

**STATE OF NEVADA
BOARD OF HOMEOPATHIC MEDICAL EXAMINERS**

MINUTES

ANNUAL BOARD MEETING

DATE OF MEETING: March 6, 2010
TIME OF MEETING: 9:30 a.m. (Pacific Time)
LOCATION OF MEETING: BHME Board Office
1301 Cordone Avenue, Conference Center
Reno, NV 89502

MEMBERS OF THE BOARD AND STAFF: The following persons are either members of the Board or staff, and were present or absent as designated:

Cyrus Pourzan, MD, HMD, Member and President – Present
Robert Eslinger, DO, HMD Member and Vice President – Present
Bruce Fong, DO, HMD, Member and Secretary-Treasurer – Present
Diane Kennedy, Member – Present
KJ Smith, Member – Present
Leticia Gardea, Member – Absent
Nancy Eklof, Executive Director – Present
Colleen Hemmingway, Deputy Attorney General, Counsel to the Board – Present

MEMBERS OF THE PUBLIC:

Daniel Brady, DC
Sangeeta Khade
Thomas Lee, APH
Carol Christian, Gerber Medical Clinic
Tiffany Vanderstokker, NHIMA
Jim Uprighand
Teresa Emerson, Gerber Medical Clinic
Inge Gerber, Gerber Medical Clinic
Michael Gerber, NHIMA
Melissa Koch, APH, Gerber Medical Clinic
Dennis Grover
Martha Boyce

ALSO PRESENT:

Stephanie Ceccarelli (to take Minutes)

- I. **Call to Order/Roll Call/Determination of Quorum/Welcome All Visitors** - President Pourzan called the meeting to order at 9:34 a.m., Pacific Time. Roll call was heard and a quorum of five members was determined.

II. Approval of Today's Agenda

Motion: Bruce Fong moved to approve today's agenda.
Second: KJ Smith
Action: Approved unanimously.

III. Introduction of Applicants

IV. Approval of Applicants to Take Exam

1. Daniel Brady, DC - Member Fong provided a brief history of Dr. Brady's chiropractic background that qualifies him to take the APH Exam.

Motion: Bruce Fong moved to allow Dr. Daniel Brady to take the APH Exam.
Second: Robert Eslinger
Action: Approved unanimously.

2. Sangeeta Khade – Member Fong reviewed Ms. Khade's Homeopathic studies completed in India. He stated Ms. Khade would be applying for the Advanced Practitioner position because she does not hold an M.D. or D.O. license in any U. S. state. Ms. Khade would not be presented with an APH certificate until pre-requisite hours were completed.

Member Kennedy asked how many hours Ms. Khade needed. Member Fong stated he has not kept track of that information.

President Pourzan asked if Member Fong and Ms. Khade had a professional relationship or would have a professional relationship in the future. Member Fong stated that has been discussed.

At this time, Member Fong recused himself and Member Eslinger reviewed Ms. Khade's file.

Member Eslinger asked where courses were completed because grading followed the U.S. grading system. Ms. Khade replied India. Member Fong clarified India's grading system converted to the U.S. grading system.

Member Eslinger asked about the length of the curriculum studied. Ms. Khade replied four years.

President Pourzan asked if Ms. Khade has practiced as a Homeopathic physician and, if so, for how long. Ms. Khade stated she had in India for six months. Member Eslinger noted Ms. Khade also completed an internship.

Motion: Robert Eslinger moved to allow Sangeeta Khade to take the APH Exam.

Member Kennedy noted the motion should also include the stipulation that Ms. Khade would not receive a certificate until the pre-requisite hours were complete.

Amended Motion: Robert Eslinger moved to allow Ms. Sangeeta Khade to take the APH Exam with the stipulation that a certificate is not presented until she completes the pre-requisite hours needed.
Second: KJ Smith
Action: Approved with one abstention from Bruce Fong.

At this time, Member Fong excused himself to administer the APH exam to the applicants.

V. Change in Supervising Physicians

A. Kevin Jenkins, APH from Dr. Fuller Royal to Dr. Dan Royal, Protocol Included

B. Babette Clough, APH New Protocol with Dr. Forsythe and still works with Dr. Cora Ibarra (enclosed)

C. Patricia Pia, HA from Dr. John Diamond to Dr. Bruce Fong

There was no discussion regarding the proposed changes.

Motion: Robert Eslinger moved to approve the changes.
Second: Diane Kennedy
Action: Approved.

VI. Financial Condition of the Board

- **Resignation of Diane Kennedy as Finance Chair, Committee Member and Mylan Hawkins Resignation from the Finance Committee**
- **Review & Discuss Letter from Paul Townsend**
- **Board Response Letter**
- **Governor Requested a Meeting with ED and Board member Diane Kennedy regarding the critical situation of the Board not self supporting and not able to generate enough income to continue operations: (reference docs included herein)**
- **Board Secretary-Treasurer, Bruce Fong, presents a plan to help stabilize the Board's finances and the debt owed to the Attorney General's Office and creating a 501C as an option**

President Pourzan accepted the resignations of Diane Kennedy and Mylan Hawkins from the Finance Committee.

Ms. Eklof reported a meeting was held with the Governor regarding the Board's finances. The Governor was requesting a solidification of the Board's finances and would provide Chief Deputy Stacy Cunningham's assistance with this issue otherwise this Board would be integrated into other Boards.

Member Fong commented that the Board and this community were shrinking. He suggested reciprocity with Arizona, which has the only other active alternative medicine board and creating an informational brochure about the Board to attract unlicensed practitioners. He stated he would initiate a plan to retire the AG Bill by donating to a non-taxable entity.

Member Smith asked how much the AG Bill was. Ms. Eklof stated it was \$126 thousand. Member Smith asked if unlicensed practitioners were unlawful and should be enforced by the state. Member Fong stated that was correct, but the Board did not have the financial resources to enforce. He commented that the Board should be reaching out to provide information that unlicensed practitioners could be licensed under this Board.

President Pourzan asked if letters about joining the Board have been sent to practitioners. Ms. Eklof stated that would be addressed during her Executive Director's Report along with a request to develop a form letter because calls were increasing everyday with reports of doctors practicing homeopathic medicine. President Pourzan asked about the current budget. Ms. Eklof explained, without the AG Bill, the Board pays its bills and has lowered expenses. It was noted Board financing would break even without the pressure of the AG Bill.

Member Eslinger asked how the AG's Office was addressing this issue. Member Kennedy reported the issue has been discussed, but discussion would cease until a payment plan is established to show a good faith effort. Member Eslinger requested clarification that the only basis for integration of this Board into another board is the AG Bill. Ms. Eklof clarified it was, technically, the financial condition of the Board. She added Mr. Townsend addressed the Audit Sub-Committee in December 2008 and the recommendation after the audit of the Board was to allow the Board to reduce the balance due by presenting a claim to the Board of Examiners for recommendations to the Interim Finance Committee if money is needed to pay attorney fees or cost of an investigation or both. In addition, the Board could also request the Attorney General obtain approval from the Board of Examiners to write off the balance due as a bad debt, which the Attorney General's Office is reluctant to do.

It was discussed that no action was needed to be taken on this issue.

Member Kennedy stated the Board finances need to be laid out and a payment plan of regular monthly payments established with the AG's Office. In response to Member Kennedy's request, Ms. Eklof reviewed details of the Bill.

Member Fong asked if the AG's Office would consider establishing a flat fee for service. Ms. Eklof reported State law changed and no longer allows for a flat fee to be established.

President Pourzan recommended keeping this issue at the Finance Committee level with periodic reports to the Board President.

Member Eslinger asked if it was standard practice for a public inquiry to cost the Board. Discussion was heard regarding the freedom of information with administrative costs.

VII. Petition for Declaratory Order – Re: Declaratory Judgment on the legality of D.E.A. certificates for physicians licensed under NRS Chapter 630A (See document included herein) – Member Fong reported Dr. Fuller Royal submitted a Petition for Declaratory Order. He read the following petition into the record:

“Dear Dr. Fong: Executive Secretary, Larry L. Pinson, and General Counsel, Carolyn J. Cramer, of the Nevada Pharmacy Board have refused to provide singly licensed physicians under NRS chapter 630A with permission to obtain a D.E.A. certificate unless such licenses also are licensed under NRS chapters 630 or 633. Please place on the agenda for the next Board meeting the following request for a declaratory judgment:

Question:

Does an allopathic (MD) or osteopathic physician (DO), who has an unrestricted license to practice in a state or territory of the United States other than Nevada and who is in possession of a valid D.E.A. controlled substance registration certificate allowing him to prescribe in that state or territory, have the same rights to prescribe scheduled 2, 2N, 3, 3N, 4, and 5 drugs and medicines if granted a license to practice “homeopathic medicine” under NRS chapter 630A in Nevada?

Background Information:

In 1999, the Executive Secretary of the Nevada Pharmacy Board, Mr. Keith Macdonald, requested an Opinion from the Office of Attorney General: “May a singly licensed homeopathic physician prescribe controlled substances as defined in NRS chapter 453 or dangerous drugs as defined in NRS chapter 454 as “pharmaceutical preparations” within the nontraditional therapies described in revised Homeopathic Board regulation LCB File No. R213-97?”

The Office of Attorney General rendered Opinion 99-06:

“If singly licensed homeopathic physicians find the need to prescribe controlled substances or dangerous drugs as listed within NRS chapters 453 and 454, they should obtain a clear grant of such power through statutory amendments made by the Legislature. To date, *the Legislature has specifically denied such power to singly licensed homeopathic physicians. Revised NAC regulation LCB File No. R213-97 exceeds the scope of delegated statutory authority and is therefore invalid. We believe that our conclusion in Op. Nev. Att’y Gen. No. 93-21 (September 20, 1993), continues to accurately describe the limited ability of singly licensed homeopathic physicians to possess, dispense, and administer controlled substances and dangerous drugs.*” (Emphasis added)

Senator Ann O’Connell requested a Legislative Counsel Bureau (“LCB”) Opinion as to the legality of Attorney General Opinion 99-06. Senator O’Connell asked the following three questions: “(1) whether the Attorney General’s opinion invalidating the regulation is correct; “(2) whether the regulation is effective and valid, and if so, what authority homeopathic physicians possess to prescribe medications, including drugs, controlled substances and dangerous drugs; and “(3) whether the authority to write prescriptions granted by this regulation is in conformity with the intent of the Legislature in enacting A.B. 286. The complexity of these issues make it necessary to provide a significant amount of background information. After providing this information, we will answer each of your questions separately.”

The Legislative Counsel Board rendered “Opinion Re 99-06”:

“It is the opinion of this office that the declaration of the invalidity of R213-97 contained in Attorney General Opinion No. 99-06 is legally null. Only a court of competent jurisdiction may invalidate a regulation and until such a court does so, R213-97, having satisfied all the procedural requirements of the Nevada Administrative Procedure Act, remains in effect and must be presumed to be a valid regulation.

“It is the further opinion of this office that licensed homeopathic physicians may practices all of the therapies defined in R213-97, including chelation therapy and other forms of detoxification by means of intravenous infusion. A reasonable interpretation of the statutes and regulations, currently in effect, including R213-97, establishes that *homeopathic physicians possess the following authority to write prescriptions by virtue of their homeopathic licenses:*

“1. *When practicing traditional or classical homeopathy, they may prescribe, dispense and administer traditional homeopathic remedies as medically appropriate according to the standards applicable to the homeopathic tradition. With respect to the allopathic medications, including controlled substance or dangerous drugs, homeopathic physicians may write prescriptions for a single pill of such substances, but only for the purpose of diluting it and compounding it into a*

homeopathic preparation, only if the allopathic drug is found in the Homeopathic Pharmacopoeia and only if the resulting diluted dosage is in accordance with dosages found in that pharmacopoeia.

“2. When practicing one of the alternative therapies expressly authorized by A.B. 286 and defined in R213-97, homeopathic physicians may prescribe:

“(a) Any controlled substance listed in schedule I, II, III, IV, or V as set forth in chapter 453 of NRS, so long as both administration and dosage are medically appropriate according to the standards applicable to that alternative therapy, except that a homeopathic physician may not prescribe “narcotic drugs and opiates that are listed as schedule II controlled substances pursuant to chapter 453 of NRS, except as those substances may be described for use in the official Homeopathic Pharmacopoeia of the United States.” (R213-97.)

“(b) Any dangerous drug that is defined in chapter 454 of NRS so long as both administration and dosage are medically appropriate according to the standards applicable to that alternative therapy.

“(c) Any other allopathic drug available by prescription so long as both administration and dosage are medically appropriate according to the standards applicable to that alternative therapy.

“Finally, it is the opinion of this office that, in general, the definitions contained in the regulation of the Homeopathic Board, R213-97, do not exceed the Board’s statutory authority and are consistent with legislative intent. However, with respect to the definition of one alternative therapy, orthomolecular medicine, particularly that branch of it that concerns chelation or other forms of detoxification by means of intravenous infusion, there is a significant question whether the regulation is consistent with legislative intent. Nevertheless, in light of the presumption of validity that accompanies every regulation and taking into consideration that the Legislative Commission did not object to the regulation and that the Legislature took no corrective action during the 1999 session, we are inclined to believe that a court of competent jurisdiction would be more likely than not to find the portion of the regulation consistent with legislative intent. In any event, we conclude that such a court would not invalidate the regulation in its entirety.” (Emphasis added)

Enclosed are “seven copies of the petition” in compliance with NAC chapter 630A.240:

1. A petition for a declaratory order or advisory opinion may be filed by a holder of or an applicant for a license or permit to practice homeopathic medicine.

2. The original and seven copies of the petition must be filed with the Secretary-Treasurer of the Board not less than 10 days before the next regularly scheduled meeting of the Board. The Secretary-Treasurer will submit the petition to the Board at that meeting. Within 30 days after the meeting, the Board will issue its declaratory order or advisory opinions. (Emphasis added)

Respectfully yours,

F. Fuller Royal, MD, HMD”

Member Fong stated for the record that he received the petition on January 19, 2010. He stated that, in his opinion, this petition was to prevent singly-licensed physicians from obtaining their DEA certificate, under 630A. However, the legal opinion of the LCB is that the Board has the right to give prescribing rights to these singly-licensed physicians. He stated, for the record, this is not a voted on policy of the Pharmacy Board, but a policy established by the Pharmacy Board’s Executive Director based on opinion and advice of a private counsel.

Member Eslinger asked if there was a specific physician this petition was directed at. Ms. Eklof reported Dr. Flechas was one of the physicians that had been denied.

President Pourzan pointed out the question does not match the petition because the question was addressing an unrestricted valid D.E.A. license. Discussion followed that the current rule is that the Pharmacy Board has to approve a D.E.A. certificate before issued and that the real issue was that the Pharmacy Board now wants to reverse their previous action of allowing prescription rights so legislative language was needed because the Pharmacy Board was overstepping bounds set in statute with regards to action that can be taken by this Board and would place restrictions on this Board in attempting to attract unlicensed practitioners. Member Fong noted Assemblyman Ty Cobb has been contacted and would look into this matter.

Motion: Bruce Fong moved that: 1) the Board pursues legislative change in the statutes to clarify this issue on a more permanent basis and 2) the Board would continue to pursue efforts with Assemblyman Cobb to clarify the issue.

Deputy Attorney General Hemmingway stated it was appropriate for the Board to discuss this issue, but not take any action at this point because no action is described in the Declaratory Order. She noted the Board had thirty days to provide a response.

The motion dies due to the lack of a second.

It was discussed that the best course of action was to address this issue through Assemblyman Cobb because legislative action would need to be required in order to establish more permanent language in statute with regards to this issue.

VIII. Secretary Treasurer’s Report – Member Fong stated this information was presented earlier in the meeting.

IX. Executive Director Report – Ms. Eklof reiterated developing a form letter to address the reports of doctors practicing homeopathic medicine. It was discussed and decided to agendaize this issue for the next meeting. Ms. Eklof reported the University of Nevada’s Medical School invited Homeopathic physicians to attend training on the application of substance abuse technologies. Classes will be held from February through July 2010.

X. Election of Officers

- A. President**
- B. Vice President**
- C. Secretary Treasurer**

Robert Eslinger nominated Bruce Fong as President. KJ Smith seconded the Nomination.

Bruce Fong nominated Robert Eslinger to remain as Vice President and for Diane Kennedy to be Secretary Treasurer. Diane Kennedy did not accept the nomination.

Bruce Fong nominated KJ Smith as Secretary Treasurer. Robert Eslinger seconded Bruce Fong’s Nominations.

Nominations carried unanimously.

At this time, the meeting was turned over to newly-elected President Fong.

XI. Committee Appointments (Committee appointments are made at the pleasure of the President.)

- **Complaint Committee**
- **Education Committee**
- **Fiscal-Finance Committee**
- **Policy & By Laws Committee**
- **NRS & NAC Committee**
- **Development Committee**
- **Executive Committee**

President Elect Fong stated he was proposing a change to committee appointments, which requires a by-law change and distributed information regarding the change for future discussion.

At the request of Member Kennedy, agenda item VI was re-opened.

VI. Financial Condition of the Board (Re-opened) – Member Kennedy noted the Board had the right to a free website through the State, which would save the Board \$400 a year. Ms. Eklof stated she would check into the issue.

At 11:04 a.m., the Board adjourned to allow APH exams to be completed and for a lunch break.

- Motion:** Bruce Fong moved to adjourn the meeting until 12:45 p.m.
- Second:** Robert Eslinger
- Action:** Approved unanimously.

At 1:14 p.m., the meeting reconvened.

XII. Applicants for APH Interview following Completion and Passing of the Written Exam

A. Vote on whether to Proceed in Closed Session

B. Board Oral Interview of the Applicants, Pass/Fail

President Elect Fong stated a 76% was required to pass the APH exam. He reported Dr. Brady scored a 71% and Dr. Khade scored a 62%. He noted Dr. Brady was within the 5% range of the passing requirement, therefore he was entitled to the option of having a personal Board review and oral exam, according to Board policy manual. In response to Board request, Dr. Brady reviewed his protocol with Dr. Schallenberger.

Motion: Bruce Fong moved for the Board to administer an oral exam to Dr. Daniel Brady in order for him to gain the 5% points needed to pass the APH Certification Exam.

Second: Robert Eslinger

Action: Motion carried by a vote of 3 to 2.

Motion: Robert Eslinger moved for the protocol to be re-submitted to Dr. Schallenberger for more specificity prior to granting certification.

Second: EJ Smith

The Board discussed voting on the protocol issue after the oral exam and interview was completed. Member Eslinger withdrew his motion.

At this time, the Board administered an oral exam and interview of Dr. Brady.

XIII. Board Vote on whether to Accept or Reject APH Applicants for Certification – Following the administration of the oral exam and interview of Dr. Brady, the Board discussed and decided Dr. Brady needed more preparation for the exam.

Motion: Bruce Fong moved not to pass Dr. Daniel Brady on the APH Exam.

Second: Robert Eslinger.

Action: Approved unanimously.

President Elect Fong also strongly recommended a review of Dr. Brady's protocol by Dr. Schallenberger.

XIV. Public Comment – There was no public comment.

XV. Announcements

A. Next Board meeting during 2010 – President Fong noted the next meeting would be held in the summer 2010 with a specific date to be announced in the future.

B. Recognition of the Passing of John Diamond – The Board recognized the life and efforts of former Board member John Diamond. Member Eslinger also recognized Ms. Eklof and Member Kennedy's efforts on the Board. President Elect Fong offered his sentiments on the life of John Diamond.

XVI. Adjournment – There being no further business, the meeting adjourned at 1:50 p.m.

Motion: Bruce Fong moved to adjourn the meeting.

Second: Robert Eslinger

Action: Approved unanimously.