

Arizona State Board of Homeopathic Medical Examiners

Minutes of Regular Meeting

September 11, 2007

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)
Marie Stika
Les Adler, MD, MD(H)
David Rupley, Jr., MD(H) (present by telephone)

Absent:

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

a. Dr. Rowe welcomed new board members, Dr. Lester Adler, and Dr. David Rupley, Jr. Each physician provided a short introduction regarding their practice and interest in serving on the Board.

b. At this juncture Dr. Rowe invited outgoing President, Dr. Charles Schwengel to the podium and presented a plaque to him recognizing and thanking him for the many hours he contributed to the business of the Board and the citizens of Arizona. The contribution of Dr. Garry Gordon, who was out of the country, were also recognized and noted as Board members thanked both outgoing members for their nine years of dedicated service.

c. Dr. Rupley made a statement explaining that he had not received the agenda packet. He clarified that his participation in the meeting would largely be limited to listening to the proceedings and that in most complaint matters he would abstain from voting.

II. Annual Meeting

Election of Officers and President's Message

Mr. Farris made a motion nominating Dr. Todd Rowe for President and Dr. Martha Grout for Vice-President. Dr. Rowe inquired if Mr. Farris would be willing to continue serving in the capacity of Secretary-Treasurer and Mr. Farris indicated his consent. There were no other nominations presented. Dr. Adler seconded the nominations that passed unanimously.

The Board's mission to protect the public and provide regulation of homeopathic physicians was reiterated in Dr. Rowe's President's message. He indicated that it was his intention to remain focused upon the implementation of the recommendations made in the performance audit and to have regular dialogue with the executive director. This coordination of efforts would assist in making the Board more efficient.

Fees and the 2007 Meeting Schedule were acknowledged and are available on the web-site at www.azhomeopathbd.az.gov . Interested applicants may also contact the executive director for copies of the information.

III. Review, Consideration, and Action on Minutes

Legislative Committee Minutes July 7, 2007

Executive Session Legislative Committee Minutes – July 7, 2007

Regular Meeting Minutes – July 17, 2007

Executive Session Minutes – July 17, 2007

Special Meeting Minutes – August 13, 2007

Executive Session Minutes – August 13, 2007

Dr. Grout noted an incorrect date (*March 13, 2007*) on the header in the Executive Session Minutes of July 17, 2007 and requested that the header be corrected. Dr. Grout moved to approve all of the minutes listed on the meeting agenda with the amendment to the Executive Session Minutes of July 17, 2007. Mr. Farris seconded the motion that passed unanimously.

IV. Review, Consideration and Action on Applications

A. Physicians

There were no new applications discussed

B. Medical Assistants

There were no new medical assistant applications

V. Review, Consideration and Action on Compliance Reports

Jeffrey J. Rutgard MD(H)

Mrs. Springer provided a status update on the compliance requirements submitted by Dr. Rutgard since the last regular meeting. She stated that Dr. Rutgard had re-confirmed his ongoing intention to complete the requirements of the consent agreement by the November, 2007 timeframe and that in his last email communication he had stated that his homeopathic studies were ongoing as required by the agreement.

Dr. Rowe reconfirmed that Dr. Rutgard must abide by the terms of the consent agreement.

VI. Call to the Public

The Board took public comment from two persons from Parker, Arizona that had sought surgical procedures from Dr. Gary Page.

R. S. introduced herself and explained that she had sought surgery because she wanted to build self confidence. However, as a result of her experiences, she now distrusts all physicians. R.S. also explained that the situation is further complicated since Dr. Page has been summarily suspended from the practice of homeopathic medicine and she has no recourse to address problems that have developed as a result of the surgery. R.S. has

had to seek out another physician at further expense and noted that as a college student the whole experience is very difficult on her financially and emotionally. When she developed an infection from the surgery and sought additional medical care to address that issue she was shocked to find that Dr. Page was still employed by Indian Health Services in Page, Arizona.

K.B. made her statement to the Board and explained that the whole experience had been extremely adverse. She expressed her feelings of abandonment and noted that she had developed a bacterial infection at the surgical site, can not fully extend her arm upwards, and most stressful of all, has recently discovered that based on her medical history is not even a proper candidate for implants. She must now undergo another procedure to remove the implants inserted by Dr. Page. K.B. expressed her opinion that both surgeons were gamblers with human life and that this is wrong.

The Board thanked both persons for their time and explained that the investigation into the matter was ongoing.

VII. Complaints and Investigations

A. Review, Consideration, and Action On Previously Tabled Case Reviews Case No. 06-14 Joseph Sherman DO, MD(H)

Mrs. Springer updated the Board regarding this previously tabled case. She explained that in July, 2006 the Board had conducted their review and determined that primary jurisdiction should go to the Board of Osteopathic Medical Examiners (OBEX). The OBEX had conducted their investigation and issued a non-disciplinary advisory letter and required that Dr. Sherman complete 20 continuing education hours in infection control.

Dr. Grout opined that it did not appear that there was sufficient evidence to discipline Dr. Sherman. AAG Wood suggested that the Board may wish to review all of the additional information from the OBEX investigation and consider whether or not there are concerns that should be addressed. Following a general discussion regarding tabled matters Dr. Grout made a motion directing Mrs. Springer to obtain all of the investigation materials from OBEX and provide them to Board members for further consideration. Mrs. Stika seconded the motion that passed with a majority vote.

Roll Call: 5-1; Grout, Farris, Stika, Rowe, Adler
Rupley abstain

Case No. 06-16 Jeffrey Baird DO, MD(H)

Mrs. Springer recounted the facts of this case, noting that the Board had voted to table the case in July, 2006 and ceded primary jurisdiction to OBEX. At the conclusion of their investigation, OBEX had entered into a stipulated agreement with Dr. Baird and reprimanded his osteopathic license.

There was a brief discussion of non-approved botox and a quick review of the definition of minor surgery as it would relate to injections.

A motion directing Mrs. Springer to request all of the investigation materials from OBEX and to place the matter on the next regular meeting was made by Dr. Grout. Mr. Farris seconded the motion that passed with a majority vote.

Roll Call: 5-1 Grout, Farris, Stike, Rowe, Adler

Rupley abstain

B. Review, Consideration and Action On Investigations Pursuant to ARS §32-2934(A)

Case No. 07-03

Frank George, DO, MD(H)

This case came to the Board's attention after receipt of information concerning a medical condition for which the physician was receiving treatment. Dr. George was present and Board members requested that he provide information on the current state of his physical health and ongoing treatment.

Dr. George indicated that he had sought conventional treatment in Arizona and alternative treatments in Germany and that they had been quite successful in stopping the disease process. With regard to his clinical practice, the doctor stated that he had made appropriate arrangements relative to oversight of the clinic. He noted that Drs. Hayle Aldren, Robert Zieve, and Sean Devlin were providing medical coverage for his patients and that Dr. Devlin was responsible for the management of the clinic. Mr. Farris inquired whether or not the doctor saw patients directly. Dr. George explained that he was working part time, about 3 hours per week and that he would occasionally see a patient to answer specific questions relative to the treatment, but that another physician was always present with him. He indicated that his primary duties were as a consultant. Dr. George responded to further questions from Board members.

The Board adjourned to executive session at 10:40 a.m. following a motion from Dr. Grout to request legal advice pursuant to ARS 38-431.03(A)(3). Dr. Adler seconded the motion that passed unanimously. The Board returned to the regular meeting at 10:50 am.

Mr. Farris thanked Dr. George for the information and made a motion to close the investigation. He directed that the executive director acknowledge in a letter to Dr. George, the arrangements that have been made to provide continuity to patients undergoing treatment at Dr. George's clinic. He requested that the doctor notify the Board should his medical condition change or when he once again resumes active practice. Dr. Grout seconded the motion that passed unanimously.

Roll Call: 6-0 Dismiss

C. Review, Consideration, and Action On Investigations Pursuant to ARS 32-2931(A) and (B)

Case No. 08-05

Ricardo Cid, Ph.D.

Case No. 08-06

Dr. Nemecio Cid-Mellado

Mrs. Springer explained that the respondent's actions had come to her attention after OBEX staff forwarded documents alleging that Drs. Cid-Mellado and Cid were operating a business in West Phoenix selling homeopathic remedies and diagnosing patients utilizing iridology and homeopathy. In addition, they had conducted sports physicals for student athletes at a nearby high school. As a result of her contact with the respondents, Mrs. Springer stated that references to homeopathic doctor had been removed from advertisements and business cards. She noted that although Dr. Nemecio Cid-Mellado was a licensed physician in Mexico he was not licensed in Arizona and Dr. Cid is a doctor of divinity.

The Board considered whether a referral to the county attorney was proper given that both respondents had complied with the Board's request to cease using any designations that would lead the public to believe they were homeopathic physicians. In addition, information filed in response to the Board indicated their intention to cease diagnosing or treating patients with homeopathy. The Board noted that selling homeopathic remedies did not violate the intent of the law.

Dr. Grout made a motion to offer respondents a Cease and Desist Agreement. The motion stated that should respondents refuse to sign the agreement that the Board would refer the matter to the county attorney. Motion seconded by Mr. Farris and passed with a majority vote.

Roll Call: 5-1 Grout, Farris, Stika, Rowe, Adler
Rupley abstain

D. Review, Consideration and Action on Proposed Consent Agreement or Stipulated Orders

Case No. 05-21 Charles Crosby , MD(H)

Dr. Crosby and his attorney, Stephen Meyers, were present during discussion of a proposed consent agreement and order. AAG Wood explained that new information indicated that the Board must reconsider their original vote taken September 12, 2006 in that previous Board member, Dr. Garry Gordon, should have recused himself from consideration of the matter. AAG Wood read from the minutes of the September 12, 2006 meeting and noted that the original motion to offer Dr. Crosby a consent agreement had been made by Dr. Rowe and referenced A.R.S. §§32-2933(17), (18), and (19) relating to unprofessional conduct as the basis for the action. A motion to reconsider the Board's original vote taken September 12, 2006 was offered by Dr. Grout. Dr. Rowe seconded the motion that passed with a majority.

Roll Call: Grout, Rowe, Farris, Stika, Adler
Rupley abstain

Mr. Myers was invited to address the Board. Mr. Myers reviewed the consent agreement and stated that the respondent disputed the references to A.R.S. §§32-2933(17) and (19) found in the conclusions of law. He noted that the order was not in dispute and in his opinion, the fifteen provisions making up the order appropriately protected the public. Mr. Myers went on to say that ARS §32-2933(18) was not in dispute but that the record did not support the inclusion of the other two provisions (17) and (19). He pointed out that the case was never adjudicated in Florida and that language of the Florida consent agreement indicates that the respondent neither admitted nor denied the findings. Mr Myers provided a background of the case stating that no patients had complained, but rather, Dr. Crosby had voluntarily reported his concerns to the Florida board and had complied with their request that he enter the Professional Referral Network (PRN).

There were no questions and AAG Wood noted that the question the Board must review is whether the inclusion of professional conduct standards ARS §32-2933 (17) and (19) should remain in the conclusions of law or not.

At 11:20 a.m. Dr. Grout made a motion to adjourn to executive session for legal advice pursuant to ARS 38-431.03(A)3. Ms. Stika seconded the motion that passed unanimously.

The Board returned to the regular session at 11:35 a.m. and adjourned for a five minute break.

The meeting reconvened at 11:40 a.m. and Mr. Myers stated his client would agree to the inclusion of ARS 32-2933(19) under the conclusions of law in the consent agreement. He requested that the board include a statement in the findings of fact referencing the opinion stated in the November 4, 2004 correspondence by Dr. Garry Gordon that indicated he had reviewed Dr. Crosby's medical records and in his opinion, a cause and effect relationship existed between metal toxicity and respondent's behavior and that respondent had done everything possible to remedy the behavior.

Dr. Grout made a motion to accept the consent agreement as discussed which would amend the conclusions of law to retain ARS §32-2933 (18) and (19) and include a statement in the findings of fact referencing Dr. Gordon's opinion in a November 4, 2004 correspondence. AAG Wood indicated that the Board must include clarification in the agreement that they were unaware of the conflict that Dr. Gordon had in the matter. Mr. Farris seconded the motion that passed with a majority vote.

Roll Call: 5-0 Grout, Farris, Stika, Rowe, Adler
Rupley abstain

Mr. Myers thanked the Board and reiterated that he was not aware of the conflict Dr. Gordon had in the matter and had he been aware he would have brought it to the Board's attention earlier.

Case No. 08-01 Gary Page MD(H)

Mrs. Springer reported that Dr. Page signed a consent agreement agreeing to the voluntary summary suspension of his homeopathic license on September 6, 2007. Administrative proceedings will be held within 4 months. Pursuant to A.R.S. §32-2934(D) the hearing in this matter will be convened within sixty (60) days of service of the complaint and notice of hearing.

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

A. Rules

1. Mrs. Springer informed the Board that permanent fees in *AAC R4-38-105* were approved by the Governor's Regulatory Review Council August 7, 2007 and filed in the Office of the Secretary of State effective August 9, 2007.
2. The rule package to renew the emergency concerning fees in *AAC R4-38-105* was withdrawn from consideration by the Attorney General's Office upon approval of the permanent rulemaking.
3. Work on the draft of *Chapter 38, Article 3, R4-38-301-311 Medical Assistants* was ongoing. Dr. Lester Adler and Dr. David Rupley agreed to serve on the Rules Committee with Dr. Rowe since Drs. Schwengel and Gordon were no longer on the Board. Mrs. Springer stated that a few questions regarding definitions and training programs remained to be answered and that she would send out the proposed rules to committee members for their input before the next regular meeting.

At 12:00 p.m. Dr. Rupley left the meeting and the Board adjourned for lunch. The meeting reconvened at 1:00 p.m. Dr. Rowe, Dr. Grout, Dr. Adler, Marie Stika and Mr. Farris were in attendance.

B. Discussion of Proposing Rules related to Performance Audit Recommendations

1. Internships ARS 32-2913(D)(4)

Mrs. Springer stated she would send Dr. Grout language relating to the approval of internships.

2. Labeling, recordkeeping, storage and packaging of drugs

Dr. Rowe suggested that the Board consider language from the Arizona Medical Board but noted that supplements were not addressed. He requested that Mrs. Springer provide a copy of language previously adopted that had governed the labeling, storage and packaging of drugs.

3. Deletion of oral examination requirement AAC R4-38-106 (A)(2)

Board members discussed whether or not ARS §32-2912(B) *required* the completion of an oral examination. The language indicates that the "Board may require an applicant to submit additional written or oral information..." There was general agreement that an oral examination was an option as reflected by the usage of the word "may". They agreed that AAC R4-38-106(A)(2) should be deleted from the rules.

4. AAC R4-38-103 proficiency in recognized homeopathic modalities

Following a brief discussion of the intended meaning of the rule, AAG Wood suggested language intended to provide a recognition of proficiency in a specific modality as follows:

An applicant may practice any of the specified modalities recognized as part of the practice of homeopathic medicine; however, if an applicant wishes to be certified to practice a specific modality they shall demonstrate the following proficiencies in the modality by completing the indicated number of post graduate hours."

C. Legislation

1. a.) through i.) Dr Rowe requested that Mrs. Springer prepare a listing of proposed legislation for Committee of Reference members.

Mrs. Springer stated she still had not found another source from which to obtain a second bid relative to validation of the written examination. Dr. Rowe suggested that the C.H.E. may be willing to validate the classical homeopathic part of the examination and encouraged her to complete the request for proposal and mail to potential candidates.

Each of the other subject matters requiring statutory change were briefly discussed.

Board members agreed that a revision of the annual renewal date to the date of licensure would require a review of the late renewal criteria in ARS 32- 2915(D). They generally agreed that the current guidelines were too long (90 days) and suggested that licensees should have a 30 day grace period in which to renew late with a penalty. If fees were not received within the 30 day time frame the license would expire for non payment of renewal fees.

Dr. Rowe suggested that when the written examination questions were compiled, 60% of the questions should relate to homeopathic subject matter and 40% of the questions should include the other recognized homeopathic practice modalities. There was a

consensus that this would be appropriate and further discussion was held regarding how an applicant would obtain enough training in the other modalities and prepare for the examination.

During the discussion on internet prescribing board members concurred that typically internet prescribing is not a usual standard of practice. In recognition of the prevalence of internet websites, they agreed that a physical examination would be required and that the patient must be seen before prescribing over the internet.

D. Substantive Policy statement(s)

Pain Management Guidelines

The Board briefly discussed their approval of Pain Management Guidelines incorporating guidelines published by the Arizona Medical Board but rewritten from a homeopathic perspective. Dr. Rowe stated that the guidelines had been considered previous to the assignment of AAG Wood to represent the Board and that the Board was seeking input from her regarding the appropriateness of publishing as a Substantive Policy Statement. Ms. Wood agreed that it would be appropriate to submit the guidelines as a substantive policy.

IX. 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 the November 13, 2007 regular meeting.
2. Dr. Grout confirmed that the informed consents submitted by Dr. Jeff Bradstreet, MD(H) for heavy metal detoxification, Intravenous Immunoglobulin Treatment, Spironolactone, Oxytocin Nasal Spray, and Hyperbaric Oxygen Therapy were appropriate as submitted.

X. Review, Consideration and Action On Other Business

1. Mrs. Springer directed Board members attention to information in their packets concerning the August, 2007 financial report. The review of the 2009-2010 Budget and Strategic Plan was deferred to a teleconference meeting to be held on September 25, 2007 at 7:30 a.m.

XI. Future Agenda Items

- Listing pending complaint matters on the agenda
- Definition of minor surgery
- Cosmetic procedures and the homeopathic medical license
- Conduct of investigative interviews, training medical consultants
- Complaint tracking spreadsheet
- Implementation of revised written examination and review coursework
- Continuing medical education
- American Medical College of Homeopathy status update

XII. Future Meeting Dates

A special meeting of the Board was scheduled for Tuesday, September 25, 2007 at 7:30 a.m. to consider the strategic plan and fiscal year 2009 – 2010 budget.

XIII. CLOSE OF BUSINESS/ADJOURNMENT

The meeting adjourned at 2:50 p.m. following a motion by Mr. Farris. Ms. Stika seconded the motion that passed unanimously. The next Regular Meeting of the Board will convene

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at the State Board's Offices, 1400 W. Washington, Basement Conference Room B-1,
Phoenix, Arizona, 9:00 AM, on November 13, 2007.

Respectfully Submitted,

Christine Springer, Executive Director