



ARIZONA STATE BOARD OF HOMEOPATHIC and INTEGRATED MEDICINE EXAMINERS

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Mary Grace Warner, MD, MD(H)
Mario Fontes

**AZ Board of Homeopathic and Integrated Medicine Examiners
Regular Session Minutes
January 9, 2018**

1. CALL TO ORDER

The acting chairperson, Dr. Mary Warner, called the meeting to order at 9:00 a.m.

2. ROLL CALL

Dr. Warner confirmed the attendance of the following Homeopathic Examiners Board (HEB) Members:

Mary Grace Warner-Dunlop, MD, MD(H)
Charles Schwengel DO, DO(H) via telephone
Mario Fontes
Alan Kennedy

Also present: Eric Borg, Executive Director, Sabrina Khan, Assistant AG

3. DECLARATION OF CONFLICTS OF INTEREST

None declared.

4. REVIEW, CONSIDERATION, AND POSSIBLE ACTION REGARDING APPROVAL OF MEETING MINUTES.

- a. Regular Meeting Minutes – November 14, 2017

The HEB considered and discussed the Regular Session minutes of the November 14, 2017 meeting.

MOTION: Mr. Fontes made a motion to approve the regular session minutes of November 14, 2017.

SECOND: Mr. Kennedy seconded the motion.

Roll call vote was conducted. Motion passed unanimously.

The HEB considered and discussed the Executive Session minutes of the November 14, 2017 meeting.

MOTION: Mr. Fontes made a motion to approve the regular session minutes of November 14, 2017.

SECOND: Mr. Kennedy seconded the motion.

Roll call vote was conducted. Motion passed unanimously.

5. REVIEW, CONSIDERATION, AND POSSIBLE ACTION REGARDING JURISDICTION OF THE FOLLOWING DUAL LICENSEE PURSUANT TO A.R.S. § 32-2907 TO INCLUDE RESCINDING THE HEB'S VOTE TO CEDE JURISDICTION TO THE ARIZONA MEDICAL HEB.

a. Inquiry Number: 17-02 – Dr. Dean Silver, MD, MD(H)

Dr. Warner asked Mr. Borg to give a review of the case. The HEB was asked by Mr. Myers, attorney for Dr. Silver, to reconsider its decision to deny jurisdiction by the Homeopathic HEB in this matter. The complaint was forwarded to the HEB from the Medical HEB. An investigation hasn't yet been conducted due to the non-acceptance of jurisdiction by the HEB. The licensee has attempted to voluntarily surrender his M.D. license. The matter before the HEB is whether to now accept jurisdiction in this matter.

Dr. Schwengel wished to add some thoughts on this matter. He felt that the HEB referred this matter to the AMB because we didn't have the resources to properly conduct a proper investigation. If the HEB had asked one of its members to conduct an investigation into this matter, then it would be short of a quorum when it came time to vote on matters relevant to the case. He stated that the AMB has turned down jurisdiction in the matter. He felt that the HEB had overlooked the option of asking one of our other licensees to volunteer to conduct the investigation. He has served in that capacity in the past. He asked Dr. Grout if she would be willing to serve as the investigator in this matter.

Mr. Fontes stated that he recalled that the reason the HEB didn't accept jurisdiction in this matter was because the complaint didn't deal with homeopathic matters, not that the HEB didn't have the proper resources. Dr. Warner concurred with Mr. Fontes. She asked where the AMB stood regarding acceptance of jurisdiction in this matter. The HEB asked Mr. Myers if he knew. Mr. Myers stated that Dr. Silver hasn't practiced regular medicine in many years and that his practice is exclusively homeopathic. The AMB tabled their decision in order to give the HEB an opportunity to make its determination.

Mr. Myers stated that Dr. Silver's consent forms inform patients that they are being treated homeopathically because that is his practice. He doesn't believe that Dr. Silver should be subjected to an allopathic investigation. Mr. Myers recounted his experiences representing both dual and singular licensed physicians. Mr. Myers agreed with Dr. Schwengel's assertions regarding having a licensee conduct the investigation. Mr. Myers stated that Dr. Silver's lymphoma has returned and he may not survive. He mentioned the AMB's policy statement regarding alternative medicine which he feels is very antagonistic to homeopathic medicine.

Dr. Warner stated that she thought that due to the nature of the complaint, the AMB would have dealt with it rapidly and in a judicious manner and more likely in favor of Dr. Silver. She wished to hear more discussion on this matter. Mr. Borg mentioned that according to the record the HEB denied jurisdiction based on both of the reasons mentioned earlier. Mr. Kennedy stated that many of the complaint items are outside of our jurisdiction. He asked what would the HEB be investigating if they did accept jurisdiction. Dr. Warner suggested that the complaints are all hearsay and would require the investigation of witnesses and a

more in-depth investigation because none of the complaints dealt with homeopathic treatment. Dr. Schwengel mentioned that Dr. Silver is attempting to surrender his medical license and that the AMB wouldn't accept the surrender as long as there was an active investigation. Because of this, it would make sense to have the HEB investigate the matter. The HEB could act on its findings and if there were medical issues found as a result of the homeopathic investigation, those matters would be referred to the AMB for its action.

Ms. Khan stated that if the HEB does conduct an investigation and take action that the HEB investigation findings would go to the AMB and they couldn't conduct their own investigation. They could take action against the license for violations of their statutes, but would be bound by the HEB investigation. Mr. Myers brought up the Appeals Court case of Bigelsen. Ms. Khan reiterated that if the HEB accepted jurisdiction and conducted an investigation that the findings would be transferred to the AMB who would then be limited to the HEB investigation but could take actions based on their statutes.

Dr. Warner believes that if the HEB accepts jurisdiction then it would take action based solely on its statutes and rules. Mr. Borg stated that anyone can file a complaint without having to have a medical background and knowing who has jurisdiction. If the HEB accepts jurisdiction in this case, a good area to start the investigation would be with the IVs. IVs were being administered but there is no detail as to what was being administered and why so, the investigator would be looking into this as a starting point. The investigator would have to ask a lot of questions to find out what was happening and where the treatments were going. This would be necessary not to broaden the scope of our investigation but rather to determine if there were violations of the homeopathic scope of treatment and our statutes. Mr. Kennedy asked if the investigation direction would be detailed so that the HEB would know where it was headed.

Dr. Schwengel added that Dr. Grout is very thorough and meticulous in her paperwork and would be good to serve these issues. Dr. Warner asked if she would have the authority to question the complainant first to see if there was merit for the complaint. Mr. Borg stated that the past practice has been for the investigator to investigate the matter, make findings and present them to the HEB without suggesting violations of statutes. The Executive Director would then look at the findings to determine if there were violations of the HEB's statutes.

Mr. Myers stated that the HEB has the ability to forward on its investigative findings to other agencies that may have had violations of their statutes. Mr. Myers stated that if there is anything in the allegations that deals with public health that would be the primary responsibility of the HEB. Mr. Borg mentioned that the complainant doesn't have to have knowledge about medical procedures – the bar is set very low to allow them the benefit of the doubt on what they are complaining about. This complaint is very nebulous and will take some investigating to determine if there were violations. The complaint as written doesn't mention specifics regarding homeopathic medicine but as Mr. Myers mentioned, Dr. Silver's practice is 95% homeopathic. Mr. Myers stated that Dr. Silver's practice is 100% homeopathic. Mr. Borg said that if that is the case then it would be incumbent upon the

HEB to take jurisdiction in this case. Mr. Kennedy said that if there was any validity to any of the allegations, then the HEB should proceed with this matter.

MOTION: Dr. Schwengel made a motion to rescind its vote to grant jurisdiction to the AMB and retain jurisdiction in this matter and open an investigation in the matter.

SECOND: Dr. Warner seconded the motion.

Roll call vote was conducted. Motion passed unanimously.

6. REVIEW, CONSIDERATION, AND POSSIBLE ACTION REGARDING THE FOLLOWING INVESTIGATIVE INTERVIEW.

a. Inquiry Number: 17-03 – Dr. Dan Harper, MD, MD(H)

Dr. Warner asked Mr. Borg to review the case. Mr. Borg stated that the case originated with the CA Medical Board (CMB) which conducted an investigation and then took action against the licensee which revoked his license. This revocation was stayed and a consent order was issued with probation and stipulations. There were many specific treatments that the CMB determined had violations of their practice standards. Dr. Harper has provided background information on these treatments and has submitted more background information this morning. Dr. Harper is here today to answer questions.

Dr. Schwengel questioned Dr. Harper as to his identity. He asked if Dr. Harper had practiced in Utah. Dr. Harper said that no he had not.

Dr. Warner stated that the only problem she saw was that there wasn't a destructor in the room during the ozone treatment. Dr. Harper said that he used 3 destructors in the treatment but that the CMB required a 1 lb. inline carbon destructor. The CMB maintained that this was negligent to the environment. Dr. Harper used 3, 12 lb. destructors in the room because he has many chemically sensitive patients so he used 3 destructors to try to pull out other chemicals. Mr. Borg asked if there were a paper detailing the protocol for a specific type of destructor to be used in ozone therapy. Dr. Harper said that it only called out that a destructor be used, but specifics aren't given.

Dr. Harper talked about the cold laser therapy he used for pain treatment. He stated that these could be bought off the internet so anyone could purchase and use these. The California investigator claimed that because Dr. Harper let his patient use the cold laser, he was potentially endangering other patients that may get hit in their eyes with the laser. Mr. Borg asked how long the pain abatement lasted. Dr. Harper responded anywhere from 24 to 48 hours. Dr. Warner asked if there was any record of the patients coming in to the office to use the cold laser. Dr. Harper said that there was. Mr. Borg mentioned that the CMB stated that Dr. Harper didn't maintain records for these patients' self-treatment sessions. Dr. Harper said that he didn't write orders for every treatment and document every treatment in the patient's file. His receptionist kept the records, he didn't. Mr. Fontes asked if it would be appropriate for the HEB to see the records. Dr. Harper stated that he didn't bring them. Mr. Fontes asked where it is written that a destructor shall be used. Dr. Harper stated that it is in the protocol by Dr. Schallenberg. Mr. Fontes asked Dr. Harper how much ozone therapy he does a year. Dr. Harper said he does about 3 minor ozone injections per day.

Regarding the blue water treatment, Mr. Borg asked Dr. Harper to address the CMB assertion that there is no evidence that any homeopathic remedies can be exactly replicated or be transferred by a machine. Dr. Harper referred to section 4 on energy remedies which he included copies of the ICIM force that gave AMA credit showing the Remedy Maker could be used to replicate homeopathic energies. Mr. Borg asked if Dr. Harper had any documentation that proved that the energies from one side of the machine had been proven to transfer to the other side. Dr. Harper referred to studies he submitted wherein the researcher took the energies of a liquid and turned them into a digital form. The digital form was sent via email from France to Italy where water was bombarded for 16 hours with the digital form. They were able to demonstrate the same digital form (up to 96%) after the energies had been transferred. Dr. Harper cited physicians from other countries who use this treatment and said that insurance pays for the treatments in these countries, but not here in America. Mr. Fontes asked if the allegation was that Dr. Harper was endangering patients. Dr. Harper said that the allegation was that he was defrauding patients. Mr. Borg stated that the CMB's claim was that there is no evidence to support this treatment. Mr. Fontes asked if the patients thought they were getting a homeopathic treatment or an energy treatment. Dr. Harper stated that there were no patient complaints. The complaints were from an independent contractor to try to extort \$40,000 from him. He further stated that he spent 8 hours trying to explain to the CMB why he uses homeopathic treatment but they wouldn't listen – they have it in for homeopathy. He further mentioned an individual that uses the legal system to target certain types of medical practices.

Dr. Warner asked if it was necessary for a practitioner of craniosacral therapy to have a certification. Dr. Harper replied no. Dr. Schwengel stated that he performs craniosacral therapy all the time and it doesn't require a certification. Mr. Borg mentioned that the CMB cited Dr. Harper for not having formal training in this treatment. Dr. Harper said he has had over 600 hours of this type of work with Dr. Bley, a licensed, trained therapist. Dr. Harper paid over \$3,000 to attend a "pain and drain" course where touching is used to drain pain from patients. Mr. Borg inquired about the downsides to craniosacral therapies citing the CAB assertions that it can cause headaches, pain and fatigue. Dr. Harper replied that if you look at the abstracts in section 3 of his binder, it cites a study showing a low level of patient negative reactions. Only 5% got temporary anxiety. Mr. Borg clarified that he was thinking of the potential for harmful effects if they were common being that practitioners weren't required to be certified. Dr. Harper mentioned many treatment scenarios that could result in traumatic effects and stated that if one were to practice the treatment, then one should be prepared to deal with the effects. Dr. Warner emphasized that the bottom line is that one is not required to have a certification even though there are potential harmful effects. Mr. Fontes added that as long as one has a license to touch patients, they are fine to perform the treatment.

Dr. Warner asked about the independent contractor he used and the nature of the relationship she had with his practice. Dr. Harper said that she was a Reiki master and he needed someone who could transfer energies. She would do the treatments but send the billings to his office. Dr. Warner asked Dr. Harper who did the medical documentation. Dr. Harper said that the independent contractor was supposed to document the treatments but didn't maintain complete records. Dr. Harper and the independent contractor went before a

court to settle their issues. Because of the cost and Dr. Harper's understanding of the judge's feelings in the matter, he determined to settle the matter instead of fighting it. Dr. Warner asked if Dr. Harper had supervised or checked the independent contractor's documentation or treatments since the patients were technically his. He said no because he referred them to her.

Dr. Harper made some comments. In 1999 Dr. Gordon suggested that Dr. Harper get involved with the HEB so that if he ever had to appear before a medical board, he would be judged by members that understood his industry. He didn't feel this was the case with the CMB. He is wondering what the HEB could do for him. He wanted the HEB to write a letter that he followed all standards of patient care in the state of AZ so that he can present it in California.

MOTION: Dr. Warner made a motion to go into executive session for legal advice

SECOND: Mr. Kennedy seconded the motion.

Roll call vote was conducted. Motion passed unanimously.

The HEB went into executive session at 10:26.

The HEB went back into regular session at 10:34

Dr. Warner told Dr. Schwengel that Dr. Harper brought in a binder with the CMB's investigation files.

MOTION: Mr. Kennedy made a motion to table the issue until the next meeting.

SECOND: Mr. Fontes seconded the motion.

Discussion:

Mr. Fontes asked Dr. Harper if he had a draft of the document detailing the powers of the CMB. Dr. Warner said that we have the document. Mr. Borg suggested that the HEB allow Mr. Borg to review the documents and send out the pertinent documents for review.

Roll call vote was conducted. Motion passed unanimously.

7. HEB ADMINISTRATIVE MATTERS FOR REVIEW AND DISCUSSION

a. Investigator pool

Mr. Borg mentioned prior HEB discussions where the matter of how investigations would be conducted was discussed. If an HEB member were to act as the investigator, it would lead to a HEB quorum problem. The HEB used to have a list of volunteers who would act as an investigator and be compensated by CEUs. This was not an appropriate option according to the AG. If the HEB could maintain the list of volunteers but not compensate them with CEUs, this may be a desirable option. The list could be based on areas of expertise.

MOTION: Dr. Warner made a motion to go into executive session for legal advice

SECOND: Mr. Fontes seconded the motion.

Roll call vote was conducted. Motion passed unanimously.

The HEB went into executive session at 10:41

The HEB returned to regular session at 10:47

The HEB took no action on the matter.

b. Homeopathic Industry acknowledgement of Arizona Homeopathic licensure

Mr. Borg reviewed a request by some licensees for the HEB to write a letter to a manufacturer that won't recognize a specific homeopathic physician's license. This licensee used to be dual licensed with the AMB but now only has the HEB license. Dr. Warner suggested that this may be a political issue and shouldn't involve the HEB. Mr. Borg stated that the HEB doesn't have any statutory authority to act on this issue. It could discuss it but cannot tell a manufacturer what to do. Mr. Kennedy said that his only concern is if this action impacts consumers. Dr. Warner asked if we would inform the authors of the letter that the HEB isn't taking any action on this matter. Mr. Borg said yes.

The HEB took no action on the matter.

8. CALL TO THE PUBLIC

None.

9. REVIEW AND CONSIDER FUTURE HEB MEETING DATES

- a. March 13, 2018

10. REVIEW AND CONSIDER FUTURE AGENDA ITEMS

NONE

11. ADJOURNMENT

MOTION: Mr. Kennedy made a motion to adjourn.

SECOND: Dr. Schwengel seconded the motion.

Roll call vote was conducted. Motion passed unanimously.

Respectfully submitted,

Eric Borg

Executive Director