

# Arizona State Board of Homeopathic and Integrated Medicine Examiners

## Regular Meeting Minutes of July 8, 2014

### I. Call to Order, Roll Call

Presiding officer, Dr. Todd Rowe, called the meeting to order at 9:00 a.m. and confirmed the attendance of the following board members:

Present:

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Todd Rowe, MD, MD(H)  
Bruce Shelton, MD, MD(H)  
Alan Kennedy  
Dr. Les Adler, MD, MD(H)  
LaJuana Gillette  
Mary Grace Warner, MD, MD(H)

Christine Springer, Executive Director, Christopher Munns, Solicitor General, and Mona Baskin, Assistant Attorney General were also present at the meeting.

Dr. Rowe stated that the Board would consider agenda items in the order they were published on the agenda and that there were no timed matters to consider.

Mr. Munns requested that the **order of the agenda** be changed and that the Board consider Dr. Frank Lobacz's request for rehearing next. Dr. Rowe commented that Dr. Lobacz's attorney, John Kaley, had indicated he wished to be present for the Board's discussion, but that he had a previously scheduled court date and would be unavailable until 10:00 a.m. local time. Mr. Munns indicated he had not be made aware of Mr. Kaley's scheduling conflict but that he had a deadline and could be available to the Board by telephone. Board members agreed that it would be most helpful to them if Mr. Munns could be available to them in person.

Mr. Munns indicated he had read Mr. Kaley's July 2, 2014 correspondence and explained to the Board that under Arizona Supreme Court rules governing the practice of law, Mr. Kaley would not qualify to represent Dr. Lobacz as his legal counsel since he was not a licensed attorney in Arizona and he had not obtained *pro hanc vice* status to serve as Dr. Lobacz' legal counsel in this case.

Mr. Kennedy inquired if Mr. Kaley could observe the proceedings and Mr. Munns confirmed that this would be acceptable, but that he could not present a legal argument on behalf of his client. Mrs. Gillette asked if Mr. Kaley had been made aware of his lack of legal standing in Arizona. Mrs. Springer confirmed that she had discussed the status of his legal standing in Arizona and that while he was aware of the issue, he still wished to observe the proceedings. Board members agreed to change the order of the agenda and to consider the matter as the next item of discussion

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Dr. Rowe reminded Board members that Mr. Munns, in his capacity as Solicitor General would respond to their legal questions concerning this matter.

**V. Review, Consideration and Action on Complaints and Investigations**  
**B. Ongoing Cases – Review, Consideration and Action**

**Case No. 11-03 Frank Lobacz, MD(H), License No. 0041**

Mr. Kennedy made a motion to table the matter to the next board meeting to allow Dr. Lobacz time to find an attorney licensed in Arizona to represent him relative to his request for rehearing. In making his motion Mr. Kennedy stated that he believed Dr. Lobacz should have an opportunity to explain his position before the Board. There was no second to his motion.

Dr. Shelton stated that there was a 30-day time limit to file for a rehearing and Mr. Munns confirmed that Dr. Lobacz had timely filed his request.

Dr. Rowe made a motion to adjourn to *Executive Session* at 9:10 a.m. for legal advice pursuant to *A.R.S. § 38-431.03(A)(3)*. A second to the motion was made by Mr. Kennedy. The motion passed unanimously. The Board returned to the Regular Session at 9:20 a.m.

Dr. Rowe asked AAG Baskin to summarize her response to Dr. Lobacz request for rehearing. Ms. Baskin stated for the record, that the state would object to Mr. Kaley's appearance in the matter since he is not licensed to practice law in Arizona. However, the state would not object if the Board continued the matter to another date to give Dr. Lobacz time to obtain licensed legal counsel.

Ms. Baskin went on to explain her pleading in response to Dr. Lobacz's rehearing request. She indicated that she would not recommend that a rehearing be granted pointing out that Dr. Lobacz did not respond in writing in a timely manner to the board's Complaint and Notice of Hearing and yet, once Dr. Lobacz was in receipt of the board's order revoking his homeopathic license he immediately made contact with the board, through the executive director, by email and phone. She reminded the board that he had been convicted of all 6 counts of the superseding indictment in Federal court and the Board had waited until the court entered it's final judgment before moving forward with their formal hearing. Finally, she noted that the doctor's appeal in the court could take many years and that if the conviction is ultimately set aside he has remedy before the board to petition the board asking that it vacate its previous order if the revocation was based on the conviction of a felony under *A.R.S. § 32-2912(D)*. Ms. Baskin also commented that the Board is not the correct forum to argue the contested points of the criminal case.

She said that on behalf of the State of Arizona, the state requests that the board deny the rehearing.

Dr. Rowe asked a legal question of Mr. Munns asking what the board options are with regard to the rehearing request. Mr. Munns commented that the board may deny the request, grant in whole or in part a rehearing, or review in whole or in part the circumstances of the rehearing request, or continue the rehearing request to allow Dr. Lobacz to find legal counsel.

Dr. Adler asked about potential conflicts with AAG Baskin representing the Board and now, in this matter, representing the State. Mr. Munns clarified that as a Solicitor General his position as the Board's independent advisor creates a wall between advocate and independent advisor.

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Board members discussed whether or not Dr. Lobacz ever stated he did not receive the initial Complaint and Notice of Hearing. Mr. Kennedy pointed out that in Mr. Kaley's communication he noted Dr. Lobacz' attempt to arrange with prison officials, to be present for the board's formal hearing and that through no fault of his own, this did not occur. Dr. Rowe indicated that while this point had been made, he was unconvinced of the argument since Dr. Lobacz had quickly contacted the board's office once he received the revocation order.

Dr. Warner questioned AAG Baskin about her statement made about the appeals process. AAG Baskin responded with an explanation of the types of appeals Dr. Lobacz has filed including an appeal of his conviction and a federal *habeous* which is a type of appeal in which the judgment is attacked. She also spoke to remedies available to Dr Lobacz under A.R.S. § 32-2912(D).

Following additional board discussion, Mr. Munns commented from a procedural standpoint that due process had been followed in the hearing process and that no deficiencies had been noted in the formal hearing process followed by the Board.

MOTION: Dr. Rowe made a motion to deny the appeal.

SECOND: Mrs. Gillette.

DISCUSSION: Dr. Rowe stated he saw no evidence of procedural abnormalities, and that he was confident that due process had been afforded to Dr. Lobacz. Dr. Shelton commented that if Dr. Lobacz is successful in his appeals he could petition the board under the appropriate statute to get his license back. Mr. Kennedy also commented that he supports the motion and is comfortable that due process was afforded.

Mrs. Gillette called the question

ROLL CALL VOTE: 6 – aye, 0 – nay

Voting aye: Warner, Gillette, Adler, Kennedy, Rowe, Shelton

MOTION PASSED

Following the vote, Mr. Kaley joined the meeting at 9:40 a.m.by telephone and explained he had a previously scheduled court appearance. Dr. Rowe pointed out that he was aware that Mr. Kaley is not a licensed lawyer in Arizona and that his role was considered observational. He informed Mr. Kaley of the Board's decision to deny the rehearing. Mr. Munns explained that an order would be prepared detailing the Board's decision and that it would be sent to Dr. Lobacz with a courtesy copy to Mr. Kaley.

*The board returned to the regular order of the meeting agenda at this point.*

## **II. Board Member Appointments/Introductions**

The presentation and thank you to Dr. Rowe was tabled to the September meeting.

Dr. Rowe welcomed Dr. Charles Schwengel, who was observing as a member of the audience. He commented that Dr. Schwengel had been appointed to the Board, but that official paperwork had not been received in time for him to participate in this meeting. Mrs. Springer clarified that Dr. Schwengel's appointment would not be legally effective until 12:43 p.m. this date.

Relative to **agenda item VIII (1.)** there was a general discussion about when elections would be held to replace outgoing board member, Dr. Rowe, who serves as the board's president.

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There was general agreement that Dr. Shelton, as vice president, would assume official duties until the annual elections at the September 9, 2014 meeting.

### **III. Review, Consideration, and Action on Minutes**

Board members considered the meeting minutes of the *May 13, 2014 Regular Meeting*. Mr. Kennedy made a motion to approve the minutes as revised and Mrs. Gillette seconded the motion. The motion passed unanimously, 6 – 0.

The Board considered the Rules Committee Minutes of *June 20, 2014*. Mrs. Springer clarified that the minutes were provided to board members as a point of information and that they would be approved at the next rules committee meeting.

### **IV. Review, Consideration, and Action on New Applications** ***Medical Assistants***

Renay Williams

The Board heard a presentation from Mrs. Springer concerning the applicants' qualifications. Dr. Shelton made a motion to approve the application. Dr. Rowe seconded the motion that passed unanimously 6 - 0.

Pavel Gershkovitz

Discussion of this application was tabled.

### **V. Review, Consideration and Action on Complaints and Investigations**

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

#### **Inquiry 2014-01      Anonymous Re: Shea Medical – Charles Schwengel DO, MD(H)**

At the Board's request Mrs. Springer summarized the complaint filed by an anonymous individual at the Arizona Department of Health Services in June. She stated that the Osteopathic Board had forwarded the complaint to her office and indicated that they were declining jurisdiction. The complaint, while directed generally at the health care institution, Shea Medical is operated by Dr. Schwengel, a homeopathic and osteopathic physician. Anonymous alleged that the facility was providing IV's, that staff was untrained, that treatments were caustic, the treatments were not covered by insurance, and that treatment includes placing IV ports and providing hydrogen peroxide flushes. Noting that there was no supporting documentation to corroborate the allegations she stated she was unable to identify actual harm to patients.

Dr. Rowe commented directly on each of the allegations and noted that the lack of supporting documentation made it impossible to identify actual harm to patients. He stated that the insurance issue is outside the board's jurisdiction, that IV's and hydrogen peroxide flushes are within the standard of practice of homeopathic physicians, that without specifically identifying which treatments are caustic it is impossible to investigate the complaint. He also noted that many traditional and alternative treatments could be considered toxic, including chemotherapy. Dr. Rowe commented that there was no direct evidence against Dr. Schwengel and it was his feeling that the matter should be dismissed.

MOTION: Dr. Warner moved to dismiss the matter.

SECOND: Mrs. Gillette.

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DISCUSSION: Dr. Rowe acknowledged that he was aware that Dr. Schwengel would be serving on the Board at the next meeting, but that he had no bias in determining the complaint. Mr. Kennedy and Mrs. Gillette stated that they did not know Dr. Schwengel. Dr. Shelton stated that although he knows Dr. Schwengel from working with him in a professional association he did not feel biased in any way with regard to the case. Dr. Adler stated although he knows Dr. Schwengel professionally, he had no bias concerning the consideration of the case.

Mrs. Gillette called the question

ROLL CALL VOTE: 6 – aye 0 - nay

Voting Aye: Warner, Gillette, Rowe, Shelton, Kennedy, Adler

MOTION PASSED

### ***B. Ongoing Cases – Review, Consideration and Action***

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

Mrs. Springer informed board members that the investigation is ongoing. She indicated she has been unable to make contact with the Scottsdale Police Department and is unaware of their progress on their investigation. Board members requested that the case be placed on the next agenda for a more comprehensive discussion.

#### **Case No. 11-03 Frank Lobacz, MD(H) – License No. 0041**

(Discussion of this matter was moved to the beginning of the meeting after the roll call.)

### **VI. Review, Consideration, and Action on Previous Board Orders**

#### **Charles Crosby, MD(H) Quarterly Report**

The Board reviewed a quarterly report submitted on Dr. Crosby's behalf by his therapist in accordance with the terms of his Consent Agreement and Order. They noted that the report was received timely and that there was no substantive change from the last report. No further action was taken.

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

#### ***Five Year Review Report – and Discussion of Article 1 through Article 4 of Title 4, Chapter 38***

Mrs. Springer stated the Governor's Regulatory Review Council had approved the Five Year Review Report. In response to a question from Dr. Rowe concerning whether or not it was difficult to obtain Council's approval, Mrs. Springer explained that the process was lengthy because of the detail involved with preparing the report. She noted the role of the rules analyst and stated that the board must attempt to file their homeopathic doctor rules with an eye to the time frame set forth in the Five Year review.

Dr. Rowe asked that the rules analyst, Jeannie Haun, be made aware of the board's recognition of her hard work and their sincere thanks for her assistance.

#### ***Legislation Consideration of future legislation***

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The board discussed the possibility of seeking legislative changes to the statutes concerning fees, anonymous complaints, mental health evaluations, and other minor housekeeping matters. Additional discussion will be held at the next meeting.

Dr. Shelton commented that the ability to accredit educational institutions should be incorporated back into the statutes as one of the board's powers.

**Discussion of Senate Bill 1154**

This discussion was tabled.

**VIII. Review, Consideration, and Action on Professional Business**

1. The board agreed to hold elections during the statutorily recognized annual meeting in September (A.R.S. § 32-2903). Dr. Shelton, in his current elected capacity as vice president will serve as the point of contact for administrative matters.

2. In recognition of the recent death of long-time homeopathic physician, Dr. Abram Ber, license number 001, Mrs. Springer presented a short history of his accomplishments in relation to the Board. She pointed out that he had served with the Homeopathic Board from 1987 through 1997 and had been instrumental in setting forth many of the procedures relative to board functions; including the application process, the peer review committees for Chelation therapy, rulemaking, and disciplinary processes. It is with appreciation that the Board and the community recognizes Dr. Ber's many contributions and expresses their sadness at his passing.

**IX. Review, Consideration and Action on Other Business**

1. Financial Report

Mrs. Springer presented information regarding the current board financial report. She indicated that as of June 30, 2014, revenues were \$85,856 and expenditures were \$80,786. The legislative appropriation for FY2014 is 102,100. The current ending cash balance is \$18,782.

**X. Call to the Public**

No members of the public wished to make a statement.

**XI. Future Agenda Items**

Discuss request legislation for the Board to accredit education institutions  
Discuss the ratio of questions reflecting knowledge of the various homeopathic modalities on the written examination  
Annual Meeting and elections  
Appointment of Examination Committee

**XII. Future Meeting Dates**

None

**XIII. Adjournment**

The meeting adjourned at 10:40 a.m. following a motion by Mrs. Gillette. The motion was seconded by Dr. Adler and passed with an 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 September 9, 2014.

Respectfully Submitted,

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Christine Springer  
Executive Director

**Approved by the Board in Regular Meeting on September 9, 2014**