

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Regular Meeting Minutes

May 14, 2013

I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 9:00 a.m. noting by roll call the attendance of the following board members:

Present:

Todd Rowe, MD, MD(H)
Don Farris
Mary Ackerley, MD, MD(H)
Dr. Les Adler, MD, MD(H)
Alan Kennedy (present by telephone)
Bruce Shelton, MD, MD(H)

Mona Baskin, Assistant Attorney General and Christine Springer, Executive Director were also present. Members of the general public were also in attendance.

II. Board Member Appointments

Dr. Rowe and board members extended their congratulations to Bruce Shelton, MD, MD(H) regarding his appointment by Governor Brewer to a three year term. Dr. Shelton expressed his pleasure at the opportunity to serve on the Board and indicated he had most recently served with the Arizona Homeopathic & Integrative Medical Association as their President.

Dr. Rowe presented plaques to outgoing board members Don Farris and Dr. Martha Grout. In making the presentations, he thanked them for their many years of service and indicated Mr. Farris had served on the Board for nine years and that Dr. Grout's board service had spanned seven years.

Following the presentation of plaques Dr. Rowe inquired about the status of pending board appointments. Dr. Adler expressed his continued interest in serving on the Board and indicated he had filed an application with the Governor for re-appointment. Dr. Ackerley expressed her thanks for the opportunity to serve the citizens of Arizona, but indicated she would not seek reappointment. She stated her practice demanded her full attention and had become very busy. She confirmed that the Governor's office had been notified of her decision.

III. Review, Consideration, and Action on Minutes

Teleconference Meeting Minutes – February 22, 2013

Mr. Farris made a motion to approve the draft minutes. Dr. Ackerley seconded the motion that passed with a majority vote. Aye: Dr. Rowe, Dr. Adler, Mr. Farris, Mr. Kennedy, Dr.

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Ackerley. Dr. Shelton recused himself from the vote since he had not been a member of the board on the designated meeting date.

Regular Session Minutes – March 12, 2013

Dr. Adler made the motion approving the regular session minutes. The motion was seconded by Mr. Farris and passed with a majority vote 5 – 0. Dr. Shelton recused himself from the vote since he had not been a board member on the designated meeting date.

Substantive Policy Statement committee Minutes – April 5, 2013

Mr. Farris made a motion approving the minutes as drafted. Dr. Ackerley seconded the motion that passed with a majority vote 5 – 0. Dr. Shelton recused from the vote noting that he had not been a board member on the designated meeting date.

IV. Review, Consideration and Action on Applications

A. Medical Assistants

Jenn Katona

The board considered a registration application submitted by Jenn Katona and noted she was present for an interview with Dr. Martha Grout, her supervisor. At Dr. Rowe's request, Mrs. Springer provided an overview of the applicant's qualifications and indicated the application was administratively complete. Board members questioned Dr. Grout and Ms. Katona regarding her proposed job duties at the clinic. Dr. Adler move to approve the application. Mr. Farris seconded the motion that passed unanimously.

Rachel Tomb

At Dr. Rowe's request, Mrs. Springer presented an overview of the documentation submitted by Ms. Tomb. Board members requested additional information about her previous work history and indicated that the supervising physician's description of her job duties was not legible. Dr. Rowe recommended the application be held pending clarification of job duties and previous work history.

B. Physicians

Rekha V. Shah, M.D.

At the Board's request, Mrs. Springer provided her review of the application requirements related to Dr. Shah's documentation and indicated the file was administratively complete. Dr. Rowe welcomed Dr. Shah who was present for an oral interview. Board members inquired about Dr. Shah's plans for the integrated medicine license and about her background in homeopathy and acupuncture. Mr. Farris made a motion to approve the application. Dr. Ackerley seconded the motion that passed unanimously.

V. Review, Consideration and Action on Complaints and Investigations

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

Case No. 13-04 Martha Grout, MD, MD(H)

Dr. Rowe asked Mrs. Springer to present an overview of the case in relation to the question of jurisdiction pursuant to A.R.S. § 32-2907. Mrs. Springer directed board members to their packet information referring to correspondence submitted to the Board by Dr. Grout's legal counsel, Mr. Stephen Myers. She indicated that the Board's options include opening a complaint and seeking jurisdiction to conduct the investigation pursuant

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to A.R.S. § 32-2907 or tabling the matter and ceding jurisdiction to conduct the investigation to the Arizona Medical Board since Dr. Grout also holds an allopathic medical license.

Mrs. Springer also commented that Mr. Myers was requesting the board consider asserting primary jurisdiction to conduct the investigation based on specific factors including the following: the type of care provided to the patient, the integrative nature of prescriptions dispensed to the patient, and signed informed consent that acknowledged non-allopathic methods of treatment.

Dr Rowe questioned AAG Mona Baskin about the arbitration process in the event both boards request jurisdiction in the complaint. AAG Baskin described the arbitration panel makeup and noted the Arizona Supreme Court would appoint a licensed lawyer to serve as chairman to the panel.

Mr. Myers was present with Dr. Grout and noted that he had been informed by the Arizona Medical Board that they would consider the matter of jurisdiction at their June 6, 2013 meeting. He noted that the two medications used in treating the patient were clearly homeopathic. Throughout the medical record he noted that there were references to integrative therapies and he also pointed out that Dr. Grout had dispensed natural substances as part of the treatment offered to the patient under her homeopathic medical board dispensing permit.

Dr. Shelton disclosed that Mr. Myers had represented him in prior matters and inquired if this would be cause to recuse in the current case. AAG Baskin indicated that this would not be a cause to recuse. Dr. Shelton stated on the record that he felt he could be impartial and show no bias in his consideration of the case.

Mr. Myers clarified that he believed the homeopathic board should assert sole jurisdiction to adjudicate the case as indicated by the facts in the medical record.

Mr. Farris made a motion to seek sole jurisdiction in the case. He commented during his motion that the parents specifically sought out Dr Grout to seek alternative treatment options. Dr. Ackerley pointed out that the consent form signed by the father clearly designates the treatment offered would be alternative in nature. Dr. Shelton seconded the motion.

Dr. Rowe inquired about a legislative bill that would have outlawed the use of laetrile and medical marijuana in Arizona. Dr. Shelton stated the bill failed to pass. Dr. Adler also commented that the two medications dispensed were clearly alternative in nature and that the allopathic board would have no knowledge of how and why these types of medications would be utilized.

Dr. Rowe concurred that the homeopathic board should seek the primary jurisdiction. Mr. Farris reiterated his review of the medical notes led him to conclude that the Board should have the jurisdiction based on the fact that the parents sought out Dr Grout for alternative methods of treatment. Mr. Kennedy agreed that he would support the motion for the Board to take jurisdiction.

Mr. Farris amended his motion to state that the homeopathic board, should have sole jurisdiction in the case and that dual jurisdiction would be inappropriate given the nature of

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the type of treatments given to MM and the informed consent signed by the parents. Dr. Shelton seconded the amended motion.

Dr. Adler commented that the motion should also note that the medications used show that the type of treatment was clearly integrative in nature. Mr. Farris indicated he believed his motion was clear as it stands.

Mrs. Springer clarified that in her correspondence to the Arizona Medical Board informing them of the board's decision that she would indicate the reasons behind the board's action which would include the informed consent, the dispensing of the two medications that are clearly alternative in nature, and the type of treatment offered to the patient.

Mr. Farris reiterated his motion that the homeopathic board should take primary jurisdiction in the matter and that dual jurisdiction would be inappropriate given the type of treatment provided. The motion had been seconded by Dr. Shelton and a roll call vote was held.

Motion: to assert sole jurisdiction in the matter under A.R.S. § 32-2907

Roll Call

Aye: Kennedy, Ackerley, Shelton, Farris, Adler, Rowe

6 – 0

Case No. 13-03 Abram Ber MD(H)

Mrs. Springer reviewed the facts of this case and noted that Dr. Ber's use of the MD in his letterhead to indicate his educational training had been brought to the Board's attention by a Banner Samaritan physician. Dr. Rowe commented that although Dr. Ber followed the initials MD with the full written term showing he was a Homeopathic Physician, current rules in *AAC R4-38-115* state a physician may not use the initials 'MD' following their professional designation, unless they are also licensed by the Arizona Medical Board. The rule requires homeopathic physicians to use MD(H) to show they are licensed by the Homeopathic Board.

Dr. Rowe suggested that a complaint investigation be opened and a letter of concern issued. Mr. Farris stated he was concerned that the Board had no authority over the use of a corporate name and noted the corporate name Dr. Ber used on his letterhead had been registered long before *AAC R4-38-115* was updated.

Dr. Rowe made a motion to open a complaint investigation. Mr. Farris seconded the motion.

Roll call vote to open a complaint.

Aye: Farris, Kennedy, Rowe

Nay: Shelton, Adler, Ackerley

3-3 Motion failed

There was further discussion relative to opening a complaint. In response to a question concerning whether Dr. Ber had been notified of what types of action the Board could take during an initial review of a complaint, Mrs. Springer indicated that although she had provided an agenda of the meeting she had not provided a separate notice of the types of actions the Board could take under A.R.S § 32-2934. AAG Baskin stated she was concerned that Dr. Ber had not been fully informed of the types of action the Board could consider at the first review of the complaint.

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Dr. Rowe made a motion to open a complaint investigation and requested that Mrs. Springer inform Dr. Ber of the type of action the Board may consider at their next meeting in July, 2013. Dr. Shelton seconded the motion.

Roll Call vote to open a complaint.

Aye: Kennedy, Ackerley, Shelton, Rowe, Adler, and Farris

Motion passed 6 – 0

Case No. 13-02 Edward Gogek, MD, MD(H)

Board members considered the case brought by B.B. about a past due account from five years ago. They also discussed the complainant's concern with a remedy provided to the patient by the physician. A review of the medical records indicated that the remedy was proper and that the complainant's recollection of the remedy was not consistent with the medical record.

Noting there was no basis upon which to continue the investigation, Dr. Rowe made a motion to dismiss the complaint. Dr. Shelton seconded the motion.

Roll Call to dismiss:

Rowe, Ackerley, Kennedy, Farris, Shelton, Adler

6 – 0

(Mr. Kennedy left the meeting at 10:40 a.m. The remainder of the Board members adjourned for a short five-minute break and returned to the meeting at 10:45 a.m.)

Case No. 13-01 David Korn, DO, MD(H)

Mrs. Springer updated members regarding this matter in which the Osteopathic Medical Board was seeking jurisdiction to conduct an investigation. She noted that the matter was similar in nature to two other tabled complaints in which the Osteopathic Board had jurisdiction under A.R.S. § 32-2907.

Dr. Rowe commented that the complaint did not involve the use of homeopathic treatment methods. He made a motion to affirm jurisdiction to conduct the investigation should be retained by the Osteopathic Medical Board. Mr. Farris seconded the motion that passed unanimously.

Motion to cede jurisdiction to the Osteopathic Medical Board

Farris, Ackerley, Rowe, Shelton, Adler

5 – 0, Kennedy not present

Ongoing Cases – Review, Consideration and Action

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

Mrs. Springer informed Board members that the case in the Eastern Division of the Federal Court in New York had been continued to May 17, 2013 at which time the prosecution in the case was to provide additional evidence in support of their sentencing recommendations.

Dr. Rowe inquired about the history of this case. Mrs. Springer responded that Dr. Lobacz had this instant case pending at the time he failed to renew his license in January, 2011. The physician had been informed that the case was pending and that his license was suspended pending resolution of the pending complaint. The matter is tabled pending completion of sentencing and once that is complete the board can re-open the case and take action.

AAG Baskin referred the Board to A.R.S. § 32-3202 regarding the status of a license when an open case against the licensee is pending.

VI. Review, Consideration and Action on Previous Board Orders

Charles Crosby, MD(H) Quarterly Report

Board members reviewed the information submitted on behalf of Dr. Crosby and noted that he was compliant with the terms of his consent agreement and order.

Thomas Lodi, MD(H) Status of Compliance

Mrs. Springer updated board members on Dr. Lodi's compliance status in regard to the consent agreement terms. She indicated an affidavit had been filed by his chief administrative assistant showing compliance with the order that he remove M.D. from his website, An Oasis of Healing, and use the correct license designation of MD(H). The affidavit shows that he had complied with the term of the order. Mrs. Springer indicated that other websites, that the affidavit indicates are not within Dr. Lodi's control, use the term MD, MD(H). The board concurred that Dr. Lodi had shown a good faith effort regarding the website issue and that the M.D. designation had been removed from those sites in which he had direct control. Mrs. Springer said she had conducted a search of those sites noted in the affidavit and all references had been corrected.

The board also discussed a 60-day report filed by Dr. Lodi that included a list of patients he had consulted with during the report time frame. Mrs. Springer directed their attention to the inclusion of patient's medical records and noted she had posted the records on a confidential website for their review. Dr. Ackerley volunteered to review the records in more detail and report back to the board concerning Dr. Lodi's compliance with accepted methods of record keeping. Dr. Lodi's attorney informed board members that Dr. Lodi had provided only those records that indicated his direct participation as a consultant to the other physicians within his practice.

Board members instructed Mrs. Springer to review Pharmacy Board prescription monitoring reports for the specified time period of the report.

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

A. Legislation – Review, Consideration, and Action

1. The executive director updated members concerning the status of draft legislation relating to fees in A.R.S. § 32-2914. She indicated the bill had passed the House appropriations committee with an amendment and was pending a final read and full House vote.

VIII. Review, Consideration and Action on Professional Business

1. Dr. Rowe opened discussion related to Telemedicine and commented on the strong growth in the use of telemedicine within the health community. Board members reviewed the Arizona Medical Board policy and agreed that a face to face physical examination is an important component in many situations. Dr. Ackerley agreed, although within the psychiatric community, she commented that telemedicine would be readily adaptable to situations where the patient is not nearby. In instances where there are no active prescriptions, but rather a consultation setting, there was agreement that telemedicine would be appropriate. Dr. Ackerley added that one of the terms of her malpractice policy required at least an annual in-person evaluation of her patients, which provides an opportunity to evaluate whether additional face to face visits were needed.

Dr. Rowe commented that the Homeopathic and Integrated Medical Association should be notified for their input.

He indicated a new draft of the policy would be prepared for the next regular meeting that incorporates the discussion from this meeting.

2. Dr. Shelton expressed a concern that the homeopathic community had no reliable training course by which to prepare for the written examination. He noted that it would be helpful to have a pre test that prospective examinees could take to review their skills and knowledge in each of the therapeutic modalities.

(Mr. Farris left the meeting at 11:05 a.m.)

3. A review of the EDTA Chelation Therapy informed consent submitted by Dr. Shelton was tabled for lack of a quorum.

4. There was a brief discussion of the use of digital signatures by supervising physicians who review chart notes written by homeopathic medical assistants. The general consensus of the board was that physicians should refer to A.A.C. R4-38-302 for guidance. All board members agreed that the use of digital signatures had become much more common in an electronic medical record environment and that individuals may wish to refer to federal standards as a reference.

5. Board members reviewed Mrs. Springer's memorandum on the board's current practice to review chelation therapy protocols individually rather than to conduct peer reviews every five years for those that offer EDTA chelation therapy. Dr. Shelton directed board members to the TACT study conducted at the NIH in reference to the efficacy of chelation therapy for treating heart attack patients.

IX. Review, Consideration and Action on Other Business

1. Executive Director Financial Report

Mrs. Springer indicated that at the end of February, 2013 the Board had total expenses of \$66,764 with an ending cash balance of \$10,133. Revenue collections were \$67,477 and renewals were on track for April and May.

2. Staffing Level Report – tabled to next regular meeting

X. Call to the Public

No members of the public were present to address the board.

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XI. Future Agenda Items

Telemedicine Policy Committee Report
Examination skills and knowledge criteria for therapeutic modalities
Staffing level
Status of Article 2 - rulemaking

XII Future Meeting Dates

Regular Meeting July 9, 2013

Adjournment

The meeting adjourned at 11:55 a.m. following a motion by Dr. Shelton. 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 July 9, 2013.

Respectfully Submitted,

Christine Springer
Executive Director

Minutes Reviewed and Approved at the Regular Meeting of September 10, 2013