

# Arizona State Board of Homeopathic and Integrated Medicine Examiners

## Minutes of Regular Meeting

July 14, 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)

##### Absent:

Christine Springer and members of the public were also present. Mona Baskin, Assistant Attorney General arrived at the meeting at 9:30 a.m.

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

#### *Regular Minutes May 12, 2009*

Noting a spelling correction to the word 'clindamycin' on page 6, agenda item VII.5, Dr. Rupley made a motion approving the regular session minutes. Dr. Grout seconded the motion that passed unanimously.

#### *Examination Committee Meeting Minutes, June 3, 2009*

Dr. Rowe moved to approve the committee minutes. His motion was seconded by Dr. Grout and passed unanimously.

#### *Amend September 9, 2008 Regular Meeting Minutes*

Mrs. Springer explained that the approved minutes for agenda item IV.A., page 2, inaccurately stated that Dr. Krystyna Wolski, M.D. had completed a residency in alternative medicine instead of family practice. Her review of the meeting tape confirmed this error and she requested that the Board concur and agree that the minutes should be amended to reflect a residency in family practice. Dr. Rupley made a motion to amend the September 9, 2008 minutes as discussed. Dr. Grout seconded the motion that passed unanimously.

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

#### A. Physicians

##### **Sher Z. Kahn, M.D.**

The Board discussed whether Dr. Kahn should take the oral examination, noting that it is their intention to remove this requirement from the rules and that proposed rules have been prepared to address this. Mrs. Springer advised the Board members that Dr. Khan

had not passed the written examination and that he intended to retake the examination within the month. In addition, she advised that in her review of the continuing education, Dr. Khan had completed 287 hours and would need to complete additional training or provide evidence of other training before the Board could act on the application. Dr. Grout expressed concern about the number of post graduate continuing education hours completed through Medscape, a provider of medical continuing education and inquired whether physicians must have practical training in the alternative modalities in addition to continuing education.

Dr. Khan presented his background and training in medicine and responded to Board member questions concerning his interest in alternative medicine and a pending malpractice case he reported on his application.

Dr. Rowe commented that Dr. Khan would have up to one year to retake the written examination and complete the required number of post graduate training hours. Dr. Adler agreed to review the training hours submitted with the application and inform the applicant of the number of additional coursework that would be required prior to final Board action.

*B. Medical Assistants*

**Joanna Welland**

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. Noting that Ms. Welland was present the Board invited her to speak with them regarding her health care goals. Ms. Welland stated she was in the process of completing her boards as an R.N. and intended to practice holistic nursing. Dr. Adler moved to approve the application. Mr. Farris seconded the motion that passed with a majority vote.

Vote: 4 – 0 Adler, Farris, Grout, Rupley  
Rowe recused

**Belinda Maristany**

Mrs. Springer presented an overview of the documentation presented by Belinda Maristany. She stated that Ms. Maristany had completed a medical assistant training course and had received another 640 hours of in service training related to her duties at Envita. Dr. Rowe made a motion to approve the application. Dr. Grout seconded the motion that passed unanimously.

Vote: 5 – 0 Grout, Adler, Rowe, Farris, Rupley

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

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

**Case No. 09-10 Edward Kondrot MD MD(H)**

Board members considered the licensee's medical records and the medical reports provided by the complainant's California physicians in their deliberation of this matter. Drs. Grout and Rowe commented that records submitted by Dr. Kondrot indicate his awareness of the side effect experienced by the complainant and subsequent effort to address the problem. Dr. Grout commented that a rash can be a common side effect when a homeopathic remedy is administered and an indication of toxins leaving the body. Dr. Rowe moved to close the investigation and dismiss the complaint. Mr. Farris seconded the motion that passed unanimously

Roll Call: 5 – 0 Dismiss

Rowe, Adler, Rupley, Grout, Farris

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

Mrs. Springer informed board members that Dr. Schroeder would be unable to attend the scheduled interview for health related considerations. Dr. Rupley moved to continue the investigative interview to the next regular meeting. Mr. Farris seconded the motion that passed with a unanimous vote.

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

**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 presented her report of the two allegations submitted by the complainant. Dr. Adler noted that the complainant had withdrawn her complaint and asked Assistant Attorney General (AAG) Baskin if the Board must proceed with their review or if the Board was bound by the complainant's request to withdraw the matter. AAG Baskin stated that the Board may consider the information as a piece of evidence but must consider each allegation individually.

In the review of the first allegation concerning supervision of a medical assistant who was treating the complainant the Board looked at the treatment notes and found that Dr. Rowe had signed them in standard intervals as required by rule. The complainant's email revelations of self medication with other remedies not part of the treatment plan were also considered.

In their review of the second allegation, Mr. Farris commented about three letters of support received from other class participants present at the same meeting that led to the complainant's assertion that Dr. Rowe had been untruthful in his legislative testimony. The correspondence noted Dr. Rowe's discussion of the legislative hearing and the potential impact of pending legislation concerning spiritual practitioners. Board members also reviewed the minutes of the legislative hearing and found no evidence to confirm the allegation.

Dr. Rupley moved to dismiss the complaint. Mr. Farris seconded the motion that passed with a majority vote.

Vote: 4 – 0 Rupley, Farris, Grout, Adler

Rowe recused

*THE MEETING ADJOURNED FOR A FIVE MINUTE RECESS*

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

At the Board's request, Mrs. Springer gave an overview of the allegations made in the complaint as follows: 1) concern over the intent of a listing in the website, TopThyroid Docs; 2) the use of an EAV device in the initial visit; and 3) concern over Dr. Schwengel's suggestion regarding hormone replacement supplements. The Board also reviewed Dr. Schwengel's informed consent as it relates to a suggestion to utilize arbitration in a complaint dispute. Mr. Farris commented that Dr. Schwengel did not provide medical care to the patient and that no violations of the homeopathic practice act had occurred. Dr. Adler concurred. Dr. Rowe stated his disagreement and Assistant AG Baskin commented

that a review of each allegation was necessary to determine if a violation had occurred. That fact that no treatment was provided should be considered as one piece of the overall review of evidence.

During discussion Dr. Rowe pointed out that Dr. Schwengel is no longer listed in TopThyroid Docs website and noted Dr. Schwengel's response to the allegation indicated that he has no control over the website and never requested inclusion of his name on the site. The Board noted that the complainant had not signed an informed consent, was not treated other than to receive a demonstration of how an EAV device works, and had been refunded her fee paid for the office visit when she requested it. Concerning the suggestion made to the complainant regarding hormone replacement supplements, Dr. Rowe commented that intake notes show Dr. Schwengel's awareness of the complainant's previous health status and concerns.

Dr. Rowe made a motion to dismiss allegations 1, 2, and 3 stating that no violations of the homeopathic practice act had been demonstrated. Dr. Rupley seconded the motion.

The Board held additional discussion regarding the language of the informed consent and the use of arbitration. Dr. Rupley noted that revisions of the language in the consent had been provided to the Board members in preparation for the meeting. Dr. Rowe expressed his concern that the general public may not be aware of what the mediation terminology refers to. He suggested additional language should be added to clarify that filing a complaint was an additional option if the patient was unsatisfied.

Dr. Rowe moved to dismiss each of the allegations and requested that a letter be sent to Dr. Schwengel suggesting additional language regarding the right of the patient to file a complaint. Dr. Rupley seconded the motion that passed unanimously.

Roll Call to Dismiss: 5 – 0  
Rupley, Rowe, Farris, Grout and Adler

**C. Review, Discuss – Tracking Log Notification of New Complaints Filed  
Case No. 09-15 VL vs. Lloyd Arnold, DO, MD(H)**

Mrs. Springer requested the Board's consent to cede jurisdiction to the Board of Osteopathic Medical Examiners in this complaint matter. Noting that the information provided indicated that it was largely an insurance matter, Dr. Grout moved to cede jurisdiction. Dr. Rupley seconded the motion that passed unanimously.

Roll Call to cede: 5 – 0  
Grout, Rupley, Rowe, Farris, and Adler

**Case No. 09-11 Fry's Pharmacy vs. Lloyd Arnold, DO, MD(H)**

Noting this matter had been previously ceded to the Board of Osteopathic Medical Examiners and was under investigation, no action was taken on this matter.

**Case No. 09-17 OBEX Referral Lloyd Arnold DO, MD(H)**

Mrs. Springer provided the background of this matter referred from the Board of Osteopathic Medical Examiners noting that they were requesting jurisdiction to conduct the investigation. Dr. Rowe indicated his concurrence that the matter should be reviewed by the Osteopathic Board since it involved Dr. Arnold's supervision of the medical practice of an allopathic physician and that physician's prescription writing privileges. Dr. Rowe

made a motion to cede jurisdiction, Mr. Farris seconded the motion that passed unanimously.

Roll Call to cede: 5 – 0

Grout, Rupley, Rowe, Farris, and Adler

**Case No. 09-14 Martha Grout, MD, MD(H)**

Dr. Grout was recused from the discussion of this matter.

Mrs. Springer provided a brief overview of the complaint which alleges Dr. Grout should not have agreed to provide an evaluation as requested by the patient's father, in view of her knowledge that patient's mother (complainant) had not assented to the evaluation.

Mr. Farris made a motion to postpone review of the matter at the complainant's request. There was no second to the motion.

Dr. Rowe indicated he would like to request a copy of the court's order assigning a parenting coordinator to mediate disputes that arise between the parents regarding the medical care of their son. Assistant AG Baskin directed the Board's attention to consider whether any of the allegations of the complainant violate A.R.S. §32-2933, possibly subsection 19, which governs ethics. She continued by noting that if the Board were to review the matter from an ethical perspective it would be necessary to articulate specifically what ethics govern the medical profession in these types of disputes.

Dr. Grout requested to make a statement to the Board. After the Board agreed, she clarified that the patient was evaluated but that no medical treatment was provided. She commented that a treatment team was in place to further decide if the evaluation indicates treatment would be beneficial and she inquired if the Board would bar her participation in that team effort. After considerable discussion Board members did not specifically determine a course of action regarding Dr. Grout's question. Dr. Grout further commented that she had not been fully apprised of all of the available information regarding the parental dispute, particularly emails to the father from the court appointed parent coordinator. She stated she had reviewed the Court's Order concerning custody but did not believe an evaluation would violate any of the terms.

Mr. Farris made a motion to adjourn to Executive Session at 12:05 p.m. for legal advice. Motion seconded by Dr. Rowe and passed with a majority vote. Dr. Grout was recused and did not attend Executive Session. The Board returned to the Regular Meeting at 12:30 p.m.

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

Roll call: 4 – 0 Farris, Adler, Rowe, Rupley

Dr. Rowe moved to defer discussion until the next regular board meeting which would allow the complainant an opportunity to attend. In his motion he requested that the parent coordinator also be invited to attend. Dr. Rupley seconded the motion that passed with a majority vote.

Roll call: 4 – 0 Farris Adler, Rowe, Rupley

Grout recused

There was a brief discussion of whether or not the Board should direct Dr. Grout regarding her participation in the treatment team and Dr. Rowe urged her to review the Court's Order concerning custody.

**Case No. 08-08 Frank Lobacz MD(H)**

Mrs. Springer informed the Board that this case, which the Board reviewed at its outset, had proceeded to a grand jury indictment phase and that discovery was in process. No further information was available at this time.

The Board thanked Mrs. Springer for the update and requested further status reports when they are available.

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

Charles Crosby – Quarterly report

Dr. Rowe commented that his review of the June 17, 2009 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., and 2.** Mrs. Springer informed the Board of the continuation of the Governor's moratorium on rulemaking which remains in effect until October 16, 2009. The moratorium continues to affect 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*. *At the Board's request*, she indicated she would send additional correspondence to the Governor's liaison requesting that rulemaking for Articles 1 and 3 be allowed to move forward.

**3.** Mrs. Springer stated that the Governor's Regulatory Review Council had approved the Five-Year Review Report submitted on Articles 1, 2, 3, and 4 on July 7, 2009.

**B. Performance Audit Implementation**

Mrs. Springer informed the Board that the 18 month follow-up report had been approved and published on the Auditor General's website. The 24 month report would be due before the legislative Committee of Reference hearing scheduled for November, 2009.

**C. Substantive Policy Statements**

Dr. Rowe commented that the AMA had published a policy regarding human growth hormone. He requested that Mrs. Springer obtain a list of the substantive policy statements issued by the Arizona Medical Board and the Osteopathic Medical Board and report back at the next meeting.

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

1. The discussion on website changes was deferred to the next regular meeting in September.
2. Correspondence from L.K. regarding Case 09-04 - Dr Thomas Lodi was reviewed. Mrs. Springer indicated that L.K. had sent the correspondence following the dismissal of the complaint matter in May. Mr. Farris inquired about the purpose of the correspondence and whether formal action was required. The Board members declined to reconsider their May 12, 2009 vote to dismiss the complaint.
3. After a brief discussion, no action was taken to change the date of the September 8, 2009 Regular Meeting.

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

1.a. Mrs. Springer gave a brief overview of finances as of June 30, 2009. She stated that the current appropriation balance is \$1,012 from the total \$117,300 appropriation. \$116,287 has been expended from FY 2009 funds and \$1,540 expended from FY2008 funds. Of the \$22,400 supplemental funding granted to the Board the following purchases have been made: Examination Consultant (\$4127), Data Base changes to implement new renewal cycle (\$2245), New computer(\$800), Medical Assistant Database and web site enhancements (\$710), Rule writer for drafting Article 1 (\$1518), increase staff hours by 5 hours per week including ERE (\$8528). Mrs. Springer indicated any remaining FY2009 monies would revert to the general fund.

#### **IX. Call to the Public**

No comments were received from the public

#### **X. Future Agenda Items**

- IRB Policy Statement regarding Darkfield
- AAC R4-38-115 use of the title MD(H)
- Website changes
- Chelation Therapy rules
- Article 2 Dispensing and Labeling and GMP
- Substantive Policy Statement relating to Thyroid

#### **XI. Future Meeting Dates**

No change from published regular meeting schedule

#### **XII. Adjournment**

The meeting adjourned at 1:20 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 1400 W. Washington, in the Conference Room located in Conference Room B-1, Phoenix, Arizona, at 9:00 a.m. on September 8, 2009.

Respectfully Submitted,

Christine Springer  
Executive Director

**Board Approved in Regular Meeting on September 8, 2009**