

Arizona State Board of Homeopathic and Integrated Medicine Examiners

Minutes of the Regular Meeting

May 8, 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, and members of the public were also present.

Following roll call, the Board changed the order of the agenda to discuss Agenda Item IV. Review Consideration and Action on Applications, the application of Dr. Oliver B. Cooperman.

II. Review, Consideration, and Action on Minutes

Regular Meeting Minutes – March 13, 2012

Mr. Kennedy moved to approve the minutes of March 13, 2012. Dr. Grout seconded the motion that passed unanimously.

Executive Session Minutes – March 13, 2012

Mr. Kennedy made a motion to approve the executive session minutes. Dr. Ackerley seconded the motion that passed unanimously.

Rules Committee Minutes – March 30, 2012

Mr. Kennedy made a motion to approve the Rules Committee minutes. Dr. Grout seconded the motion that passed unanimously.

Following the review of Minutes, the Board changed the order of the agenda to discuss Agenda Item IV. Review, Consideration and Action on applications, Part B., Medical Assistants

III. Review, Consideration and Action on Complaints and Investigations

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

There were no new complaints received

B. Ongoing Cases

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

At 9:30 a.m. the Board considered this matter. Mrs. Springer reviewed the status of the investigation and their attention was directed to the records from Heritage Healthcare and notes from her phone conversations with A.Y.'s home based caregivers and family members. In response to a question from Dr. Rowe, Mrs. Springer confirmed that Dr. Lodi had completed a 38.75 hour course in Professional Boundaries.

Dr. Rowe and members of the Board requested that Dr. Pappas receive commendation for her extensive review of the case. He inquired whether all of the Board members believed that the investigation was complete. The consensus was that they wished to invite Dr. Lodi to an investigative interview for a dialogue on the matters that may yet be unclear. Dr. Ackley inquired about the differences between an investigative and informal interview. AAG Baskin clarified that in an investigative interview board members could ask questions and that they could dismiss, issue a non disciplinary letter of concern, or offer a consent agreement. An informal interview would typically end with disciplinary action imposed on the licensee.

Board members agreed that they had concerns with medical records, ethical issues related to the relationship between A.Y. and Dr. Lodi, possible professional misconduct related to the relationship, inadequate supervision of care givers, and potentially, whether Dr. Lodi was prescribing controlled substances for a 'family member'.

A lengthy discussion ensued regarding the definition of 'family member', particularly in a health care setting. AAG Baskin agreed to review the legal literature on the definition as it relates to immediate family member.

The Board discussed and agreed to refer the nurse caregivers to the Arizona Nursing Board for the lack of documentation of the administration of controlled substances to A.Y.

There was a discussion of whether the case should be referred to the DEA, but members agreed that additional information was necessary from the DEA as it concerns the administration of IV Dilaudid in a home or hospice setting.

The Board also agreed that there were additional questions related to standards of practice for the proper storage of controlled substances in a home care setting, conferring with other healthcare providers and following written advice related to their recommendations, and the documentation in a patient's file relating to the administration of IV Dilaudid.

Dr. Grout made a motion to invite Dr. Lodi to an investigative interview pursuant to A.R.S. § 32-2934 (C). Dr. Adler seconded the motion that passed with a majority vote.

Roll Call:

5 – 0 Aye Rowe, Adler, Grout, Farris, Ackley

Mr. Kennedy was not present for the vote

The board recognized Mr. Stephen Myers who requested an opportunity to speak with them. Mr. Myers requested a copy of the investigative records in the case.

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At 10:20 a.m. Don Farris made a motion that the Board adjourn to Executive Session for legal advice. Dr. Rowe seconded the motion that passed with a majority vote.

The Board returned to the Regular Session at 10:30 a.m. and informed Mr. Myers that the records were confidential under A.R.S. 32-2934(F) .

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

Mrs. Springer informed the Board that a homeopathic medical assistant application had been received from Brian Harrison who was assisting Dr. Korn at Envita in the operation of the EAV Device. She stated the application was incomplete and that Mr. Harrison had been informed of what items were missing. She also informed them that she had received Dr. Korn's consents for IPT/IPA but that they were incomplete and that Dr. Korn had been informed that they would need revising before the Board would review them.

Case No. 12-01 Thomas Lodi, MD(H) Inquiry from BCBS – status update

Mrs. Springer informed members that the Arizona Medical Board had declined to open an investigation. Dr. Rowe and members of the Board affirmed that the Board has no jurisdiction over Dr. Watt's medical license. The Board agreed that the matter should remain tabled for lack of jurisdiction.

Case N. 11-03 Frank Lobacz, MD(H) Status Update

Mrs. Springer informed the Board that no further action has been taken on the federal case against Dr. Lobacz. Sentencing has been continued to May 11, 2012. The Board expressed concern over the length of time that has occurred. Mrs. Springer noted that Dr. Lobacz remains incarcerated in a prison hospital and is very ill. AAG Baskin stated that the Board has shown due diligence in attempting to adjudicate the matter, but until a final sentence is entered the Board may not proceed. The Board agreed that the matter should remain tabled.

IV. Review, Consideration and Action on Applications

A. Physicians

Oliver B. Cooperman, M.D.

Dr. Les Adler recused himself from this discussion noting a personal and professional relationship with the applicant.

The Board welcomed Dr. Cooperman and Mrs. Springer presented the applicant's credentials noting that all required documentation had been filed. She indicated that he had been successful in passing the written examination and described the type of post graduate education submitted in support of the requirement to complete at least 300 hours of education in alternative modalities described under the definition of the practice of homeopathy. The Board interviewed Dr. Cooperman and inquired about his past and current practice and his plans for the homeopathic medical license.

Dr. Grout moved to approve the application. Mr. Farris seconded the motion that passed with a majority vote:

5 - Aye

0 - Nay

Dr. Adler recused

Following Dr. Cooperman's application review, the Board considered Agenda Item II., Review, Consideration, and Action on Minutes.

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B. Medical Assistants

Timothy Hunter

Mrs. Springer reviewed the applicant's credentials noting that he would be assisting Dr. Hayle Aldren with neuromuscular therapies. Dr. Grout moved to approve the application. Mr. Farris seconded the motion that passed unanimously.

The application of Ms. Boswell was discussed out of the published order of the agenda and followed the discussion of Agenda Item III. B. Case No 11-11 Dr. Thomas Lodi.

Note: the discussion was held in conjunction with Agenda Item V. Review, Consideration, and Action on Previous Board Orders – Stanley Olszyn compliance review.

Diedra 'Boswell

Mrs. Springer's summarized Ms. Boswell's application and noted that fees and evidence of citizenship had not been received. The Board requested that the director obtain transcripts of her nursing education and verification of nursing license from the Texas Nursing Board. Noting that the application was incomplete the Board tabled the matter.

(The following narrative describing the ensuing discussion relates to Agenda Item V, Stanley Olszyn (Update regarding Employees).

In their discussion, Mr. Farris and other Board members expressed concern that the application from Ms. Boswell was required as a compliance item in Dr. Olszyn's Consent Agreement. It was Mr. Farris' concern that Dr. Olszyn's slow response to completing this part of the Consent Agreement could potentially make him out of compliance.

Mr. Kennedy made a motion to invite Dr. Olszyn to the next regular meeting and request he supply information relating to Ms. Boswell's nursing license in Texas. Mr. Farris seconded the motion. There was additional discussion concerning whether or not Ms. Boswell had obtained licensure from the Texas Nursing Board.

Mr. Kennedy amended his motion to clarify that the Board will hold a special meeting in July and to invite Dr. Olszyn to attend regarding his compliance with the terms of the Order. The motion included a request that Mrs. Springer notify Dr. Olszyn of the Board's concern immediately and to inform him that at the meeting the Board may vote to open a separate complaint for violation of the terms of the Consent.

Mr. Farris seconded the motion that passed unanimously.

There was additional discussion regarding the content of the correspondence and documentation Ms. Boswell should submit prior to the regular meeting in July.

Mr. Kennedy withdrew his first motion and made a new motion clarifying the following: That the executive director is to send correspondence to Dr. Olszyn requiring his appearance at the next meeting to be held in July; that the Board may vote to open a new investigation for possible non-compliance with the terms of the Consent Agreement; and that he must comply with all terms of the Consent Agreement, particularly with regard to Ms. Boswell's medical assistant registration. The Board requested that the correspondence include language that Ms. Boswell cease and desist from practice until she has complied with registration as a homeopathic medical assistant.

Dr. Rowe seconded the motion that passed unanimously.

At 11:45 a.m. the Board adjourned for a ten minute break

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Upon their return the Board held a lengthy discussion to consider whether to hold a special meeting before the regular meeting in July. In addition, they reiterated their concern that Dr. Olsztyn was potentially out of compliance with the terms of the Consent Agreement in regard to registering Ms. Boswell.

Dr. Adler made a substantive motion to cap the amount of time that Dr. Olsztyn would have to provide the additional documentation regarding Ms. Boswell's medical assistant application. Dr. Ackerley seconded the motion. Dr. Rowe, Dr. Grout, Mr. Farris, and Mr. Kennedy did not concur and voted no.

There was discussion to clarify what the Board's concerns were regarding Dr. Olsztyn's possible non-compliance and how best to address the issue.

Dr. Adler amended his substantive motion to have a special meeting in two weeks to consider whether or not Dr. Olsztyn is in compliance with the terms of the Consent Agreement, and to request in correspondence that Dr. Olsztyn immediately comply with the terms of the Consent Agreement and provide required documentation in support of Ms. Boswell's application as a medical assistant. Dr. Rowe seconded the motion that passed unanimously.

Roll call:

6-0 Aye: Rowe, Grout, Kennedy, Adler, Ackerley, Farris

Assistant Attorney General Baskin left the meeting at this point in the meeting.

The Board discussed potential dates for the special meeting. The Board selected Wednesday, May 23, 2012 at 8:00 a.m. to conduct the special meeting. They agreed that the meeting would be in a telephonic format.

IV. 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.

Stanley Olsztyn, MD(H) – Review documents filed to comply with terms of Consent Agreement and Order

Dr. Adler reviewed Dr. Olsztyn's *informed consent* that was filed in compliance with the terms of the Consent Agreement and Order. He indicated that the consent language was unacceptable and should be revised. Mrs. Springer indicated she would direct Dr. Olsztyn's attention to the Informed Consent samples present on the Board's website.

(The discussion relating to the *update of employees* is found under Agenda Item IV, Diedra Boswell.)

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

A. Rules

1. Chapter 38, Article 1, Section 105 Fees

Dr. Rowe made a motion adopting the proposed rulemaking to increase the renewal fee by \$25. Dr. Grout seconded the motion that passed unanimously. Mrs. Springer stated that Notice of Final Rulemaking would be sent to GRRRC for their review in early June.

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She reiterated that 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 Final Rulemaking would be prepared for the Board's consideration at the July regular meeting.

3. The Board requested that the draft rules for Doctor of Homeopathy be available at the July regular meeting.

B.. Legislation

Dr. Rowe updated Board members on the status of the Chiropractic Association sunrise that seeks to include the practice of homeopathy to the scope of practice of Chiropractors. He noted that in addition to homeopathy the sunrise application also seeks to add IV Orthomolecular medicine to their scope.

The Board agreed that further discussion should be held in July regarding the status of the sunrise application.

VII. Review, Consideration and Action on Professional Business

1. A brief discussion was held about the intent of A.R.S. § 32-3213 regarding advertising on websites and the use of the title, MD or DO in addition to the MD(H) title. It was the consensus of the Board that websites should accurately reflect the licensure status of physicians and that the statute includes electronic media.

Dr. Rowe suggested that Mrs. Springer contact the homeopathic association and ask them to remind members of the advertising statute and that to violate the statute is an act of unprofessional conduct.

2. There was a brief discussion of correspondence from Dr. Hayle Aldren requesting clarification of A.A.C. R4-38-302(D) and requirements for supervising a homeopathic medical assistant. The Board agreed that the term "same day" could be interpreted to mean the same as the supervising physician's instruction to the medical assistant in a patient's standing order.

3. Mrs. Springer reminded Board members that Dr. Grout's term would expire June 30, 2012. Dr. Grout commented that she was evaluating her options and would let the Board know if she would seek a third term.

Mr. Farris commented that attendance at meetings should be a priority to any individual contemplating board membership. He expressed concern about Mr. Kennedy's attendance and health issues and was hopeful that some of the health challenges were behind him. Dr. Rowe agreed to speak with Mr. Kennedy about the matter and expressed, along with other board members, that Mr. Kennedy's input was valuable and that his participation in discussions showed him to be prepared and committed to his Board tenure.

Dr. Rowe indicated that Dr. Grout should inform AzHIMA of her decision once it is made.

4. Dr. Rowe informed that Board that the Accreditation Commission of North America had declined to accredit the American Medical College of Homeopathy. He stated that as a consequence the Arizona Private Post Secondary Commission had removed their state license. He indicated that over the next two years, ACHENA (Accreditation Commission for Homeopathic Education in North America) would seek recognition as an accrediting agency and that ultimately the college would seek accreditation through that body. At this time he urged the Board to continue pursuing

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rulemaking for the homeopathic doctor license and to continue preparatory work on the written examination.

5. The discussion of the types of actions under A.R.S. § 32-2912(A)(4) and 2912(F) was tabled to the next regular meeting. Board members agreed that insight from the Assistant Attorney General would be valuable in reviewing the intent of the law.

6. Dr. Adler recommended approval of the Informed Consent filed by Dr. David Korn for Insulin Potentiated Antibiotic with Cheliodonine (IPAC) with changes. He indicated that on page three Dr. David Korn's name had been left out and should be included. Board members did not take a formal vote but agreed with Dr. Adler's assessment.

7. Dr. Adler stated that there had been insufficient time to file an Informed Consent for Pulse Electronic Magnetic Field and requested that the matter be tabled to a future meeting.

VIII. Review, Consideration and Action on Other Business

1. Executive Director Financial Report

Mrs. Springer informed the Board that revenues continue to be insufficient to cover projected expenses beyond May, 2013. She directed the Board's attention to her May 4, 2012 financial report and noted the various suggestions to reduce expenses. Board members agreed that Mr. Farris and Dr. Rowe should inform AzHIMA of the need to raise fee caps and Mrs. Springer should present her information on the reduction of Board expenses.

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

- A.R.S. § 32-2912 and 2915 and the five year wait period for new applicants
- Increasing applicant interest in the homeopathic and integrated medicine license
- Reducing board expenses

XI. Future Meeting Dates

May 23, 2012 8:00 a.m. Telephone Conference Meeting

XII Adjournment

The meeting adjourned at 1:20 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 July 10, 2012.

Respectfully Submitted,

Christine Springer
Executive Director

Approved in Regular Meeting on July 11, 2012