

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Minutes of the Regular Meeting

January 10, 2012

I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 9:08 a.m.

Roll Call

Present:

Todd Rowe, MD, MD(H)
Martha Grout, MD, MD(H)
Don Farris
Mary Ackerley, MD, MD(H)
Dr. Les Adler, MD, MD(H)
Alan Kennedy (joined meeting by telephone at 9:30 a.m.)

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

II. Review, Consideration, and Action on Minutes

Regular Meeting Minutes – November 8, 2011

Dr. Grout moved to approve the minutes of November 8, 2011. Mr. Farris seconded the motion that passed unanimously.

Voting Aye: Rowe, Grout, Farris, Ackerley, Adler. Nay: 0

Executive Session Minutes – November 8, 2011

Mr. Farris moved to approve the executive session minutes. Dr. Grout seconded the motion that passed unanimously.

Voting Aye: Rowe, Grout, Farris, Ackerley, Adler. Nay: 0

III. Review, Consideration and Action on Complaints and Investigations

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

Case No. 11-09 David Korn, DO, MD(H) Complaint of C.H.

The Board discussed jurisdiction of the case under the provisions of A.R.S. § 32-2907. Mrs. Springer explained that the Board of Osteopathic Examiners had confirmed they would consolidate an allegation of impairment made in the instant complaint with another ongoing investigation. She stated they had agreed that the Homeopathic and Integrated

Medicine Board would conduct the primary investigation into the alternative care provided to C.H. while in treatment at Envita Natural Medical Center.

Dr. Rowe made a motion to affirm the jurisdiction of the Homeopathic and Integrated Medicine Examiners Board to conduct the investigation into the patient care provided to C.H. while under treatment at Envita Natural Medical Center. Dr. Grout seconded the motion that passed unanimously.

Voting Aye: Rowe, Grout, Ackerley, Adler, Farris. Nay – 0.

B. Ongoing Cases

Case No. 11-03 Frank Lobacz, MD(H)

Mrs. Springer stated that the scheduled sentencing in the U.S. District Court, New York Eastern District in the case involving Dr. Lobacz was moved to February 3, 2012. No additional information or discussion on this matter was held.

Case No. 11-11 Thomas Lodi, MD(H)

Mrs. Springer indicated that a medical consultant had been assigned and was in the process of reviewing the information for her report. She stated that the report would be available at the next regular meeting.

C. Investigative or informal Interview Pursuant to A.R.S. 32-2934 (C) and (G)

Case No. 11-04 Dr. Levin for E.D. vs. Stanley Olsztyn MD(H)

Case No. 11-07 A.B. vs. Stanley Olsztyn, MD(H)

Case No. 11-08 J.F. vs. Stanley Olsztyn, MD(H)

At **9:30 a.m.** the Board considered three matters filed concerning Dr. Olsztyn's care of the indicated complainants. Dr. Olsztyn and his employee, Teddy Boswell, were present in the room along with members of the public.

Dr. Rowe moved to adjourn to Executive Session under A.R.S. § 38-431.03(A)(1) for legal advice. Dr. Grout seconded the motion that passed unanimously. The Board returned to the Regular Session at 9:49 a.m. to request that a backpack left in the meeting room be removed. They returned to Executive Session at 9:50 a.m. *Note: Mr. Alan Kennedy joined the executive session meeting at 10:00 a.m. during its deliberations in Executive Session.* The Board returned to the Regular Session at 10:10 a.m.

In *Regular Session*, Dr. Rowe made a motion *rescinding* the November 8, 2011 vote to conduct an Informal Interview and to instead, proceed with an investigative interview pursuant to A.R.S. § 32-2934(C). Dr. Grout seconded the motion that passed unanimously.

Roll call to proceed with an investigative interview: 6 – 0

Voting Aye: Rowe, Ackerley, Kennedy, Farris, Adler, Grout

At 10:15 a.m. Dr. Grout made a motion to conduct an interview with Dr. Bruce Shelton, the medical investigator assigned to the case, in *Executive Session* pursuant to A.R.S. § 38-431.03(A)(2) (review of confidential material). Mr. Farris made a second to the motion that passed unanimously. The Board adjourned to Executive Session.

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At 10:20 a.m. the Board returned to the *Regular Session* and clarified that the Board, in addition to the review of confidential medical records; would also seek legal advice in Executive Session pursuant to A.R.S. § 38-431.03(A)(3).

Dr. Rowe made the motion to return to the *Executive Session*, Dr. Grout seconded and the motion passed unanimously. The Board returned to the Regular Session at 10:47 a.m.

The Board adjourned for a 5 minute break

At the return of the board in Open Session, Dr. Rowe commented on a letter from Glynn Gilcrease, the attorney representing A.B. He noted that Mr. Gilcrease had expressed a concern over the assignment of Dr. Bruce Shelton, whom he believed to be biased in his review of the case facts. Mrs. Springer went over the vetting process used by the Board when case assignments are made. She indicated that, at the outset of the case, Dr. Shelton had indicated, in writing, that he had no bias in the case review. Dr. Rowe also commented that the homeopathic medical community is a small community and that although most of the physicians are familiar with one another, it does not indicate a personal friendship would be present.

Dr. Olsztyn interview

At this point in the meeting, Dr. Olsztyn was invited to speak to the Board. He commented that he had been shocked when he heard that E.D., A.B. and J.F. had experienced medical problems following their visits to his clinic on March 16 and 17, 2011. He noted that other patients seen those days had not experienced negative outcomes following their IV therapies. Dr. Olsztyn also stated that his nurse, Teddy Boswell had suffered a sudden acute illness following J.F.'s visit.

Board members asked a number of questions related to the number of IV Colchicine treatments Dr. Olsztyn had given over the course of operating his practice, whether any problems had been observed in the past after patients had received the IV Colchicine, and whether he had observed problems in other patients who presented with a viral condition for their therapy.

Dr. Rowe inquired about Ms. Boswell's professional credentials. Dr. Olsztyn recounted her previous training with the Navy as a nurse and indicated she had undergone a week of training after she was hired to learn therapies specific to his practice. Dr. Rowe inquired if Ms. Boswell was registered as a homeopathic medical assistant and Dr. Olsztyn commented that since she was a registered nurse he had not thought that was necessary.

Dr. Olsztyn was also questioned regarding how he provided informed consent to his patients to inform them that they were receiving alternative therapies under his homeopathic medical license. He indicated that he disclosed this information verbally at the patient's first visit.

Dr. Rowe questioned Dr. Olsztyn on the type of written informed consent he would provide to patients prior to receiving IV Colchicine. The doctor responded that he did have a written informed consent specific to this type of therapy, but that he would typically refer to an article written by Dr. Rask concerning the possible dangers of Colchicine therapy.

Additional questions concerned the rate of infusion of IV Colchicine and Hydrogen Peroxide. Dr. Olsztyn explained his process and the usual amount of time such IV's would

take. In response to a comment from Drs. Rowe and Adler concerning patients' comments that the rate of infusion had been more rapid than usual, Dr. Olsztyn indicated he had no information regarding that perception.

Dr. Rowe and Dr. Grout inquired about Dr. Olsztyn's medical records and differences between patient statements regarding their medical conditions on the date of the IV infusions and what was indicated in their charts. Dr. Grout specifically addressed whether or not vital signs were written into the patient charts. Dr. Olsztyn stated that the nurse typically records vital signs on a pad of paper and that these were to be transferred to the chart later. Mr. Farris also questioned the doctor about whether vital signs were recorded into the patient's charts. Additional discussion was held about J.F.'s high temperature on the date of her visit for the IV Colchicine and how that fact was translated to the patient's chart.

Dr. Olsztyn responded to many other questions from board members Rowe, Ackerley, Adler, and Grout regarding where and when he had obtained his stock of Colchicine, how it was prepared for administration to the patient, the results received back from Eagle Labs of the Colchicine he had submitted to them after J.F., A.B., and E.D. became ill, and other technical questions relative to the specific technique of preparing an IV for administration.

Dr. Adler inquired about the half life of Colchicine. Dr. Shelton responded that it is one hour, but that it may linger in the system longer if the metabolic breakdown has been blocked.

At 12:20 p.m., Dr. Shelton, who had been present by telephone, requested that he be excused. Board members thanked him for his assistance and Dr. Shelton disconnected his phone from the meeting line.

Teddy Boswell interview

Ms. Boswell was invited to the podium and was questioned about her credentials and work history. Board members also inquired about how vital signs were recorded in the charts and she explained her process indicating that she would write them on a separate pad of paper and transfer them to the chart later.

Ms. Boswell, in response to questions relative to her perception of the health status of A.B., E.D., and J.F. went over her recollection of their health conditions when they had presented to the clinic for their I.V.s.

She concluded her testimony at 12:40 p.m.

Dr. Rowe inquired if Board members had any other questions for Dr. Olsztyn and Ms. Boswell. They indicated that they did not. He opened the matter to further discussion by board members.

Mr. Farris requested further explanation on the half life of Colchicine and how the body metabolized the substance. Drs. Rowe, Grout, Kennedy and Adler all agreed that the patients had symptoms of Colchicine toxicity. Although he agreed, Dr. Adler pointed out that there were other factors that had to be considered. He noted that Dr. Olsztyn had testified that over 25 years of practice and the provision of 3500 prior IV's there had never been a problem noted in patients that had received IV Colchicine.

Dr. Rowe questioned Board members to develop a consensus on the following points:

1. Was there evidence that Dr. Olsztyn or his nurse acted to violate professional conduct statutes;
2. Was the provision of IV Colchicine legal within the scope of the homeopathic medical license and if so under what practice modality was it legal;
3. Was the IV Colchicine used inappropriately in these patients;
- 4) Was the stock of Colchicine product adulterated;
- 5) Was the speed of discharge of the IV appropriate, noting that it can vary from patient to patient depending on the size of the vein; and
- 6) Was the staff adequately trained.

The following concerns were identified:

- 1) Although Ms. Boswell indicated she had been a licensed RN in Texas the interview found that she was no longer licensed in any state. On this basis it would have been appropriate that Dr. Olsztyn registered her as a homeopathic medical assistant since she was providing orthomolecular therapies to the patients.
- 2) No written informed consent was provided to patients, either informing them that Dr. Olsztyn was a licensed homeopathic physician; or informing them that IV Colchicine may be toxic if mixed with certain food products or antibiotic medications.
- 3) Whether or not the IV Colchicine therapy should have been registered with the Board as an experimental therapy;
- 4) Whether patient medical records were inadequate in that vital signs were not properly recorded and informed consent relative to the IV Colchicine therapy was not present in any of the patient files.

At 1:05 p.m. Mr. Farris made a motion requesting that the Board adjourn to *Executive Session* for legal advice under A.R.S. § 38-431.03(A)(3). The Board returned to the open session at 1:20 p.m.

The Board took a ten minute break following their return from the executive session.

Following the break, Dr. Rowe made a motion for disciplinary action against the homeopathic medical license of Dr. Olsztyn and to offer him a Consent Agreement with the following terms:

- 1) one year probation; with an option that after at least six months he could petition, in writing, for an early termination of probation after completion of all of the other terms of the agreement;
- 2) within 30 days of signature on the agreement provide evidence that he has a written homeopathic informed consent as required by A.R.S. 32-2933(A)(41) that discloses to his patients he is working under the homeopathic medical license, and provide a copy of the consent to the Board;
- 3) he no longer provide IV Colchicine to his patients and that the Voluntary Agreement he signed during the investigation remain in effect prohibiting the use of IV Colchicine;
- 4) complete 12 hours of Board approved continuing education in the area of records and practice management;
- 5) before completion of the one year of probation, Dr. Olsztyn must complete another board interview and submit to an audit of five patient records to show compliance with ARS 32-2933(A)(20) regarding adequate patient records.
- 6) comply with all board rules and statutes and provide to the Board within 30 days of the effective date of the agreement a list of all of his employees and their job

duties. If the employee assists in providing homeopathic therapies to patients, the employee must be registered as a homeopathic medical assistant as required in A.R.S. 32-2933(A)(34). During the term of probation, any change in the status of office personnel must be registered within 10 days of the change to the Board.

Dr. Ackerley seconded the motion and discussion of the terms indicated in Dr. Rowe's motion commenced.

Dr. Rowe commented that he had serious concerns about the lack of patient informed consent as well as a lack of vital sign documentation in patient charts. He amended his motion to request that the Consent Agreement indicate under the lack of adequate recordkeeping that Dr. Olszyn had failed to adequately document patient vital signs, physical examinations, treatments and patient responses. Dr. Ackerley seconded the amendment. The motion and the amendment passed unanimously on a roll call vote.

Roll Call to approve Consent Agreement and amendment: 5 – 0; 1 Absent
Aye: Rowe, Grout, Farris, Adler, Ackerley
Absent for the vote: Kennedy

IV. Review, Consideration and Action on Applications **A. Physicians**

There were no physician applications on the agenda

B. Medical Assistants

Sybil Ihrig

Dr. Rowe was recused from this agenda item.

Dr. Grout chaired the meeting during discussion of the application. Mrs. Springer reviewed the applicant's credentials noting Ms. Ihrig had completed 1100 hours of homeopathic training.

Dr. Adler moved to approve the application. Mr. Farris seconded the motion that passed with a majority vote 4-0.

Voting Aye: Grout, Farris, Ackerley, Adler. Nay: - 0. Recused: Rowe

V. Review, Consideration and Action on Previous Board Orders

Charles Crosby – Quarterly Report

Following a brief review of the most recent quarterly report filed in compliance with the requirements of the Consent Agreement and Order, Dr. Rowe noted he found the report to indicate Dr. Crosby's ongoing compliance with the board's order.

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

A. Rules

1. Chapter 38, Article 1, Section 105 Fees

Mrs. Springer explained that a Notice of Docket Opening had been filed at the Office of the Secretary of State. A Notice of Proposed Rulemaking is in process and will be filed at the Secretary of State's Office for publication in the *Administrative Register*.

2. Chapter 38, Article 2, Section 201 – Section 206

The executive director indicated that a Notice of Docket Opening had been filed at the Office of the Secretary of State. The Notice of Proposed Rulemaking is being prepared for publication in the *Administrative Register*.

3. Mrs. Springer clarified contact information on potential members of an Advisory Committee that would be drafting proposed rules for the Doctor of Homeopathy license.

B.. Legislation

1. A brief status report was provided by Mrs. Springer on SB1003 which concerns licensing criteria for prospective homeopathic doctors.

2. Dr. Rowe gave a brief report about the status of discussions related to the sunrise application of the Arizona Chiropractic Association which seeks to add homeopathy to the scope of practice for chiropractic doctors. He indicated that the Association is focusing efforts refining their application to address concerns related to adequate training hours and that it is their intention to bring their sunrise application back to the legislature in 2013.

VII. Review, Consideration and Action on Professional Business

A. Continuing Education

1. The Board discussed an application submitted by Dr. Robert Zieve requesting approval of continuing education credit for reviewing articles within the journal entitled *Townsend Letter – The Examiner of Alternative Medicine Healing with Homeopathy*. Board members concurred that the journal is recognized within the field of alternative medicine and may be used to meet criteria of continuing education under *AAC R4-38-116(D)(3)*. They approved six hours of continuing education credit for the articles submitted.

B. Discussion and update – Medical Marijuana

Mrs. Springer gave a brief report of the bill proposed by Representative Kimberly Yee that would require medical boards to submit names of disciplined physicians to the legislature that were cited by their respective boards for prescribing medical marijuana without proper medical records to document an existing medical condition. A brief discussion was held. Mrs. Springer clarified that the reporting period would be capped at two years.

C. Chiropractic Board sunrise scope of practice to include homeopathy

This agenda item was discussed above under agenda item VI. B. 2.

VIII. Review, Consideration and Action on Other Business

Executive Director Financial Report

This item was deferred to the next regular meeting.

IX. Call to the Public

Following an invitation from Dr. Rowe, there were no members of the public that wished to make a statement to the Board.

X. Future Agenda Items

- Homeopathic Medical Assistant discussion relative to compliance by physicians in registering their assistants who assist them in providing alternative medical therapies.
- SB1003 status
- Olsztyn Consent Agreement
- Establish a Committee to prepare the Doctor of Homeopathy Examination

XI. Future Meeting Dates

March 13, 2012

XII. Adjournment

The meeting adjourned at 2:05 p.m. following a motion by Dr. Grout. The motion was seconded by Dr. Ackerley and passed with a majority vote of those present. The next Regular Meeting of the Board will convene at 1400 W. Washington, in Conference Room B-1, Phoenix, Arizona, at 9:00 a.m. on March 13, 2012

Respectfully Submitted,

Christine Springer
Executive Director

APPROVED IN REGULAR SESSION ON MARCH 13, 2012