

**MINUTES**  
**STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS**  
**DECEMBER 2016 BOARD MEETING – postponed**

**Held JANUARY 19, 2016**

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

**REGULAR BOARD MEETING**

**I. Call to Order:** The meeting scheduled for 12:30 p.m. was called to order at 12:45 p.m.

**Roll Call:**

<b><u>Members present:</u></b>	Jason Macedonia, LPO Brian Weaver, LPO – Board President Tammy Daulton, LPED – Board Secretary Jeff Hagman, LP
<b><u>Members absent:</u></b>	Animesh Bhatia, DPM (per prior notice/conflict) Two seats vacant pending appointments
<b><u>Staff present:</u></b>	Mark B. Levy, Board Director Shelley Bango, Office Assistant Steve Kochheiser, Assistant Attorney General
<b><u>Guests:</u></b>	None

**II. Agenda – Amend/Approve:** Mr. Levy pointed out changes made to the agenda as distributed today, mostly a re-ordering of business previously listed. Agenda approved by unanimous consent.

**III. Review/Approve Minutes of September 22, 2015, meeting:** Minutes having previously been circulated, it was moved/seconded by Hagman/Daulton to approve without amendment or correction. No further discussion, vote was unanimous in favor.

**IV. Executive Session [ORC § 121.22(G)] -- (12:50 P.M.)** The regular meeting having been convened, it was moved/seconded by Macedonia/Daulton to enter Executive Session 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. Roll Call vote was taken with Daulton, Hagman, Macedonia, and Weaver affirming the motion. Executive Session ended and the public meeting reconvened.

**V. 1:05 p.m. Settlements / Charges / Dispositions / Complaints**

- A. Notices of Opportunity for Hearing – None reported
- B. Consent Agreements for Consideration – None reported
- C. OPPCE Remediation – Staff reported two licensees submitted appropriate worksheets requesting to utilize the OPPCE Remediation one-time allowance provided for in OAC Agency Rule 4779-9-03. Director Levy requested approval of the agreements allowing the subjects to “catch up” their minimum

requirements by the end of January without incurring a penalty. Approved by unanimous consent as to Mark Graham, LPO.315, and Mark Clary, LPO.238.

D. Complaint statuses and tracking

No report.

**VI. 1:10 p.m. Licensing Report/ratification**

A. It was moved/seconded by Hagman/Weaver to ratify approval of licenses issued since the last meeting as listed in the report. Mr. Macedonia abstained as to licensee Dinneen. Vote was unanimous otherwise.

Name	License Type	Credential	Expiration Date	First Issue Date
Sarris, Kelsey E	Licensed Prosthetist	LP 314-3	1/31/2018	11/3/2015
Dinneen, Molly Nicole	Orthotist - Temporary	LP 309-TEMP	10/13/2016	10/13/2015
Fernandez, Justin D.	Licensed Orthotist	LO 322-3	1/31/2017	9/29/2015
Lemons, Mallory Lynne	Prosthetist-Orthotist - Temporary	LPD 323-TEMP	12/10/2016	12/10/2015
Lutz, Amy Catherine	Licensed Prosthetist	LP 322-1	1/31/2017	1/14/2016
Reeling, Danica	Licensed Orthotist	LO 326-3	1/31/2018	10/13/2015
Rivers, Shandy Lynn	Licensed Orthotist	LO 321-1	1/31/2017	1/14/2016
Spill, Ryan Patrick	Licensed Prosthetist	LP 321-3	1/31/2018	10/19/2015
Stevens, Andrew David	Orthotist - Temporary	LO 308-TEMP	10/13/2016	10/13/2015
Underwood, Jennifer Louise	Licensed Pedorthist	LPED 243-1	1/31/2017	1/14/2016
Woody, Thelma	Licensed Pedorthist	LPED 242-3	1/31/2017	10/19/2015

11 Items Found

**VII. 1:15 pm Administrative Docket**

1. ODM – Rule Revisions and statuses – OAC 5160-10-20 – **Orthotic Devices, Prosthetic Devices, and Related Services – public hearing date 12/28/2015**

Mr. Levy walked the Board through the input provided to Ohio Dept of Medicaid (ODM) for its update of the O&P Covered Services Rule. As a result of the Board’s input, language tying provider qualifications to the “criteria set forth” in Chapter 4779 was enhanced/retained, and technical language relative to preparatory prosthesis documentation was accepted as more closely conforming to familiar regulatory usage and requirements: “Repairs, adjustments, or modifications that are made within ninety days after delivery, unless necessitated by major changes in the recipient’s **physiological** condition **or functional need; or ...**”

2. New eLicense Database setup activity – **OPP GO LIVE JUNE/JULY 2016** – Brief status report was provided; OPP is now on a release schedule requiring intensive time commitments to assure the platform is configured optimally for OPP Board licensee and agency utilization.

3. **Workforce Planning – report submitted and distributed** – no new information to report.

Mr. Levy led the Board through a review of the current Rule Review agenda/inventory, noting a number of items of “housekeeping” character, whether correcting typographical errors or updating information to prepare for the capabilities of an all-online license application and processing system (State of Ohio eLicense 3.0). Feedback and input received from stakeholders was noted, and **certain items were highlighted\*** if the suggested changes indicated a change in policy or shift of organizational priority.

1. Review Rule Text and BIA Statements – AMEND OR RESCIND/NEW

4779-2-03 – Board Records -- amending language was written to maintain current documentation requirements but also allows for the adoption of “best practices” protocols to promote effective eLicense system implementation, thus adding an allowance for name-change documentation that “meets any documentation standards established as best practices for administration of the eLicense database system maintained for the board by the department of administrative service division of information technology. ...”

4779-3-01 – Definitions -- amending language clarifies that a Temporary license may only be renewed one time; and that current status is best determined not by reference to hard copy documents but by reference to online license verification functionality at the Board’s website.

4779-3-02 – Device-Related and Scope of Practice Definitions – amending language expands the understanding of “accommodative” as a term that may be applied both to OTS and custom fit/fab dispensation; updates the lengthy delineation of Custom Fabricated device design characteristics, originally borrowed from DMEPOS Quality Standards Appendix C language, to clarify that 3D printing/design is an appropriate fabrication technique within the scope of practice of O&P practitioners; and re-orientes the definition of “minimal fitting” as used in RC 4779.01 away from providing a distinction from the federal “minimal self-adjustment” to more closely align with the federal standard for OTS devices dispensed “as-is” with no customization.

4779-5-01 – The Examinations – amending language expands the scope of practitioners in Pedorthics to allow entrance to those who have passed the “BOC” pedorthic certification exam, noting the Board has determined there is general consensus that the educational and testing standards governing the BOC administration for Pedorthics is functionally equivalent to the ABC regimen.

4779-5-02 – Admission to Exam -- amending language establishes a limit to serial issuance of Temporary licenses, which the Board understands as a credential meant to be held for a short period of time while other licensing requirements are completed.

4779-5-03 – License Application Procedure -- amending language represents: (a) minor housekeeping changes to keep language consistent with other changes being made in related rules; (b) to anticipate changes that will be put in place with the onboarding of the new eLicense platform; and (c) to clarify that the limited reciprocity licensing track prescribed by Section 4779.17 of the Revised Code provides a waiver of the Ohio-licensed supervision requirement.

4779-7-01 – License Documents -- These changes are all focused on the enhancements available in the new eLicense platform and to clarify that the Board has discontinued issuance of annual license renewal wallet ID cards. License renewal cards are only reliably accurate as to status on the day they are printed; real time online license verification is available through the eLicense Center license lookup function.

4779-10-01 – Ethical and Professional Conduct -- Language is being added to clarify that cooperation with a Board investigation is a matter of professional conduct subject to enforcement action. The phrase “unless otherwise ordered by a court” was added at the suggestion of AAG Kochheiser, thus the new language to the rule will read:

*“(M) A license holder, or an applicant for licensure, shall provide a written response within a reasonable period of time not to exceed thirty days to any written inquiry regarding compliance with law or rule received from the board. A licensee or an applicant for licensure may not withhold or refuse to provide copies of any records requested by the board or its representative, unless otherwise ordered by a court.”*

2. The Board conducted a brief review of the NO CHANGE rules for concurrence

4779-2-01 -- Board Organization  
4779-2-02 – Personnel  
4779-4-02 – Certificate Program Requirements

Called for discussion. Mr. Levy requested a **motion to approve proceeding with the package**, filing the Business Impact Analysis with the CSI office, and continuing with the rule filing process contingent upon appropriate review and approval of the package by the Office of the Common Sense Initiative. **Daulton so moved, seconded by Weaver, approved unanimously.**

The Board took a five-minute break.

IX. 2:00 pm – Financial Reporting

Fiscal activity through the end of November 2016 was reviewed, written report as provided is appended to these minutes. The following items were noted:

- A. **FY16 -- \$176,950 -- Budget appropriation**
  1. Performance YTD – within projected parameters. There are some challenges presented by changes in DAS/IT services rates, with credits/allowances provided for items that will show substantial increases in the next budget and budget formulating periods. Newer vendors for certain financial services are apparently experiencing difficulty conforming billing practices to state of Ohio requirements, resulting in disparities between expectations and expenses booked.
  2. OBM supplemental appropriation – contract and exempt parity – this item will be reported on more fully at the next meeting. Since the state’s contracts with its employees’ unions concluded negotiation after the budget bill was finalized, allowances were made for upward adjustments to accommodate union raises and parity increases for exempt staff.
  3. IT Assessment – equipment acquisition – An assessment of OPP computer equipment and software utilization was conducted to determine compatibility with the state of Ohio’s “enterprise image standard.” Conclusion generally is that systems need upgraded to higher level encryption and processing standards to realize the full benefit of IT Optimization and maintain appropriate security standards. Desktop systems

over three years old are all considered older generation needing upgrade. Purchase and system upgrading will likely occur before the end of the current fiscal year; Board leadership will be consulted to assure appropriate oversight for the process.

4. Budget impacts and projection – projections showing performance against budget line items indicate we may end the year with a surplus, so staff will seek to realize as much known expense obligations as possible in the current fiscal year (audit, computer upgrades) where deferral to FY17 was being considered. Mr. Levy reported that he may consider contracting for limited investigative services to assist in complaint backlog processing.

X. 2:10 pm -- Legislative Report

A. Tracking report – deferred

B. HB213 – 2-year License Renewal – testimony submitted 11.17.2015 – there has been no further activity on this bill since the November hearing.

C. SB194 – Alternative Healthcare Practitioners – a broad array of trade associations representing licensed allied healthcare interests have formed a coalition to oppose the measure; O&P Association has been solicited for involvement. We are tracking the bill and may offer testimony to limit allowances for alternative health care providers to engage in services “include(ing) but not limited to ... non-invasive instrumentalities” as regards custom fabricated or custom fitted O&P devices.

D. HB276 – Chiropractors Scope of Practice / DME—legislation introduced and heard in committee seeks a broad authorization for Chiropractors of offer a wide range of health and nutrition and device and supply services. OPP board is tracking and urging the O&P Association to enter an appearance to address any practitioner concerns.

E. SB90 – Healthcare ID – the bill which lacks a large stable of legislative sponsors seeks to require that healthcare professionals encountered in a variety of settings be clearly identified as to their licensed status by worn photo identification.

XI. 2:30 pm - Old Business

A. Board Continuity

1. Two seats open – pending Governor’s action – applications submitted

a. Consumer Member (term began 12/6/2014)

b. O&P Practitioner (term began 12/6/2014)

2. Terms ending and up for appointment/re-appointment 12/6/2015:

a. Animesh Bhatia, DPM (Medical Board licensee member) [not seeking re-appointment]

b. Members Daulton and Weaver have been re-appointed to terms ending 12/06/2018.

XII. 2:35 pm New Business

A. NCOPE changes regarding educational standard setting (9.21.15 statement)

Mr. Levy asked members to take notice of announcements from NCOPE and ABC that NCOPE will be abandoning its program as to fitter education, focusing exclusively on “higher learning and education” and will “only participate in post-secondary level accreditation,” and that ABC is picking up the fitter-related tasks. The NCOPE

statement suggests the organization will still seek to guide curriculum course content for those institutions offering Associate Degree programs, and that they are on track for drafting Pedorthic level education standards targeting a minimum of an Associates degree under a 2016-2017 time frame.

B. Licensing policy –

1. Would a “unified” OPP license with 3 specialty endorsement options meet statutory requirements and professional practice allowances?
2. Could we assess a fee per endorsement type for renewal, and would a fee assessment for two “endorsements” for LPO holders violate statutory language?

Mr. Levy explained that these issues are being raised due to the convergence of our work to migrate eLicense processing to a new platform with more opportunities for automation and stakeholder self-service, as well as the prospect of another fee increase to balance agency expense and revenue dollars.

As to an OPP license with specialty endorsements, it was noted that all three specialty practice areas have pedorthics in their scope. One of the administrative problems with the current protocol is that many O&P practitioners begin with either orthotics or prosthetics, then add the other specialty. A unified license with specialty endorsements might allow progression without requiring re-submission of “requirements documents” repetitively, and maintenance of a single license number identifier upon attainment of the additional endorsement.

Such a scenario might inform a different approach to fee assessment as well. Although most licensing arrangements suggest a common fee per license type issuance/renewal across an agency’s licensing spectrum, there is an argument to be made that the market value of the specialty designations is lowest for Pedorthics, and that Orthotics and Prosthetics each add additional value. Mr. Levy stated he would work to prepare for the next meeting with funding formulas that offer the opportunity to model how revenue generation would be impacted by specialty-type fee assessments.

C. Personnel Matters (at discretion of the Board) – no discussion.

D. 2016 meeting dates – proposed:

~~March 15; June 14;~~ APRIL 12; September 13; December 13 (Tuesdays)

Given the problems scheduling the December 2015 meeting, Mr. Levy requested the Board consider only holding 3 more meetings in 2016, moving the March meeting to April. There was no objection to the proposal; discussion focused on whether to keep the meetings on Tuesdays, and the time of day to meet. Mr. Hagman suggested a 10:00 AM start time would be more conducive to accommodating business needs, especially for any member traveling for two hours or more each way. There was no objection to the proposal, agreement by unanimous consent was noted, and the above-noted schedule was approved.

E. FY2017 FEE INCREASE – Agenda Item for Consideration Next Meeting

Mr. Levy noted that the new fee rule requires any proposed fee increase to be posted to the website at least 60 days before becoming effective, and that the Board should consider FY16 revenue figures to determine if any further fee adjustments are necessary or indicated.

XIII. 3:15 pm – Ethics Review

A. Statewide training opportunities

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 file 2015-CA00039 – State Employee-outside employment on state time  
OIG report was distributed in advance of the meeting, and Mr. Levy reviewed the basic details. An administrator with the Ohio Department of Medicaid submitted a personal service contract bid with another state agency offering services related to the subject matter she addressed as an employee of ODM. Investigative findings indicated that not only was the solicitation of business with another state agency a violation of HR policy, but that the subject of the investigation also utilized business tools at the ODM workplace in furtherance of the contracting initiative. Several work rule and policy violations were found, the subject resigned her employment, and the investigative file was referred to local prosecutor for consideration of criminal charges for theft in office.

XI. 3:30 pm – Adjournment With no further business raised, the meeting was adjourned by general consensus of the members present, motion by Weaver/Daulton. No discussion.

Respectfully submitted,

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Mark B. Levy  
Board Director

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Brian M. Weaver  
President

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Date

[[ signed original on file in Board office ]]