Board reviewed correspondence from Dr. Bruce Shelton concerning a device manufactured by Zyto Systems. The Board took no action at this meeting stating that Dr. Shelton should notify them when he begins using the device in his practice.

5. Following Dr. Grout's recusal from the discussion, the Board reviewed amendments she filed relating to her protocol for treatment of chronic inflammation, chronic fatigue and autoimmune disease. The amendments include language further describing side effects of minocin and clindamycin. Dr. Rowe moved to approve the revised protocol. His motion was seconded by Dr. Adler and passed with a majority vote. Dr. Rowe also noted that correspondence to pharmacists regarding the use of Benicar had been included with the amendments.

Vote: 5 . 0

Grout recused

6. After the lunch break the Board held a discussion concerning their previous decision to conduct a chelation peer review as required in *A.A.C. R4-38-111*. Mrs. Springer informed them that during her attempt to schedule a mutually agreeable time in which to hold the review with approximately 19 chelating physicians, it was brought to her attention by AHIMA personnel and previous Board members that the current rules (amended in 2005) and the substantive policy statement (04-01) of the Board regarding chelation therapy negated the need for a peer review.

AAG Hargraves pointed out that *A.A.C. R4-38-113* addresses chelation therapy for other than the treatment of metal poisoning and indicates the Board requires detailed records and periodic analysis of results that are available for periodic review by a peer review committee.

Dr. Rupley stated that if a diagnosis of elevated metal levels is made the Board would expect documentation related to provoked urine and stool sample testing in the patient file. If there is no documentation of elevated levels of metal in the blood then the Board would consider the therapy experimental. He indicated those physicians that chelate should document which therapy they offer.

Dr. Rowe instructed Ms. Springer to notify those physicians that offer chelation therapy about requirements noting that if the physician is NOT treating for heavy metal poisoning as defined in A.A.C. R4-38-101 (8) they must submit to a peer review. He requested that the notice request copies of informed consents and protocols.

Drs. Adler, Grout and Rupley agreed to review the informed consents as they are submitted to the Board.

**VIII. Review, Consideration and Action on Other Business**

1.a. Mrs. Springer gave a brief overview of finances as of April 30, 2009. She stated that the current appropriation balance is \$60,974 from the total \$117,300 appropriation. \$94,004 has been expended. Current revenues received as of April 30, 2009 are \$86,986.

**IX. Call to the Public**

No comments were received from the public

**X. Future Agenda Items**

- IRB application for Live Blood Cell Analysis (Dark Field)
- AAC R4-38-115 use of the title MD(H)
- Website changes
- Chelation Therapy rules
- Article 2 Dispensing and Labeling and GMP

**XI. Future Meeting Dates**

A teleconference meeting to resolve J.D. vs. Kondrot 09-10 and any pending medical assistant applications

**XII. Adjournment**

The meeting adjourned at 2:40 p.m. following a motion by Dr. Grout. The motion was seconded by Ms. Stika 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 July 14, 2009.

Respectfully Submitted,

Christine Springer  
Executive Director

**Approved by the Board in Regular Meeting on July 14, 2009**