

Arizona State Board of Homeopathic Medical Examiners

Minutes of Regular Meeting

May 13, 2008

I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 1:00 p.m.

Roll Call

Present:

Todd Rowe, MD, MD(H)
Don Farris
Martha Grout, MD, MD(H) (arrived 1:12 p.m.)
Les Adler, MD, MD(H)
Marie Stika

Absent:

David Rupley, Jr., MD(H)

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

II. Review, Consideration, and Action on Minutes

Executive Session Minutes March 11, 2008

Mr. Farris made a motion approving the executive session minutes. Ms. Stika seconded the motion that passed unanimously.

4-0

Rowe, Adler, Farris, Stika present

Regular Meeting Minutes – March 11, 2008

Ms. Stika made a motion approving the Regular Meeting minutes of March 11, 2008. Dr. Adler seconded the motion. The motion passed unanimously.

4-0

Rowe, Adler, Farris, Stika present

Teleconference Meeting Minutes – March 18, 2008

Mr. Farris made a motion to approve the Teleconference Meeting Minutes of March 18, 2008. Ms. Stika seconded the motion that passed unanimously.

4-0

Rowe, Adler, Farris, Stika present

(At this point in the meeting, Dr. Grout arrived 1:12 p.m.)

III. Review, Consideration and Action on Applications

A. Physicians

Dr. Christina Bowers M.D.

The Board members conducted an oral interview with Dr. Christina Bowers, D.O. They noted her previous practice in Arizona as an anesthesiologist. Dr. Bowers presented a clinical overview of Case No. 4. Following her presentation the discussion included comments from Dr. Adler and Dr. Grout concerning her oral examination presentation. Dr. Adler expressed concern with Dr. Bowers' lack of experience in a primary care setting. Dr. Grout expressed a concern regarding 90 hours of homeopathic training and the applicant's plans to serve as a homeopathic consultant in a group practice.

Dr. Grout requested that the Board move to Executive Session for legal advice at 2:00 p.m. Her motion was seconded by Mr. Farris and passed unanimously.

At 2:10 p.m. the Board returned to the general session.

Mr. Farris made a motion denying Dr. Bowers application at this time. Dr. Grout noted that Dr. Bowers' responses in the oral examination did not indicate a thorough knowledge of the practice of medicine as a homeopathic physician that is required by A.R.S. §32-2913(B). She noted that the applicant had successfully passed the written examination but also must demonstrate competency in the clinical management of a sample case as required in A.A.C. R4-38-106 (A)(2). Under the provisions of A.R.S. §2913 (C) Dr. Bowers may be reexamined within one year of the date of the receipt of the original application fee without payment of additional fees. Dr. Grout seconded Mr. Farris' motion to deny the application. Motion carried unanimously.

Roll call to deny

5-0

Stika, Grout, Adler, Farris, and Rowe

Dr. Constantine Kotsanis, M.D.

Dr. Kotsanis presented his medical background at the Board's request. He explained his long-time medical practice utilizing alternative medicine and stated that he was very involved in the 'DAN' (Defeat Autism Now!) movement .

Dr. Grout moved grant waiver of the written examination pursuant to A.R.S. §32-2913(A)(1). Ms. Stika seconded the motion that passed unanimously.

Dr. Kotsanis was asked to present a clinical review of Case No. 6. Following discussion and questions from the members of the Board Dr. Grout made a motion to approve Dr. Kotsanis' application for licensure. Mr. Farris seconded the motion that passed unanimously.

Roll call to approve

5-0

Stika, Grout, Adler, Farris, and Rowe

Dr. Thomas Kabisch, D.O.

At the Board's request Dr. Kabisch presented his medical background stating that he had practiced alternative medicine at his Michigan medical practice for many years. He stated that he offers pain management and substance abuse therapies, muscular skeletal manipulations, and is also involved in the DAN movement.

Ms. Stika made a motion to grant waiver of the written examination pursuant to A.R.S. §32-2913(A)(1). Dr. Grout seconded the motion that passed unanimously.

Dr. Kabisch presented a clinical review of Case No. 1. Following discussion from the Board members, Dr. Adler moved to approve Dr. Kabisch's application for license. Mr. Farris seconded the motion that passed unanimously.

Roll call to approve
5-0

Stika, Adler, Farris, Grout, Rowe

B. Medical Assistants

Julia Eastman

Dr. Rowe recused himself from this discussion and left the meeting room. Dr. Grout led the discussion on this agenda matter. During the discussion Mr. Farris expressed concern that Ms. Eastman may have been practicing without registration since her previous medical assistant registration had expired December 31, 2007. He requested that the executive director remind Ms. Eastman of the renewal guidelines.

Following Ms. Stika's motion approving the application, Mr. Farris seconded the motion that passed with a majority vote.

Roll call to approve
4-0

Stika, Adler, Farris, Grout
Rowe recused

IV. Complaints and Investigations

A. Review, Consideration and Action – Ongoing Investigations

Case No. 08-08 Frank Lobacz, MD(H) Investigative Interview

Dr. Lobacz and his attorney were present by telephone for the investigative interview and responded to board member questions. Dr. Lobacz stated he had reported the federal income tax indictment filed in the State of New York on his 2008 homeopathic license renewal form as required by law. He stated that the case is pending and involves the reporting of stock option trades on his 2000, 2001, and 2002 federal income taxes. Dr. Lobacz and his attorney also informed the Board that a law suite had been filed by Dr. Lobacz against his tax accountant upon whose advice, Dr. Lobacz had relied in the specific income tax reporting years.

Assistant Attorney General Campbell suggested the Board may wish to consider tabling the matter at this time to wait for a final determination in the New York District Court of the federal tax case. She stated that the Board may either consider 08-08 from the viewpoint of whether or not Dr. Lobacz timely reported the pending federal income tax indictment or wait until the federal tax case had been adjudicated and then consider both the reporting issue and whether or not the outcome of the tax case would violate professional conduct statutes.

Expressing concern over Dr. Lobacz's delay in timely reporting the federal income tax indictment originally issued in October, 2007, Dr. Rowe made a motion to issue a non disciplinary letter of concern pursuant to A.R.S. §32-3208. The motion was seconded by Mr. Farris who noted that Dr. Lobacz must still report to the Board, the final outcome of the federal tax matter within ten days of the verdict. Following a short discussion the motion passed unanimously. In making their vote, Mr. Farris stated that the minutes should reflect the Board's intention to reserve their right to consider other action pending the final resolution of the federal income tax indictment.

Roll Call to issue Letter of Concern

5-0

Stika, Adler, Rowe, Farris, Grout

Case No. 08-09 Edward Kondrot MD MD(H)

At Dr. Rowe's request, Mrs. Springer provided a brief background of this matter and stated that the Arizona Medical Board had informed her that they had closed their review of the matter and would not seek jurisdiction. They acknowledged the primary use of homeopathic treatment in the care of the complainant. The Board proceeded in their review of the allegations made by the complainant and investigated by the medical consultant. An allegation regarding fees was unsubstantiated in that a signed informed consent with anticipated fees was clearly present showing the cost of the treatment provided. An allegation that CK was not provided by Dr. Kondrot was also unsubstantiated in that the Board found the newsletter upon which the complainant relied dated to 2004. In addition, documentation presented by Dr. Kondrot showed that he has not offered CK for a number of years, the introductory information provided to all prospective patients does not mention CK and that a review of the complainant's medical records show that CK would have been contraindicated in any case.

During their deliberation the Board noted that correspondence prepared by the office coordinator and mailed to the complainant at the time she requested a refund of fees was strongly worded, may have been inappropriate, and may have frightened the complainant. The Board was concerned that Dr. Kondrot did not review the correspondence prior to it being sent which may indicate inadequate supervision of staff. Dr. Grout made a motion to close the investigation and issue a non disciplinary letter of concern pursuant to A.R.S. 32-2933(19) and (34). In making her motion she requested that the Board's correspondence include a suggestion that Dr. Kondrot review outgoing correspondence to avoid a similar situation in the future.

Mr. Farris seconded the motion that passed unanimously.

Roll call to issue Letter of Concern

5-0

Stika, Farris, Adler, Grout, Rowe

B. Review, Consideration and Action – Initial Review(s)

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

In her review of the pending matter, Mrs. Springer informed the Board that she had initiated this investigation based on statements made in a recent *NewTimes* article. In that article the reporter had stated that office personnel working at Dr. Schmerler's clinic, A

Surgical Art, LLC, indicated to the reporter that Dr. Schmerler provided cosmetic surgery. Mrs. Springer indicated that her own call to the clinic had not confirmed this allegation.

Mrs. Springer reported, in his written response to her request for comment, Dr. Schmerler had indicated he occasionally assists Dr. Schacket as a surgical assistant. She stated that Dr. Schmerler is trained as a surgical assistant, but that there was a concern that patients would not be aware of whether he was acting as a surgical assistant or as a homeopathic medical doctor. The types of surgeries in which he assists Dr. Shacket were not clarified in his written response.

Mr. Farris commented that additional clarification was needed regarding whether or not Dr. Schmerler provides surgery outside the scope of the homeopathic medical license. He made a motion to open an investigation. Dr. Grout seconded the motion that passed unanimously.

V. Administrative Review of Previous Actions

Charles Crosby MD(H) License No. 0154

The Board reviewed and discussed the compliance report provided by Dr. Crosby in accordance with the terms of a consent agreement. Board members found that Dr. Crosby was compliant with the consent agreement.

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

A. Rules

No discussion was held of pending rulemaking matters.

B. Legislation

1. Legislative Report – Status update

Mrs. Springer informed the Board that SB 1236 (omnibus bill) had been transmitted to the Governor for her signature on April 15, 2008 and would be effective 90 days after the last day of the legislative session. She stated that session was ongoing and that lawmakers were negotiating budgets for FY 2008 and 2009. At this point, there were no anticipated dates for the end of the legislative session.

SB 1123 (continuation bill) had been transmitted to Governor Napolitano on May 12, 2008. With her signature the bill will become effective on July 1, 2008.

C. Audit Implementation Status

There was a very brief discussion on this agenda item. Dr. Rowe stated he would contact Mrs. Springer to schedule a time to discuss the status of the audit implementation.

VII. Review, Consideration and Action on Professional Business

1. The Board briefly discussed rulemaking for continuing medical education which will be required for all physicians with the implementation of SB1236 (omnibus bill). Dr. Rowe suggested the Board table this discussion and schedule a meeting of the Rules Committee for further discussion. No meeting was scheduled at this time pending the Governor's signature on the bill implementing this change.

2. Noting that SB1236 will require all homeopathic physicians to have signed consent informing their patients that procedures are homeopathic, Dr. Rowe stated he would draft a policy statement that will guide homeopathic physicians in the preparation of these consents. Dr. Rowe stated that it was his hope to have the draft for the next regular meeting.

3. Mrs. Springer provided Board members with proposed timeframes for processing complaints. The purpose of the guide is to provide a measure by which she will determine the number of days that have passed for each of the steps in the processing of complaints. She noted that this timeframe was one of the performance audit recommendations. Following a short discussion Dr. Rowe made a motion to approve the timeframe guideline. The motion was seconded by Dr. Grout and passed unanimously.

4. A review of Dr. Kotsanis' informed consents for Alternative, Complementary and Integrative Methods and the IPT Consent for Cancer Patients was tabled. Ms. Stika noted that Dr. Kotsanis had not included the second page of the IPT Consent.

5. Mrs. Springer updated the Board regarding the presentation that she and Dr. Rowe gave to the Arizona Medical Board. She stated that the presentation had gone well and that members of the Arizona Medical Board had inquired about the definition of minor surgery and therapeutic devices.

VIII. Review, Consideration and Action on Other Business

1.a. Mrs. Springer gave a brief overview of finances as of April 30, 2008. She stated that the ending cash balance is \$75,842 and 86.25% of the \$97,500 appropriation had been expended.

1.b. Mrs. Springer presented the annual performance pay report. She explained that performance measures reporting is a required part of the law that was passed implementing the 2% increase in state employee pay. Of four measures related to processing applications, processing renewals, processing complaints and sending public information requests three were within the target number of days. The complaint processing target measure was 65% percent of complaints completed within 125 days. However, this target was not met as indicated in the report that the actual percentage of complaints closed within 125 days was 57%. Dr. Rowe requested that Mrs. Springer provide a six month report on the complaint processing statistics at the next regular meeting.

IX. Call to the Public

No members of the public were present.

X. Future Agenda Items

Consider Revision of Language on Renewal Form – relating to question 3 concerning A.R.S. §32-3208

Informed Consent – Substantive Policy Statement

XI. Future Meeting Dates

No meeting dates were discussed

XII. CLOSE OF BUSINESS/ADJOURNMENT

The meeting adjourned at 5:10 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

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will convene at the State Board's Offices, 1400 W. Washington, Basement Conference Room B-1, Phoenix, Arizona, 9:00 A.M. on July 8, 2008.

Respectfully Submitted,

Christine Springer
Executive Director