

# Arizona State Board of Homeopathic and Integrated Medicine Examiners

## Minutes of Regular Meeting

November 18, 2008

### I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 9:03 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) (arrived 9:08 a.m.)  
Marie Stika

##### Absent:

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

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

#### *Executive Session Minutes July 9, 2007*

Dr. Grout made a motion approving the executive session minutes. Ms. Stika seconded the motion that passed unanimously.

Dr. Grout moved to approve the minutes of the following meetings:

*Special Meeting Minutes, July 9, 2007*  
*Teleconference Meeting, August 5, 2008*  
*Regular Meeting, September 9, 2008*  
*Executive Session Meeting, September 9, 2008*  
*Teleconference Meeting, September 29, 2008*

Dr. Rupley seconded the motion that passed unanimously.

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

#### A. Physicians

##### **Dr. Margaret Williams, M.D.**

Board members interviewed the applicant about her application and current practice in psychiatry and inquired about her plans to utilize the homeopathic license. Following the applicant's presentation of a clinical case Dr. Grout moved to grant Dr. Williams request for a homeopathic medical license. Dr. Adler seconded the motion that passed unanimously.

Vote: 6-0 Dr. Adler, Mr. Farris, Dr. Grout, Dr. Rupley, Ms. Stika, Dr. Rowe

**Dr. Jerry Tennant, M.D.**

Following a question from Dr. Rowe about the necessity of conducting an oral examination in view of the change to the new written examination encompassing all of the homeopathic modalities, Mrs. Springer explained that although administrative rules had been proposed deleting this requirement, the rules had not been finalized. It is her understanding that until the rules are final, applicants will continue with the current process.

Board members discussed Dr. Tennant's application and background in integrative medicine, noting his training and experience with electro acupuncture, EAV, and energy medicine. Following the applicant's presentation of a clinical case Dr. Grout moved to grant Dr. Tennant's request for a homeopathic medical license. Mr. Farris seconded the motion that passed unanimously.

Vote: 6-0 Dr. Grout, Dr. Adler, Mr. Farris, Dr. Rupley, Ms. Stika, Dr. Rowe

(The Board adjourned for a short break at this point in the meeting and reconvened at 11:00 a.m.)

*B. Medical Assistants*

**Sheena Korn**

The Board considered the application of Sheena Korn following a short break. Mr. Farris commented that the application should be tabled until an informal hearing is held in Case No. 08-10. Following a brief discussion about the number of training hours completed at the Columbus Paraprofessional Institute (CPI) medical assistant program in Columbus, Ohio, Mr. Farris stated that he would like additional information about the type of training courses completed by Mrs. Korn while attending CPI. Dr. Grout stated that the transcript is not clear on the number of training hours completed, nor is there a course listing of the types of courses completed.

Mr. Farris asked what training standards were required for medical assistant training in the homeopathic medical assistant rules. Mrs. Springer stated that the rules require 240 classroom hours in medical secretarial skills and 240 classroom hours in back office assisting as well as 320 hours of supervised clinical experience. Dr. Grout stated that the supervision from Dr. Korn would comprise a practical education program and that additional information should be obtained to verify the types of duties and the number of hours she provides to patients that come to the clinic.

Mr. Farris requested that the application be tabled and additional information about Mrs. Korn's training be obtained. The other Board members concurred.

**IV. Complaints and Investigations**

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

Case No 09-03	Edward Kondrot MD MD(H)
Case No. 09-04	Thomas Lodi MD(H)
Case No. 09-05	Thomas Lodi MD(H)
Case No. 09-06	Elliott Schmerler, MD(H)
Case No. 09-07	Murray Susser MD(H)

In response to a question from Dr. Rowe, Mrs. Springer explained that the referenced case numbers reflected new matters received at the Board that she was currently preparing for Board review.

Case No. 09-06 had been reported by Dr. Schmerler, concerning the revocation of his Nevada medical license.

*B. Review, Consideration and Action – Ongoing Investigations*

Case No. 08-11 Elliott Schmerler, MD(H)

Mrs. Springer explained that a second subpoena sent to Dr. Schmerler for medical records in the instant case had not been satisfied. His attorney, Mr. Stephen Myers, was present to discuss information related to his client's Motion to Quash the subpoena. Mr. Myers explained that Arizona patient's medical records were stored in Nevada along with multiple years of medical records from Dr. Schmerler's previous medical practice. He explained that it is the doctor's intention to go to Nevada and cull through the storage facility for the requested records.

Noting the first request for charts related to the case had been made in August, 2008, modified in October, 2009 and that the doctor had been unable to provide the records, Dr. Rowe suggested that the records must be provided within 40 days

Ms. Stika questioned Mr. Myers about whether Dr. Schmerler is practicing in Arizona in view of the loss of his Nevada license. Mr. Myers responded that his client is setting up practice with another physician in Arizona. Mr. Farris noted that the homeopathic medical license does not allow for cosmetic surgeries and he expressed concern that Dr. Schmerler may resume his cosmetic surgical practice. Mrs. Springer inquired if the Board may wish to consider offering the doctor an opportunity to voluntarily surrender his homeopathic medical license.

A short discussion was held concerning parameters that must be met for summary suspension. Drs. Rowe and Grout indicated their support for a voluntary suspension of Dr. Schmerler's homeopathic medical license.

Dr. Grout moved to adjourn to executive session for legal advice at 12:47 a.m. Mr. Farris seconded the motion that passed unanimously. The Board returned to the regular meeting at 1:05 p.m.

Relative to Case 08-11, Dr. Rowe made a motion requiring Dr. Schmerler provide 20 cosmetic surgical case files from the time period of October, 2007 to April, 2008 within 40 days of the provision of notice. Motion seconded by Dr. Grout and passed unanimously.

Relative to Case 09-06, Dr. Rove moved to hold a formal hearing regarding the revocation of Dr. Schmerler's Nevada medical license noting that the revocation may violate professional conduct codes relative to A.R.S. §32-2933 (10), (18), and (19). Motion seconded by Dr. Grout and passed unanimously.

Vote: 08-11 provision of medical records: 6-0  
Rowe, Grout, Stika, Farris, Adler, Rupley

Vote: 09-06 formal hearing: 6 – 0  
Rowe, Grout, Stika, Farris, Adler, Rupley

*Case No. 08-13 Doris Rapp MD(H)*

At Dr. Rowe's request, Mrs. Springer provided a status update concerning interviews held with Dr. Rapp and Mr. Williams. Board members inquired about the types of duties Mr. Williams performed for Dr. Rapp as part of his work with the Foundation. Mrs. Springer explained that Mr. Williams' responsibilities include assisting Dr. Rapp in moving her New York Foundation to Arizona as well as some video work. Mrs. Springer stated that there was no evidence to support the allegation made by the anonymous complainant that Mr. Williams was treating patients.

There was discussion about Mr. Williams and the EAV devices that he sold to alternative practitioners. Mrs. Springer explained that the results of her interviews with both Dr. Rapp and Mr. Williams did not support the allegation that Mr. Williams treated patients with the EAV device.

Dr. Rowe made a motion to close the investigation and dismiss the complaint. Dr. Grout seconded the motion.

During the discussion Dr. Rupley requested that Dr. Rapp be informed that the complaint investigation was closed and if, in the future, Mr. Williams' duties expand to include utilizing an EAV device in treatment of Foundation patients, she would need to register Mr. Williams as a homeopathic medical assistant.

The motion to close the matter passed unanimously.

6-0 Roll call: Rowe, Rupley, Adler, Stika, Farris, Grout

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

Dr David Korn was present with his wife Sheena, and attorney, Mr. Stephen Myers to respond to questions.

Mrs. Springer read a statement of the initial allegations in the anonymous complaint. The Board's medical consultant, Dr. Charles Schwengel was available to present a report of his visit to Dr. Korn's clinic and investigation into the allegations. Dr. Schwengel began his presentation stating that no evidence was found to support the allegation of a violation of universal precautions standards. He had found the facility to be clean and in-service training information timely and appropriately documented as required by OSHA. Dr. Schwengel responded to a question from Dr. Rowe regarding an allegation that personal laundry had been done at the clinic. He confirmed that Dr. Korn had admitted this allegation, but that he was unaware that this action was a violation of OSHA standards. There was additional discussion regarding the status of Mrs. Korn and her work role at the clinic. Dr. Schwengel stated she was not registered with the homeopathic board as a medical assistant. He noted Dr. Korn had provided documentation of her training in phlebotomy and medical assistant coursework at a college in Columbus, Ohio, as well as current coursework in a nursing program. Noting that one of the allegations related to Mrs. Korn providing IV therapy to patients, both Dr. Adler and Dr. Rowe inquired whether current medical assistant rules address this issue. The Board thanked Dr Schwengel for his presentation.

Mr. Farris made a motion to adjourn to Executive Session for legal advice at 11:30 p.m. Dr. Rupley seconded the motion that passed unanimously. The Board returned to the regular session at 12:00 p.m.

The Board invited Dr. Korn to address the Board. He stated that Mrs. Korn was well trained, that she had completed prerequisites for a nursing degree, and had completed training related to oxidative therapy, the provision of IVs and phlebotomy. In response to a question from Dr. Rowe, he confirmed that he provides supervision to staff as needed.

Mr. Myers requested to speak to the Board and stated that the Board's request for a response to the anonymous complaint had not included a specific allegation. Following that statement, Board members continued their inquiry. Dr. Rowe inquired why Mrs. Korn was not registered as a homeopathic medical assistant. In his response, Dr. Korn stated he felt it was not necessary in that she had standard medical assistant training as well as specialized training in oxidative therapy and IVs.

Dr. Rowe made a motion dismissing allegations 2, 4, 5, and 6 noting that there was insufficient evidence to support a violation. He made a recommendation that the Board hold an informal interview regarding allegations 1 and 3 at the next regular meeting. Mrs. Stika seconded the motion that passed unanimously.

Vote: 6-0 Informal interview

Dr. Rowe, Ms. Stika, Dr. Grout, Dr. Rupley, Dr. Adler, Mr. Farris

Case No. 08-14      David Rupley, MD(H)

Dr. Rupley recused himself from the discussion in this matter and left the room. Mrs. Springer presented an overview of the complaint and stated, that as part of her investigation, she had requested and eventually received correspondence from the agency at which Dr. Rupley and the complainant worked. This agency's own internal investigation, conducted in 2004, had not substantiated allegations similar to those brought to the Board by the complainant.

Dr. Rowe commented that allegations related to medications and laboratory testing issues were not substantiated by either the Department nor the Board. He noted the complainant had filed 13 previous complaints to licensing Boards in issues either directly or indirectly related to these matters. None of the other complaints were substantiated. The Board's own investigation found that neither the immediate supervisor or the head of the agency at which Dr. Rupley and the complainant worked substantiated the veracity of the charges. Complicating the Board's investigation was a lack of documentation or evidence from the complainant identifying patients alleged to have been harmed by Dr. Rupley. Dr. Rowe commented that the complainant's charge that Dr. Rupley is not a medical doctor was not true in that Dr. Rupley is licensed by the Homeopathic and Integrated Medicine Board and also holds medical licenses in good standing in the states of Wisconsin and California. Psychiatric medicine is included within the scope of the homeopathic medical license. Dr. Rowe moved to dismiss the complaint and close the investigation. Mr. Farris seconded the motion that passed with a majority vote.

Vote: Dismiss 5-0

Rowe, Farris, Stika, Adler, Grout  
Rupley recused.

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

*Charles Crosby, MD(H)*

The Board reviewed the most recent quarterly report from Dr. Crosby's psychologist filed in compliance with the terms of the Consent Agreement and Order currently in effect. Dr. Crosby, who resides in Florida, joined the meeting by telephone and responded to questions from the Board. The interview was held to update the Board on the status of the terms of the Consent Agreement and Order.

Dr. Adler interviewed the doctor about his current work marketing a Tenscan device and inquired about whether or not a prescription is required to dispense the therapy. Dr. Crosby responded that another physician would write the prescription and that he is solely involved in the demonstration and marketing of the device typically in a convention setting. He stated that no fees are charged to demonstrate the device. The Board thanked Dr. Crosby and ended the interview.

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

### **A. Rules**

1. The Board voted to form a rulemaking committee comprised of Drs. Rowe, Grout and Ms. Stika relative to the Five Year Review.

2. Following a brief statement Dr. Rowe made a motion to adopt proposed language to change the rules relating to dispensing in *Arizona Administrative Code*, Chapter 38, Article 2 Dispensing of Drugs and Natural Substances. Dr. Rupley seconded the motion that passed unanimously. In seconding the motion Dr. Rupley suggested the Board add language that allows for other standards rather than those in the GMP. He suggested that language be added to allow protocols be filed.

### **Public Rulemaking Hearing to Take Oral Comment regarding Proposed Rules**

*AAC, Chapter 38, Article 3, Education, Supervision, and Delegation Standards for Registration of Medical Assistants by Homeopathic Physicians and Article 4 Timelines.*

At 1:05 p.m. the Board began its public hearing regarding the proposed rules. Dr. Rowe read a brief statement to open the hearing.

No members of the public were present that wished to submit comments. Mrs. Springer stated that no written comments were submitted about the rulemaking.

Mr. Farris commented that he still had concerns about clinic staff not having appropriate training to provide IV therapy.

Dr. Grout suggested language as follows: a physician shall not delegate procedures that violate the barrier of the skin if the staff providing the therapy is not first registered as a homeopathic medical assistant or otherwise holds license or certification from another professional licensing board.

Dr. Rowe stated that the Board may want to wait for the Governor's Regulatory Review Council staff to submit their memorandum on the rulemaking. The public hearing to take oral comment was closed at 1:45 p.m.

*B. Legislation –*

Mrs. Springer indicated the deadline to submit legislation in the current session had passed as of November 17, 2008. The Board indicated they had no proposed legislation for the current session.

*C. Substantive Policy Statement – Informed Consent*

A discussion of the proposed Substantive Policy Statement (“SPS”) concerning informed consent was held. AAG Hargraves stated that the language of the statute only requires clarification that treatment provided is homeopathic and being provided under the homeopathic medical license. He indicated his concern that by adding all of the other language contained in the proposed “SPS” it could be inferred that the Board was imposing additional requirements on the licensee.

A lengthy discussion was held concerning whether the Board may legally direct a licensee to include each of the components noted in the proposed “SPS”.

The Board declined to adopt the “SPS”. Mr. Farris suggested that AHIMA present an in-service concerning informed consent relative to this statutory requirement.

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

1. Dr. Grout presented an overview of Live Blood Cell Analysis (Dark Field). She indicated that the test, which analyzes live blood cells, is conducted in laboratories and was an extension of work by Bouchard who had worked with Louis Pasteur. Legally, only private laboratories that are CLIA certified may offer the test. She indicated that the Academy of Dermatology is familiar with the technique and recently testified at a Federal hearing regarding its use. It was her suggestion that the Board consider an application to an Institutional Review Board (“IRB”) so that research could be presented in a formal setting. Dr. Grout agreed to prepare a statement concerning the technique at a future Board meeting.

2. A brief discussion was held concerning public information on the web site. Mr. Hargraves stated that email addresses are not public information. The Board suggested links be inserted that would direct individuals to related entities such as the National Center for Homeopathy, Arizona Medical Board, Osteopathic Medical Board and the Arizona Homeopathic and Integrative Medical Association.

(Note: Dr. Rupley left the meeting at 4:15 p.m. and was not present for the following discussions)

3. and 4. Dr. Grout recused herself from the discussion related to the approval of protocols for the provision of neurotherapy. After general discussion on the topic the Board tentatively agreed that neurotherapy would fall within the scope of the practice of homeopathy modality, neuromuscular integration. Dr. Rowe moved to approve the protocols and Ms. Stika seconded the motion that passed with a majority vote.

4-0 Rowe, Stike, Adler, Farris

Dr. Rupley – not present

Dr. Grout – recused.

Dr. Rowe invited Dr. Grout to describe the therapy. Following a short presentation by Dr. Grout, Dr. Adler questioned her about the type of devices utilized and what type of training a practitioner would need. Dr. Grout stated she would provide additional information relating to regulation of neurotherapy practitioners at the next meeting.

5. Dr. Rowe made a brief presentation regarding the ongoing accreditation process of the American Medical College of Homeopathy ("AMCH"). Students would graduate after four years and would practice under the spiritual exemption clause in A.R.S. 32-2911(10). Dr. Rowe recused himself while Board members discussed aspects of the proposal.

At the request of board members, Dr. Rowe responded to questions concerning whether graduates of the American Medical College of Homeopathy would be called doctors. He confirmed that graduates would be called "Doctor of Hahnemanian Principles". Recognizing the four years of training included in the program board members briefly discussed the spiritual exemption clause. No objections were registered regarding the proposed title for graduates from the program.

6. The Consent for Chelation Therapy and Protocol for Oral DMPS Provocation Protocol submitted by Dr. Jerry Tennant was tabled to the next meeting. Dr. Adler agreed to review the protocols in more detail and report to the Board at the next meeting.

6. A discussion of live blood cell analysis (Dark Field Analysis) was deferred to a future meeting.

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

1.a. Mrs. Springer gave a brief overview of finances as of October 31, 2008. She stated that the current appropriation balance is \$62,183 from the \$117,300 appropriation. \$41,900 has been expended.

1.b. A brief discussion concerning consolidation of Boards was held. Dr. Rowe stated that the Board is interested in parts of the consolidation process relative to sharing an enhanced computer system, but that a previous letter had been forwarded to the Governor regarding their desire to remain autonomous with budget processes.

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

No comments were received from the public

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

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

A meeting of the Five Year Review Committee will be scheduled.

#### **XII. Adjournment**

The meeting adjourned at 5:05 p.m. following a motion by Mr. Farris. The motion was seconded by Dr. Grout 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 1:30 P.M. on January 13, 2009.

Respectfully Submitted,

Regular Minutes November 18, 2008

Christine Springer  
Executive Director

Approved by the Board on January 13, 2009