

**MINUTES
STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS
ANNUAL BOARD MEETING**

December 9, 2014

This Meeting of the State Board of Orthotics, Prosthetics and Pedorthics (OPP) was held on the above date in the Boardroom, 31st floor of the Riffe Center, 77 South High Street, Columbus, Ohio.

I. Call to Order: The meeting scheduled for and called to order at 12:30 p.m.

Roll Call:

<u>Members present:</u>	Animesh Bhatia, DPM (12:43 arrival); Jason Macedonia, LPO; Robert Reed, consumer; Tammy Daulton, LPED – Board Secretary; Jeff Hagman, LP; Brian Weaver, LPO – Board President;
<u>Members absent:</u>	Bill Neu, LPO
<u>Staff present:</u>	Mark B. Levy, Board Director; Meloney Buehl, Office Assistant; Cheryl Hawkinson, Assistant Attorney General
<u>Guests:</u>	Dianne Farabi, Director Association Management Solutions (2:15 arrival)

II. 12:44 p.m. Agenda – Amend/Approve: The agenda as distributed was briefly reviewed. Director Levy advised that a settlement offer extended to Mr. Kuehn when charges were first issued was returned with a signature two business days prior to the meeting. Mr. Levy suggested the Board may wish to review those terms before proceeding. AAG Hawkinson advised the Board that it could not review settlement terms already offered in Executive Session. AAG Hawkinson advised the Board that should it determine to remove the hearing from the agenda, it could adjourn the Board meeting and discuss the settlement offer under its authority to consider matters in a quasi-judicial capacity even though no adjudicatory hearing was being held. After a brief discussion, a motion to amend the agenda by removing item ***IV – Convene Record Hearing in re: Notice of Opportunity for Hearing issued to Jeffrey T. Kuehn, LP.61 ...*** was made by Weaver, seconded by Hagman and approved by unanimous vote.

III. 12:46 p.m. Review/Approve Minutes of September 9, 2014 meeting: Minutes having previously been circulated, it was moved/seconded by Reed / Bhatia to approve without amendment or correction. No further discussion, vote was unanimous in favor.

IV. Convene Record Hearing in re: Notice of Opportunity for Hearing issued to Jeffrey T. Kuehn, LP.61 – removed from agenda

V. 12:47 p.m. Executive Session [ORC § 121.22(G)] -- Roll Call vote was taken to enter Executive Session at 12:47 p.m. pursuant to ORC Section 121.22 (G), to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; to consider the investigation of charges or complaints against licensees; and to consider matters required to be kept confidential by federal law or regulations or state statutes, with members Bhatia, Daulton, Hagman, Macedonia, Reed, and Weaver present and affirming the motion by Roll Call at 12:47 p.m.

Executive Session ended by consensus at 1:20 p.m. The regular meeting of the Board was reconvened.

VI. 1:20 p.m. Settlements / Charges / Dispositions / Complaints

- A. Notice of Opportunity for Hearing – Updates on three enforcement files stemming from the recent OPPCE audit were brought to the Board for discussion and/or approval.

15 C 01 – James Milner, LPED – The charges cited a failure to complete required Continuing Education to support license renewal and filing false statements in that regard. A Consent Agreement accepting license surrender in lieu of revocation was considered and approved by the Board. Motion to approve the Consent Agreement as presented was made by Reed, seconded by Hagman and approved by unanimous vote at 1:23 p.m.

15 C 03 – Pamela S. Walker, LPED – The charges cited a failure to complete required Continuing Education to support license renewal and filing false statements in that regard. Upon review of Ms. Walker’s file, the Board agreed to withdraw the previously offered settlement agreement and proceed with Goldman Hearing processes if the signed consent agreement is not received by the Board office by close of business by Thursday, December 18, 2014. A motion to proceed as described was made by Hagman, seconded by Bhatia and approved by unanimous vote at 1:25 p.m.

15 C 04 – Jeffrey Kuehn, LP – The charges cited a failure to timely respond to the Board’s requests for OPPCE compliance information. After a brief discussion, a Consent Agreement with licensee’s signature received by the Board on December 5, 2014, was considered and approved by the Board in lieu of the previously scheduled hearing. Motion to approve the Consent Agreement as presented was made by Reed, seconded by Daulton and approved by unanimous vote at 1:27 p.m.

- B. Complaint statuses and tracking – Ms. Buehl was asked to review the status and tracking metrics related to the statistics backing up the charts and graphs presented for the Board’s review. Information is presented as tracked by fiscal year. Relevant charts and graphs are appended to these minutes and incorporated by reference.

It was moved / seconded by Macedonia / Hagman that all cases recommended for closure as well as file 15 C 04 be processed for closure. This was approved by unanimous vote at 1:31 p.m.

VII. 1:31 p.m. Ethics Review

- A. Statewide training opportunities were referenced and reviewed. Board members are encouraged to avail themselves of offerings as their schedules may allow.

1. OEC trainings – schedule distributed - <http://www.ethics.ohio.gov/education/executiveordertraining.shtml>
2. OEC Webinars: <http://www.ethics.ohio.gov/education/webinars.shtml>
3. Auditor of State – Fiduciary Responsibility Webinar - <http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=142395>

- B. Case Study: OIG Report 2013-CA00056 – Ohio State Dental Board – Copies of the report were distributed to the Board either electronically or on paper; the Board discussed how its operations compare to the Dental Board; although the Dental Board is a much larger operation, discussion noted that our processes are similar in nature to those of the Dental Board; noted the thoroughness of the IG investigation even though most allegations were not found to have merit; and that state of Ohio policy limiting the use of state email for personal communications is closely observed by OPP Board staff.
- C. Regulators, medical societies take action after CBS News back surgery investigation (Florida) – Copies of the report were distributed to the Board either electronically or on paper; the information and a brief discussion highlighted the fiduciary/public responsibility nature of the professional disciplinary process assumed by healthcare licensing entities.
- D. Financial Disclosure Statement Annual Process (not on agenda) – The Board was reminded that they will be required to participate in the ethics commission’s annual financial disclosure process and recent changes to the process were discussed.

VIII. 1:39 p.m. Consent Agenda: Director’s Report

- A. Fiscal – Revenue and Expense
Spreadsheet data as presented to the Board is appended.
 - 1. FY13-14 Biennial Audit – Review of formal findings of the Auditor of State, which were in line with previously discussed preliminary findings.
 - 2. FY15 Review & Projections
FY15 Revenue YTD, 153 days (end of November): \$2,021.00
FY15 Expense YTD, 153 days (end of November): \$69,051.32 – noted as slightly high compared with point in fiscal year due to expenses related to audit by Auditor of State
FY15 Unspent: \$95,443.98
 - 3. Minority Business Enterprise (MBE) Spending (15% goal) / EDGE Spending (5% goal)
FY15 Possible MBE/EDGE Spend YTD, 5 months: \$683.09
FY15 Actual MBE Spend YTD, 5 months: \$293.38 (42.95%) – above target
FY15 Actual EDGE Spend YTD, 5 months: \$0 (0%) – below target with additional spending opportunities expected by the end of FY15.
- B. Renewal Processing – It was noted that the annual renewal process went live on 12/1/14 and that, despite updates to internal processing and vendor partners for credit card processing and banking, renewals seem to be operating without issue for the end users. Staff is monitoring closely and may need to update policy and procedure guidance to conform to new system parameters.
- C. Legislative Report
 - 1. Legislative Docket / Tracking – HB 326 status – The Board was updated with information about the bill substance and status. Changes were negotiated in the language to eliminate all new provisions except the addition of the pharmacist licensing chapter to the list of professional license exemptions to

Chapter 4779. The Board withdrew its opposition to the bill, and it is expected to be voted out of committee today on a schedule to allow final passage this session.

D. Administrative Docket

1. ODM – Rule Revisions and statuses – No activity reported.
2. New eLicense Database setup activity – following up on prior progress reports, Mr. Levy advised the Board regarding status of the implementation of a new eLicense system to be rolled out as an enterprise-wide platform configured for individual agency utilization. OPP implementation and roll-out is on hold, and the state appears to be considering alternate vendors to remediate some of the implementation problems.
3. Legislative Ethics filings – Mr. Levy reported on the completion of recent filings (agency lobbyist and agency employer), which are required three times per year.

A short break was taken (1:53 p.m.)

IX. 2:05 p.m. – Pending License Applications/Licenses Issued:

A. It was moved/seconded (Reed / Macedonia) to ratify the approval of recently issued licenses as follows:

Orthotics

- **Laura A. Hodge** – Masters O&P from Eastern Michigan University, Pamela Lupo, LO.77 supervisor, passed exams, CRC results in file
- **Justin D. Fernandez – Temp** – Masters O&P from Eastern Michigan University, Scott Skahan, LPO.113 supervisor, exam results pending, CRC results in file
- **Benjamin H. Hogan – Temp** – Masters O&P from Eastern Michigan University, Jason Macedonia, LPO.240 supervisor, needs approval to sit for exams, CRC results in file – Hagman and Macedonia abstained from vote for ratification
- **Steve Kulifaj** – BA from Lakehead University in Ontario, Canada, Teresa Masters, LPO.302 supervisor, passed exams, CRC results in file – Hagman abstained from vote for ratification

Prosthetics

- **Jacquelyn Greer – Temp** – Masters O&P from University of Pittsburgh, Kyle Yonak, LPO.139 supervisor, needs approval to sit for exams, no CRC required, holds current LO

Prosthetics & Orthotics

- **Sarah R. Stillely – Temp** – Masters O&P from Georgia Institute of Technology, Leo Godlewski, LPO.230 supervisor, passed exams, CRC results in file

Pedorthics

- **Michelle S. Curran** – HS Diploma from North College Hills HS, Pre-Cert through Eneslow Pedorthic Institute (2005), Steven C. Todd, LO.140 (deceased) supervisor, passed exams, CRC results in file – Hagman abstained from vote for ratification

Vote to ratify was unanimous with abstentions as noted above.

IX. 2:08 p.m. – Old Business

- A. Board Continuity
 - 1. Mr. Neu (O&P Practitioner) and Mr. Reed’s (consumer) positions opened 12/6/2014. Members are greatly encouraged to consider colleagues who may be interested and to assist in recruitment efforts.
 - 2. Mr. Macedonia’s term also expired 12/6/2014 and is subject to possible re-appointment.
 - 3. With the loss of the above-mentioned Board members, it will be imperative that all remaining members are present at meetings until such time as the Governor appoints additional members in order to meet quorum requirements.

- B. Social Media Update – Ms. Buehl was asked to review the status and tracking metrics related to the statistics backing up the charts and graphs presented for the Board’s review. Information is presented as tracked by month. Relevant charts and graphs are appended to these minutes and incorporated by reference.

- C. 5-Year Rule Review – Proposed language was circulated electronically or on paper and reviewed by the Board.
 - 1. Review proposed language and BIA. Director Levy stepped the Board through the four (4) rules actions proposed: Elimination (rescission) of rules governing administrative hearings; Retention (no change) of rules governing handling and access to confidential personal information; Amendment of language regarding license renewal to clarify that license suspension may only occur pursuant to standard due process protocols; and Replacement (rescind and propose new) language for the Fee rule, providing authority to the Board to set fees within a defined range with enhanced revenue capture opportunities.

 - 2. Consideration of any feedback or comments. Director Levy reported there was no feedback nor comments provided to the Board since the formal request for stakeholder feedback was issued and disseminated. Dianne Farabi, Director of the Ohio O&P Association, reported issuing a brief survey that yielded responses from less than 10% of recipients, those responses evenly divided between opposition to and support for a fee increase, although negative comments were worded more strongly than positive ones. Other than fees, another common concern noted was the lack of congruence between CE requirements imposed by national credentialing partners vs. state of Ohio standards. AAG Hawkinson inquired as to the Board’s authority to promulgate the fee rule with a lack of specificity regarding fees. Director Levy pointed to the Board’s general authority to promulgate rules including those on fees in RC 4779.08, and noted that the language is modeled on another agency’s rule provision which has withstood CSI/BIA and JCARR scrutiny.

 - 3. Consider Motions to amend and/or approve language, proceed with formal filing. AAG Hawkinson suggested adding “per violation” language to proposed new rule 4779-12-01 (R), so that it reads: “The fine for violation of any provision of RC Chapter 4779 shall not exceed five hundred dollars per violation.” There were no other motions or proposals for specific changes. It was moved / seconded by Reed / Weaver and approved unanimously to include the language “any rule promulgated

thereunder... shall not exceed \$500 per violation” in rule 4779-12-01 (R). Further, it was moved / seconded by Weaver / Hagman to approve the language as submitted including the noted change and proceed with formal filing after addressing any concerns raised by the Office of the Common Sense Initiative. The motion to approve the language as currently proposed and proceed to formal filing consistent with the CSI process was approved by unanimous vote.

- D. Health Professions Data Warehouse Project MOU – The broad question presented is whether the Board staff should continue efforts to seek the inclusion of O&P providers in the data collection / data warehouse project that is seen as the foundational basis for healthcare resource planning on the state level for years to come. The project is primarily focused on mainstream direct care providers, such as doctors, dental providers, nurses, psychologists, counselors, social workers, physical therapists. The particular question is whether the Board should sign off on a Memorandum of Understanding regarding data sharing within the project. A draft inventory of questions proposed to be included in license application and/or renewal processes was provided to give substance to the general policy question. To the extent that the profession wants to be recognized as full partners in hands-on consumer healthcare delivery, the profession should want to “be in the data.” However, getting to inclusion may impose a substantial burden on the Board, staff and its licensees. AAG Hawkinson suggested the topic is not ripe for Board action at this time as the MOU in question is still undergoing revision and discussion within the OAG/HHS division. While the topic was only briefly discussed, the sense of the Board was that staff should continue to remain engaged with this process.
- E. Customer Service Standards – Standard operating procedures relating to the Board’s customer service standards were circulated to the Board electronically and on paper. It was moved / seconded by Reed / Weaver that the standards as currently listed be formally adopted as presented; motion was approved by unanimous vote.
- F. 2014 OPPCE Teaching Activity Approval – Mr. Levy presented to the Board a request for teaching credit toward OPPCE as submitted by a licensee during the 2014 OPPCE audit. It was noted that the request meets the standards required in the statute, and that the Board has not promulgated rule language that would further define or limit the allowance. Motion to approve the credit allowance requested was made / seconded by Daulton/ Reed. After a brief discussion, the Board voted unanimously to approve the current application, but also directed staff to recommend rule language that would limit such allowances in a manner that is consistent with policies of national O&P credentialing organizations.
- G. Credit Card Processing Class Action Participation (not on agenda) – Ms. Hawkinson requested that the Board consider participation in a class action suit that we had previously opted out of at the recommendation of the anti-trust section of the OAG. After a brief discussion revealing that the lawsuit concerns pass-through credit card convenience fees; that this Board has never assessed a charge for credit card processing fees; and considering the level of effort required to participate should the Board choose to opt-in, it was motioned / seconded by Weaver / Macedonia and approved unanimously to remain opted out of the class action suit.

X. 3:00 p.m. – New Business

- A. 2015 Board Meeting Schedule – Based on availability of the Board members whose seats will remain active in 2015, the following dates were moved / seconded by Bhatia / Daulton and approved unanimously with Mr. Reed abstaining from the vote:

March 3, 2015 – 12:30 p.m. – Riffe 31st Floor Boardroom
June 9, 2015 – 12:30 p.m. – Riffe 31st Floor Boardroom
September 15, 2015 – 12:30 p.m. – Riffe 31st Floor, East B
December 8, 2015 – 12:30 p.m. – Riffe 31st Floor, Boardroom

- B. Cultural Competency – Mr. Levy introduced this topic by referencing the action the Board took earlier this year to add a component to its Mission Statement which reads: *“Take positive steps to increase access to care, workforce diversity and cultural competence in the orthotic, prosthetic and pedorthic care community.”* The Board was asked to consider what steps it would take or recommend to further this goal. Initial discussion suggested a need for further educational outreach if the Board was intent on achieving these policy goals. One member observed that “plenty of diversity” is seen at national meetings of the provider community. Questions were raised as to whether cultural competence is actually a deficit within the O&P provider and consumer communities.

Director Levy suggested three particular points that could be pursued programmatically based on Board preference and direction: (1) Outreach to find and approve providers of Continuing Education content on cultural competence in healthcare delivery; (2) Support mandatory legislative initiatives to impose cultural competency training as required content in continuing education compliance for licensees; and (3) Encourage national credentialing partners to emphasize cultural competence as an element of professional competence and required learning in the professions.

No motion was made, but discussion indicated Board consensus to encourage staff to pursue options under (B)(1) and (B)(3) above only.

- C. Pedorthist Training for AFO competence – Mr. Levy introduced the subject as one he feels is important for the Board to address going forward especially in light of the possibility that the Board may need to embrace registration of therapeutic shoe fitters. It is understood to be a controversial subject in Ohio as O&P leadership has suggested the current educational protocols for pedorthists do not include adequate learning and training in the biomechanics behind or application of AFO devices. It was noted however that both ABC and BOC scopes of practice make some allowance for pedorthists to fit certain AFO devices in certain circumstances. Ms. Daulton agreed to form and head a workgroup of other CPED and orthotic professionals in and out of Ohio and return to the Board in March with information and/or recommendations regarding education and testing standards.
- D. Consider Committee Structure -- Director Levy asked the Board to consider whether members felt processes would be more efficient and constructive if we adopted and maintained a clear subject matter committee structure, for example to address (1) rules, (2) budget, (3) enforcement. Opened for discussion, the sentiment expressed was that the Board is too small for an effective committee mechanism – that they would become committees of one person each. No motion was made.
- E. OPPCE Policies –
1. Standard letters used during the annual audit of OPPCE were reviewed and discussed by the Board and AAG, language was deemed generally acceptable.

2. Credential advancement and CE accrual "clock." Staff reported that historically, we have tried to maintain OPPCE accountability for licensees "graduating" a credential from single to dual profession to assure CE reporting for the first credential earned. However, absent a change in statutory language and with the planning for a more automated licensing system, the business rule that sets OPPCE reporting to coincide with the fourth renewal of a license issued per statutory requirements will likely result effectively in an OPPCE accounting waiver for the prior license. OPPCE reporting will occur in relation to the most recent license first issuance. Opened for discussion, no objection was made to this administrative interpretation of policy set by statute.

3. Board members were asked to consider whether the Board might wish to adopt any guidance or guidelines on progressive discipline, and whether there are any other steps we can offer or do after OPPCE Remediation is not an option for an individual licensee. No discussion, no motion.

XI. 4:00 p.m. – Adjournment

Motion by Reed / Macedonia, passed unanimously without discussion.

Respectfully submitted,

Mark Levy

Mark B. Levy
Board Director

Brian M. Weaver

Brian M. Weaver
President

3/3/15

Date