

State Board of Orthotics, Prosthetics, and Pedorthics



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JOHN R. KASICH, GOVERNOR
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STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS
appearing before
THE FINANCE SUBCOMMITTEE ON EDUCATION FUNDING K-12
of the
HOUSE FINANCE AND APPROPRIATIONS COMMITTEE

WEDNESDAY, FEBRUARY 20, 2013

Chairman Hayes, Members of the Committee, thank you for the opportunity to appear before you today. My name is Mark Levy, and I have enjoyed the honor and challenge to serve as Director of the State Board of Orthotics, Prosthetics and Pedorthics, since July of 2002. I am testifying in support of the Executive Budget Recommendation for this agency.

The State Board of Orthotics, Prosthetics and Pedorthics was established as a Professional and Occupational Licensing Board by enactment of the 123rd General Assembly. The Board's purpose is to assure the competence of persons providing custom fabrication and fitting services as:

- Orthotists (medical bracing specialists, scope of practice includes Pedorthics)
- Prosthetists (artificial limb design and customizing experts) and
- Pedorthists (fitting diabetic therapeutic shoes, footwear customized to address foot abnormalities and injuries, and specialized below-the-ankle bracing)

The Board when fully populated consists of seven (7) members -- five (5) practitioners in Orthotics, Prosthetics and/or Pedorthics; one (1) M.D., D.O., or D.P.M. as licensed by the Medical Board; and one (1) consumer member -- all serving without compensation in accordance with the terms of ORC Chapter 4779. The Board is self-sustaining, in that the license application and renewal fees that are assessed and collected from its constituent licensees have historically provided all the funds necessary to support the Board's operations.

(Continued ...)

Challenge and Response

Over the past biennium, the Board has met a number of challenges and continues to benefit from the close cooperation, shared knowledge and efforts to implement best practices among the Boards and Commissions group. Among those challenges:

- Pressure from increasing revenue recapture assessments from partner state of Ohio agencies. Examples are Auditor of State Biennial Audit fees, not previously charged against Board and Commission budgets before the last biennium, as well as revised and exponentially higher fees charged by State of Ohio IT services for basic services such as internet and network connectivity.
 - These internal state of Ohio assessments impose a disproportionate burden on small agency operations in that they demand a higher percentage of budgetary allocations compared to the impact on a larger agency, and the Board appreciates the Governor's and the General Assembly's understanding of this organizational dynamic.
- Fielding and investigating reports of unlicensed practice and unsafe dispensation of reimbursement-limited pedorthic and orthotic devices.
 - The Board has toned up its logging and tracking of complaint and enforcement-related activity.
 - We are including as an appendix to this testimony some performance measures illustrating an upward trend in complaint tracking and processing, and a downward trend in both open case statuses and complaint open-to-close timelines. For example, of the 20 open cases on our FY13 docket, 7 have been closed in less than 100 days after initiation.
- Continuing and strengthening strategies to address overutilization of publicly-funded services and the limitation or elimination of unlicensed service delivery.
 - We actively foster a working partnership with ODJFS/Medicaid policy staff in reviewing administrative protocols and reimbursement policies to assure that Ohio consumers benefit from delivery of services by appropriately licensed personnel, and that Ohio taxpayers' funds are utilized effectively and legally;

In addition, Board staff continues to work within the Board and Commission Management consortium to identify, capture and improve opportunities for cost savings and operational efficiencies to mitigate these pressures and free up resources to pursue the Board's statutory mission.

Ohio a Trendsetter in Orthotics, Prosthetics, and Pedorthics

Ohio is one of only fourteen (14) states currently requiring licensure in Orthotics and Prosthetics; fewer require licensure in Pedorthics. Although the trend is toward requiring licensure, challenges in the enforcement realm are significant. We have had some success in leveraging federal CMS policy regulating the dispensation of services grouped globally under the “DMEPOS” schedule (Durable Medical Equipment, Prosthetic and Orthotic Supplies) to further articulate and enforce Ohio licensing standards. We continue to seek and foster cooperative relationships with regulatory partners at the state and federal level.

In addition, major players in the O&P field have operations based in Ohio.

- PEL Supply in the Northeast is a major manufacturer/distributor of O&P devices and components;
- ACOR in Cuyahoga County is a leading provider of therapeutic footwear;
- Willow Wood in Central Ohio traces its origins as a manufacturer and provider of prosthetic care and devices back over 100 years and supplies local providers nationally and internationally;
- Hanger Clinic (fka Hanger Prosthetics and Orthotics), a national publicly-held corporation, has facilities statewide.
- Yanke Bionics is a major regional provider in the Northeast, Central and East Central parts of the state;
- American Orthopedics is a regional presence in Central and West Central Ohio.
- Touch Bionics, a high-end prosthetic provider specializing in advanced interactive limb componentry, located its headquarters in Central Ohio with assistance of state tax incentives a few years ago.
- Smaller providers and some “mom and pop shops” add variety, character and depth to O&P service distribution and consumer choice.

Public Policy Disconnects

However, there is a policy gap evidenced in the manner in which O&P services are regulated by CMS and by extension Medicaid and other third-party payers, exacerbated by the accounting and accountability standards that accompany the regulatory framework. This gap is fostered by the continuing inclusion of Orthotic and Prosthetic consumer care specialists – whose education and training orient them toward a clinical service delivery model and outcome-based objectives – within the realm of Durable Medical Equipment (DMEPOS) generally.

Whereas most DME suppliers (generally not consider “providers”) are medical device merchants and salespeople, O&P Practitioners engage in consultative, consumer/patient-focused device specialization and customization. They are being squeezed between market forces and regulatory measures that seek to lower the cost of service delivery without recognizing the professional time and intimate involvement with patient care in which these rehabilitation professionals engage on a daily basis.

For a healthcare system that seeks to maximize outcome-based results, the current model is dysfunctional, almost forcing the field toward lowering short-term costs at the expense of long-term results and positive patient outcomes.

Ohio Dollars Flow Out-of-State

Out of state suppliers are taking advantage of federal accreditation of their home state operations, but seeking to extend their reach far beyond their own state borders – and taking Ohio taxpayers’ money, both from Medicare and Medicaid sources -- with them back to their home states. They are profiting unreasonably at the public’s expense by focusing sales on relatively high dollar reimburseable items that can be delivered or drop-shipped to consumers with little or no professional intervention, and no effective continuing care obligation.

This is occurring even though the reimbursement amounts allowed for those devices, based on calculations performed several years ago, appear to have been designed precisely to allow for the kind of professional time spent to provide a device that is individually appropriate for the intended consumer.

Beyond this Biennium Budget

Although your time today is reserved for consideration of the immediate budget provisions in front of you which must be resolved in the next few weeks and months, I would ask you to keep these dynamics in mind as the legislative session progresses. The Practice Act authorizing this agency’s operations and establishing licensure in these fields is twelve (12) years old and in need of revision. We are working on a proposal with an identified sponsor in the Senate and will be seeking other legislative partners as well to make the Ohio provisions more sensible in the broader perspective and to close the gaps in licensure that make enforcement by cooperative compliance planning elusive and often simply not possible. Among the goals of the proposed revision are the following:

Objective #1 – driven by an upgrade in national credentialing standards for education programs embraced by the major national credentialing organizations in the field, substantive revision to requirements for licensure for Orthotic and Prosthetic Practitioners.

- At the same time, expand the scope of licensing to fill the gaps between licensing and private credentialing (to provide for assistants and fitters), and revise scope of practice definitions to conform to reimbursement models expected from the federal level in the coming years.

Objective #2 -- Clean up “program requirements” language in the statute that seek to approximate details of private sector-developed educational standards. Defer to national standards where they exist whenever reasonably possible.

Objective #3 -- Subpoena power for investigation of complaints of unlicensed practice. The current allowance only gives the Board the ability to subpoena records on the basis of a complaint regarding a licensee or applicant. Unlicensed practice is not a basis under current language to issue a subpoena; at the same time, provide for complaint investigation confidentiality.

Objective #4 – “Agree” Continuing Education requirements to the requirements of national credentialing agencies; provide for an “Inactive License” status for retiring licensees, those moving out of state, or those who need to take a leave of absence and who may want to maintain a “right of return.” These are all housekeeping provisions requested by our licensed stakeholder constituency and would provide reasonable solutions to regulatory conflicts.

Small constituency, large footprint

Although the number of licensees under the Board’s jurisdiction may appear small, their impact on the delivery of healthcare services to Ohio’s consumer population is significant, and their place in Ohio’s economy substantial. For example, data from ODJFS for Ohio’s FY12, Orthotic and Prosthetic services were reimbursed on a fee for service basis and in managed care for a total allowed amount of over \$11 million. While not all these services may be attributed to OPP Board licensees, the Board understands the role it plays in defining and refining regulatory language to assure consumers are receiving appropriate and effective services provided by qualified personnel, and is engaged in effective partnerships with other public and private entities toward these goals.

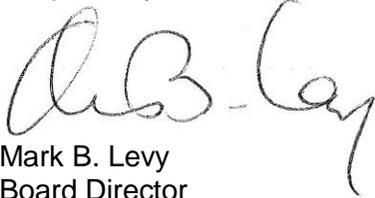
Stakeholders Represent Ohio’s Best

This Board’s licensees exemplify two driving forces of Ohio’s dynamic economy: (1) dynamic small businesses (2) providing vital services in the healthcare field at the leading edge of technology. They employ business models that range from nationally franchised facilities of a publicly-held corporation; locally-owned, regionally-focused, multiple-location enterprises; as well as some “mom and pop” type local providers.

Practitioners and owners exemplify as well both a fiercely entrepreneurial and competitive edge, and the hallmarks of inventors, craftspeople, and hands-on caregivers focused on delivery of life-enhancing, rehabilitative services to Ohio workers and consumers.

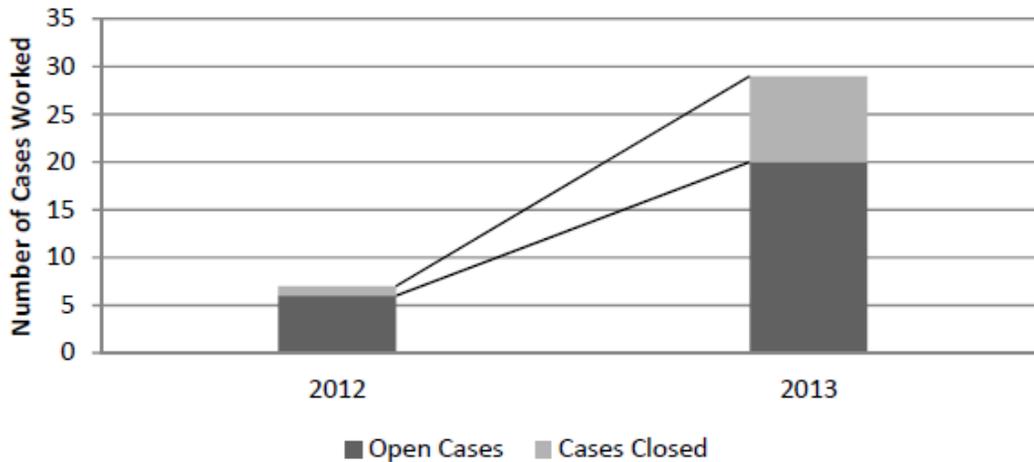
Thank you for your time and careful consideration. I would be happy to respond to any inquiries the Committee may have.

Respectfully submitted,

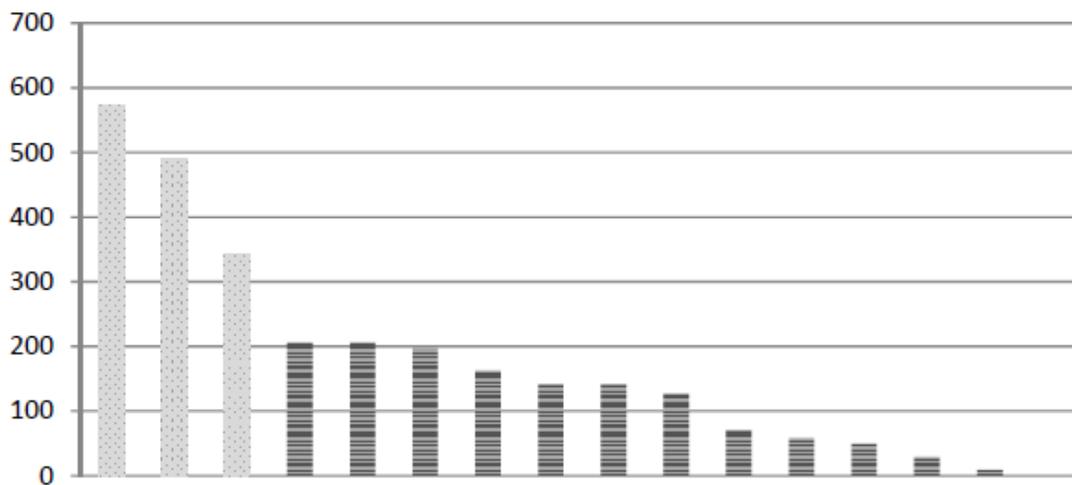
A handwritten signature in black ink that reads "Mark B. Levy". The signature is written in a cursive, flowing style.

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2012 - 2013 Case Comparison (as of 1/31/13)



Age of Open Cases, FY12-Current (Days)



FY13 Case Age (Days)

