

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Minutes of the Regular Meeting

March 13, 2012

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)

Martha Grout, MD, MD(H)

Don Farris

Mary Ackerley, MD, MD(H)

Dr. Les Adler, MD, MD(H)

Alan Kennedy

Mona Baskin, Assistant Attorney General, and Christine Springer, Executive Director, were also present. No members of the public were present at the beginning of the meeting.

II. Review, Consideration, and Action on Minutes

Regular Meeting Minutes – January 10, 2012

Dr. Grout moved to approve the minutes of January 10, 2012. Mr. Farris seconded the motion that passed unanimously.

Executive Session Minutes – January 10, 2012

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

III. Review, Consideration and Action on Complaints and Investigations

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

*Case No. 12-01 Thomas Lodi, MD(H) Inquiry from BCBS – consider
jurisdiction*

Mrs. Springer informed members of a complaint from Blue Cross Blue Shield regarding billing. The physician who has submitted the billing in question works at Dr. Thomas Lodi's clinic, an Oasis of Healing; however is not licensed by the Board of Homeopathic and Integrated Medicine. She holds an allopathic license issued by the Arizona Medical Board.

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Dr. Grout responded to a question from Mr. Kennedy regarding standard practice for multiple physicians working at a clinic; noting that the physician signing patient notes would submit a billing for their service to the patient.

Dr. Rowe made a motion to table the matter and send the information to the Arizona Medical Board since the physician submitting the billing is not under the jurisdiction of the Homeopathic and Integrated Medicine Board. Dr. Grout seconded the motion that passed unanimously. 6 – 0.

The Board changed the order of the agenda at this point in the meeting to discuss Agenda Item VI. Review Consideration and Action on Professional Business, Item number 5.

B. Ongoing Cases

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

At 9:30 a.m. the board considered this matter. Dr. Rowe made a motion to adjourn to *Executive Session* to review confidential medical records and to obtain legal advice. Dr. Grout seconded the motion that passed unanimously. Dr. Pamela Pappas, the Board's investigator on this case was invited to the executive session to present her review of the confidential medical records.

Following the end of the Executive Session, the board took a short break and returned the Regular Session at 10:15 a.m.

Dr. Rowe thanked Dr. Pappas for her complete review of the records related to this case and requested that she summarize her conclusions and findings.

Dr. Pappas indicated that there was a mixed relationship with the patient and an infringement of the therapeutic boundary. The patient had gone to see Dr. Lodi for care in 2009, a relationship had developed and although Dr. Lodi had assigned the care of A.Y. to Dr. Thomas Alexander, the medical record provided did not support that statement. In addition, the bulk of A.Y.'s care was provided by Dr. Helen Watt and there was no notation in the medical record to indicate the date this occurred. She indicated that Dr. Lodi was trained in psychology and would have been trained in boundary issues and known what types of issues could develop. Dr. Pappas stated that she was aware that Dr. Lodi had completed a physician/patient boundary course recently following the filing of the instant complaint.

Dr. Rowe asked if Dr. Lodi considered himself a family member to the patient. Dr. Pappas indicated that there were many references in medical records stating that the patient's fiancé was a physician. In Dr. Lodi's own written response to the complaint he indicates a relationship had developed with A.Y.

With regard to the allegation that Dr. Lodi over prescribed IV Dilaudid, Dr. Lodi may have underestimated the amount of IV Dilaudid prescribed to his patient. His written response indicates that he prescribed no more than 4-8 mg. of IV Dilaudid per day. The complainant notes that 900 mg were prescribed between 9-1-11 to 9-16-11 period, which after investigation was adjusted to 832 mg. No records were kept in the patient's medical record regarding the actual administration of the Dilaudid, so it is not possible to verify the actual amount of pain medication actually provided to A.Y. However, the investigation confirms that the prescriptions were written and filled. Dr. Rowe inquired if the amount of

pain medication (over 800 mgs) was appropriate for the condition the patient was in. Dr. Pappas confirmed that the record indicates the patient was in great pain and tolerant to the amount of pain medication she was receiving.

Dr. Rowe noted that Dr. Watt had written in the patient's medical record that she was reluctant to continue prescribing pain medication and that the patients' medication needs should be managed by a pain specialist. He queried Dr. Pappas about whether or not Dr. Watt continued to provide any other prescriptions for the patient. Dr. Pappas indicated that Dr. Watt did continue to prescribe limited oral medications.

Dr. Rowe asked if the medical records currently available to the investigator were sufficient to complete the investigation and if not what additional records would be needed. Dr. Pappas indicated that records from the pain specialist Dr. Castro and hospital medication administration records and progress notes would be helpful. Finally records of the home healthcare providers may shed additional light on the administration of the IV Dilaudid.

Dr. Pappas stated that with regard to the diversion allegation, there is no way to definitively answer the allegation since so many caregivers were involved in A.Y.'s round the clock care. There were no medical records showing administration of IV Dilaudid when A.Y. was receiving in home care.

Dr. Pappas concluded by saying that the impact of one's behavior and the ability to self modulate that behavior is imperative for good patient care. She indicated her concern with Dr. Lodi's medical recordkeeping stating that the chart was disorganized, the progress notes were not in consecutive order, and some entries appear to have been inserted later. She also commented that his use of the M.D. designation is misleading since, within Arizona, a homeopathic physician may not use the M.D. designation unless they are also licensed in this state. She indicated that Dr. Lodi declares his MD(H) status, but that it is buried in the text on other pages within the website.

Dr. Ackerley questioned Dr. Lodi's insight pointing to his inaccurate description of the actual amount of IV Dilaudid being prescribed to A.Y. with the records available showing the amount of prescriptions actually filled.

In response to a question from Dr. Rowe regarding possible impairment, Dr. Pappas indicated that a forensic specialist with expertise in impairment issues would most appropriately evaluate this allegation.

Dr. Ackerley asked Dr. Pappas if she was concerned when she noted that Dr. Watt had noted she would be withdrawing from prescribing further pain medication and had recommended that A.Y.'s pain management needs be overseen by a pain management specialist. Dr. Pappas replied that she was concerned by the information.

Dr. Pappas responded to other questions relating to the date of Dr. Alexander's contract with An Oasis of Care and the limited progress notes available in A.Y.'s file from Dr. Alexander. There were additional questions concerning the pain specialist, Dr. Castro and Dr. Watt's file notation that A.Y. had responded well to his recommendations.

Board members discussed the additional records that they would want to review prior to making a determination.

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At 10:45 a.m. the Board adjourned to *Executive Session* for legal advice following a motion from Dr. Ackerley. The motion was seconded by Mr. Kennedy and passed unanimously. The Board returned to the regular meeting at 10:58 a.m.

Dr. Rowe recognized Stephen Myers, Dr. Lodi's attorney who wished to make a statement. Mr. Myers indicated that Dr. Lodi's completion of the physician/patient boundary course is evidence of Dr. Lodi's commitment to his profession and recognition that his actions were problematic. He clarified that he had recommended to Dr. Lodi that the coursework be completed.

Dr. Rowe requested clarification from Mrs. Springer whether Dr. Lodi had completed coursework on medical records. Mrs. Springer stated that she had not received proof showing that he had completed coursework as of this meeting.

Dr. Rowe made a motion to continue the investigation. Mr. Farris seconded the motion that passed unanimously.

Board members indicated the additional hospital and home healthcare records that they would require and requested Mrs. Springer issue subpoena's to obtain them. Board members also requested the pain management consultation from Dr. Castro, and directed Dr. Pappas to interview Dr. Watt. Mrs. Springer was directed to conduct interviews with the home care assistants.

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

Dr. Rowe noted that Dr. Korn was present and inquired if his attorney was present. Dr. Korn stated that his attorney was not present but that he was attending to hear the discussion. Assistant Attorney General Baskin urged Dr. Korn to contact his attorney prior to making a statement, in as much as the attorney had submitted a written notice of representation.

Mrs. Springer summarized the complaint allegations for the board. She stated that C.H. had sought treatment at Envita Medical Center November 30, 2010. His complaint indicated that he was provided an initial bill for the cost of 8 weeks of treatment but that the bill provided to him at the clinic was substantially more than what he was quoted over the phone. C.H. also questioned the medical credentials of several staff that were assisting in his care and treatment and stated that although Envita treated for lyme disease he subsequently received a different diagnosis from another physician that did not support the lyme diagnosis. C.H. made additional allegations regarding fraudulent use of his credit card and stated that he was requesting a full refund of the cost of his treatment at Envita.

Mrs. Springer provided information concerning each of the allegations and noted that in her review of the response provided by Dr. Korn allegations 1 through 5 did not appear to be supported by the information provided. Regarding allegation 7 concerning the use of C.H.'s credit card the allegation was not supported. Mrs. Springer commented that the Board would have limited authority over whether C.H. should receive a full refund of fees. She noted that Dr. Korn is the medical director at Envita and does not own the facility. C.H. was present for 27 days of treatment and had signed a consent form indicating his responsibility to pay charges associated with his care.

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In allegation 6, C.H. was concerned that Envita was improperly selling a BCX machine and that Dr. Korn would receive a commission from the sale of the device. Mrs. Springer indicated that the allegation was unsubstantiated since the devices were sold by Envita Lifestyles nutritional pharmacy and physicians do not receive commissions or benefits from pharmacy sales.

The Board discussed allegation 8 regarding whether Brian Harrison, an Envita manager was qualified to perform EAV galvanic screening. Dr. Rowe commented that the procedure is considered a medical procedure and as such, the person operating the machine should be registered as a homeopathic medical assistant. Dr. Grout opined that there is no recognized training requirement to operate an EAV device and that anyone can set up practice. Following a brief discussion, it was the consensus of the board that Mr. Harrison was in a medical clinic and in that setting should be registered under the supervision of Dr. Korn, as a homeopathic medical assistant.

In her review of the complaint, Mrs. Springer found that Dr. Korn had not presented and Informed Consent for IPT/IPA therapy. It is the Board's practice to review informed consent for this therapy and the Board agreed that Dr. Korn should be encouraged to provide the information for the Board's review.

Dr. Rowe made a motion to table the complaint to complete the investigation. He requested that Mrs. Springer inform Dr. Korn of the need to register Mr. Harrison as a homeopathic medical assistant and to file informed consent for IPT/IPA in accordance with the registration of experimental therapies under *A.A.C. R4-38-111*. Mr. Farris seconded the motion that passed unanimously.

The next agenda item was discussed out of the regular order of the agenda following the approval of the minutes

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)

Noting some minor changes on page 5 and page 9 of the Consent Agreement and Order, Dr. Grout made a motion approving the terms and language of the agreement. Dr. Adler seconded the motion. Following a brief discussion, the board amended their motion to allow Dr. Olsztyn 15 calendar days to sign the agreement. Should he choose not to sign the matter would proceed to hearing.

Roll Call to approve the Consent Agreement 6 – 0
Aye: Rowe, Grout, Adler, Kennedy, Farris, and Ackerley

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

There were no physician applications on the agenda

B. Medical Assistants

This agenda item was discussed out of the regular order of the agenda and followed the discussions relating to Agenda Item III. Review, Consideration, and Action on Complaints and Investigations.

Cynthia St. Jean - Stevens

Mrs. Springer reviewed the applicant's credentials. Dr. Rowe moved to approve the application, although he requested that an explanation of the initials M.E.A.D. be provided by Dr. Mark Starr who will be supervising Ms. Stevens. Mr. Farris seconded the application and the motion passed unanimously.

Molly Hale

Following Mrs. Springer's summary of the applicant's credentials, Mr. Farris made a motion to approve the application. Dr. Adler seconded the motion that passed unanimously.

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

A. Rules

1. Chapter 38, Article 1, Section 105 Fees

Mrs. Springer stated that a Notice of Final Rulemaking would be presented to the Board in May for their approval. No comments had been received to date concerning the \$25 increase to the renewal fee.

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

The executive director indicated that a Notice of Proposed Rulemaking would be filed at the Office of the Secretary of State by the May meeting. Parties would have 30 days to comment once the notice was published in the *Administrative Register*.

3. Mrs. Springer informed the board that the Committee proposing rules for the Doctor of Homeopathy would be comprised of Dr. Grout, Dr. Rowe, Mr. Kennedy and Mr. John Soliven who was a current student in the Doctor of Homeopathy program at the American Medical College of Homeopathy. She indicated that no suggestions had been received from AHIMA regarding a participant from their ranks to serve on the Advisory Committee.

B.. Legislation

1. Springer stated that SB1003 had been sent to the Governor for her signature on March 9, 2012.

VI. Review, Consideration and Action on Professional Business

1. No discussion was held concerning the Board's role in educating the community about homeopathic medicine. It was their consensus that this role should be a primary task of the Homeopathic and Integrated Medicine Association (AHIMA).

2. No appointments were made to the Homeopathic Doctor Committee at this meeting. Dr. Rowe commented that without a rules framework for the homeopathic doctor license, it would be premature to prepare a written examination.

3. A brief discussion was held regarding the registration of homeopathic medical assistants and the board's finances. It was a consensus that licensees may not have registered their assistants, noting that of 65 active in-state physicians only 29 medical assistants were registered. Board members requested that Mrs. Springer urge compliance in the newsletter that is sent to licensees with their notice of license renewal.

4. Mrs. Springer directed board members to a handout prepared by the Arizona Medical Board and the Board of Pharmacy concerning the continuing need for better compliance with the intent of the Prescription Monitoring Program. Dr. Grout commented

that the system is slow, cumbersome, and difficult to use and that future trends show physicians moving away from paper scripts to an electronic format.

5. Board members discussed correspondence from Dr. Hayle Adren concerning medical assistants removing acupuncture needles placed by physicians. The discussion indicated that there was disagreement between board members concerning whether this is appropriate. Mrs. Springer read a brief note from the Executive Director of the Acupuncture Board who indicated that it was their stance that unlicensed personnel should not remove needles. Dr. Grout commented that she did not believe the practice was improper as long as the medical assistant was supervised and had training. She agreed to meet with the Acupuncture Board to discuss the matter further. The matter was tabled for future discussion.

VII. Review, Consideration and Action on Other Business

1. Executive Director Financial Report

Mrs. Springer informed the Board that there was a real concern that current revenues would be insufficient to cover projected expenses beyond May, 2013. She indicated that 66 licensees had renewed to date, but that projections through the end of the fiscal year indicate a potential 14% loss in renewal revenue. Mrs. Springer indicated she was working with OSPB and JLBC, and the State Board's Office to prepare a plan to address the projected shortfall.

VIII. 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.

IX. Future Agenda Items

- Discussion of medical assistant status, scope of practice relative to individuals operating electronic energy devices
- A.R.S. § 32-2915 and the five year wait period for new applicants

X. Future Meeting Dates

Homeopathic Doctor Rules Committee

XII Adjournment

The meeting adjourned at 1:05 p.m. following a motion by Mr. Farris. The motion was seconded by Dr. Adler and passed with a unanimous vote. 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 May 8, 2012.

Respectfully Submitted,

Christine Springer
Executive Director

APPROVED IN REGULAR MEETING ON MAY 8, 2012