

**<sup>1</sup>MINUTES**  
**STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS**  
**PUBLIC RULES HEARING AND BOARD MEETING**  
**JUNE 9, 2015**

This Rules Hearing and 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.

**PUBLIC RULES HEARING**

The hearing was called to order at 12:30 p.m. consistent with the Notice of Intent to File Rules filed and published on May 5, 2015. Brian M. Weaver, LPO, Board President served as Presiding Officer. Mr. Weaver explained the hearing purpose as to receive comments and testimony concerning the Board's intention to rescind, amend or adopt new rules as follows:

> Consistent with the original filing on May 5, 2015, the Board is proposing to RESCIND the following rules of the Ohio Administrative Code:

4779-11-01 through 4779-11-12 -- Rules Governing the Administrative Hearing Process

4779-12-01 -- Fees

> Consistent with the original filing on May 5, 2015, the Board is proposing to AMEND the following rule of the Ohio Administrative Code:

4779-9-01 – Continuing Education Requirements and Reporting (OPPCE)

> Consistent with the original filing on May 5, 2015, the Board is proposing to ADOPT as NEW the following rule of the Ohio Administrative Code:

4779-12-01 -- Fees

> Consistent with the original filing on May 5, 2015, the Board is proposing to file as NO CHANGE the following rule series of the Ohio Administrative Code:

4779-13-01 through 4779-13-05 – Confidential Personal Information rules

Matthew Lampke, Assistant Attorney General representing Attorney General of Ohio Mike DeWine was recognized to present evidence of the Board's compliance with the requirements of Chapter 119 of the Revised Code. Mr. Lampke called Mark B. Levy, Board Director, to testify as to the content and filing of the documents identified as Exhibits.

Exhibit 1 is a copy of the Electronic Rule Filing confirmations reflecting that the Ohio Board of Ohio Board of Orthotics, Prosthetics and Pedorthics electronically filed the proposed rules with the Joint

Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State's Office as an original filing on May 05, 2015.

Exhibit 2 is a copy of the public hearing notice that was electronically filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State's office on May 05, 2015, and published on the website of the Ohio Register.

Exhibit 3 is a copy of the full text of the rules referenced in State's Exhibit 1, along with the required rules summaries and fiscal analyses. These documents were electronically filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State on May 05, 2015.

Exhibit 4 is a copy the Business Impact Analysis filed with the Office of the Common Sense Initiative, along with their recommendations, and final response from the Board related to the rules referenced in State's Exhibit 1.

The exhibits were admitted into evidence. No witnesses appeared, and Mr. Levy testified that no witness statements or evidence were offered subsequent to publication of the hearing notice. Hearing no objection, the hearing and record were closed at 12:40 p.m.

#### **REGULAR BOARD MEETING**

**II. 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>	Animesh Bhatia, DPM Jason Macedonia, LPO Brian Weaver, LPO – Board President Tammy Daulton, LPED – Board Secretary
<b><u>Members absent:</u></b>	Jeff Hagman, LP (per advance notice)
<b><u>Staff present:</u></b>	Mark B. Levy, Board Director Meloney Buehl, Office Assistant Matt Lampke, Assistant Attorney General
<b><u>Guests:</u></b>	None

**III. Agenda – Amend/Approve:** The agenda as distributed was briefly reviewed. Motion by Daulton/Macedonia to approve agenda noting that the public rules hearing was moved out of the meeting agenda and held before the regular meeting convened, no further discussion, approved by unanimous vote.

**IV. Review/Approve Minutes of March 3, 2015, meeting:** Minutes having previously been circulated, it was moved/seconded by Bhatia/Macedonia to approve without amendment or correction. No further discussion, vote was unanimous in favor.

**V. Executive Session [ORC § 121.22(G)]** -- (12:55 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, Bhatia and Weaver affirming the motion. At about 2:50 p.m. staff were asked to leave Executive Session for discussion of personnel matters. A short break was taken before reconvening in public session.

**VI. 3:15 p.m. Settlements / Charges / Dispositions / Complaints**

- A. Notices of Opportunity for Hearing – None reported
- B. Consent Agreements for Consideration – None reported
- C. Complaint statuses and tracking

The following complaint files were reported resolved and recommended to close as indicated:

- 12-C-01 Out of state DME seeking to contract with Ohio licensees to perform fitting services, questions raised regarding adherence to professional standards if contracted providers complied with protocols as apparently dictated by DME company. Compliance correspondence concluded with ambiguous results and the DME eventually withdrew from the initiative. No basis.
- 12-C-02 DME/Unlicensed practice, out of state facility with in-state reps, extended process. No basis.
- 13-C-02 DME/Unlicensed practice – could not substantiate engagement in restricted activities; No basis.
- 13-C-33 Out of state DME offering an aggressive telemarketing salesforce-based prescription harvesting operation with confusing lines of responsibility with sales offices in New England states and distribution services in the western U.S. Referred to CMS Center for Program Integrity for examination of compliance with federal standards.
- 15-C-05 DME/Unlicensed practice – educative process with border state operator resulted in hiring Ohio-licensed personnel for Ohio services. Educative, in compliance.
- 15-C-10 DME/Unlicensed practice – telephone complaint not pursued by complainant. No basis.
- 15-C-11 OPPCE non-compliance; compliance achieved through remediation. Audit OK with remediation.
- 15-C-13 DME/Unlicensed practice. Cooperative compliance correspondence, out of state DME, inquired regarding OTS services in Ohio, clarified Ohio requirements. Educative.
- 15-C-14 DME/Unlicensed practice. Cooperative compliance correspondence, out of state DME through counsel, inquired regarding OTS services in Ohio, clarified Ohio requirements. Educative.
- 15-C-15 Out-of-state complainant, out-of-state provider, no Ohio nexus, returned and referred.
- 15-C-16 Standard of care, file opened based on public information piece, federal facility. No information received formally. No basis.
- 15-C-19 DME/Unlicensed practice. Cooperative compliance correspondence, out of state DME, inquired regarding OTS services in Ohio, clarified Ohio requirements. Educative.

**VII. 3:30 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/MedicalLibrary/Media.aspx?fileId=142395>

B. Board Meeting Attendance Compliance/Tracking

The following report was provided.

<u>BOARD MEMBER ATTENDANCE BY MEMBER, CALENDAR YEAR, AND FISCAL YEAR</u>								
<b>STATE BOARD OF ORTHOTICS, PROSTHETICS, &amp; PEDORTHICS</b>								
CALENDAR YEAR 2015	Meeting Dates	3/3/2015	6/9/2015	9/22/2015	12/8/2015	Attendance Rate - Current Year	Attendance Rate - Current and Prior Year	Attendance Rate - Fiscal Year 2014
<b>Board Members</b>								
Jason Macedonia, LPO		P				100%	100%	100%
Animesh Bhatia, DPM		P				100%	100%	100%
Brian Weaver, LPO		P				100%	80%	100%
Tammy Dalton, LPED		P				100%	100%	100%
Jeff Hagman, LP		P				100%	100%	100%
Vacancy		A						
Vacancy		A						
<b>STATE BOARD OF ORTHOTICS, PROSTHETICS, &amp; PEDORTHICS</b>								
CALENDAR YEAR 2014	Meeting Dates	3/11/2014	6/10/2014	9/9/2014	12/9/2014	Attendance Rate - Current Year	Attendance Rate - Current and Prior Year	Attendance Rate - Fiscal Year 2014
<b>Board Members</b>								
William C. Neu III, LPO		P	A	P	A	50%	75%	75%
Robert Reed		P	P	P	P	100%	88%	75%
Jason Macedonia, LPO		P	P	P	P	100%	100%	100%
Animesh Bhatia, DPM		P	P	P	P	100%	100%	100%
Brian Weaver, LPO		P	A	P	P	75%	86%	75%
Tammy Dalton, LPED		P	P	P	P	100%	100%	100%
Jeff Hagman, LP		P	P	P	P	100%	100%	100%

C. Ethics review Case Study: OIG Report 2014-CA00009

This was an investigation of a complaint of mismanagement regarding timekeeping and work hours attribution involving field personnel working assignments outside of the office. Brief discussion

regarding accuracy in record-keeping, adherence to general state of Ohio Admin Services/Budget-Management policies. It was suggested that Members may wish to review the report in relationship to current Board policy and procedure.

**VIII. 3:45 p.m. – Consent Agenda: Director’s Report**

A. Fiscal – Revenue and Expense

Spreadsheet data as presented to the Board is appended.

1. FY15 Performance data & projections – Revenue and Expense  
FY15 Revenue YTD, 10 months (as of Apr 30): \$109,001.00  
FY15 Expense YTD, 10 months (as of Apr 30): \$132,873.17
2. a. Minority Business Enterprise (MBE) Spending (15% goal)  
FY15 Actual MBE Spend YTD, 10 months: 28.2%  
b. Encouraging Diversity, Growth and Equity (EDGE) Spending (5% goal)  
FY15 Actual EDGE Spend YTD, 10 months 7.1 %
3. Approval of Renewal Overcharge Refunds – Internal Audit Compliance

Mr. Levy reported that in the process of responding to a licensee complaint regarding lack of a personalized, individual notification of the change in renewal “buy one get one” policy for licensees holding more than one OPP-issued license, he determined that the policy implementation had in fact been premature, since current fee rule language cites the renewal fee as “per licensee,” and not “per license”. He reported processing the concern with President Weaver and AAG Lampke, and recommended issuing refunds to all licensees who were similarly affected during the recent renewal process. Fourteen (14) licensees were identified with a refund total liability at \$300 each of \$4200. **MOTION by Macedonia/Bhatia** to approve the refunds identified, carried unanimously.

B. OPPCE Audit in Process

General Status: 37 Licenses were selected for OPPCE Audit (100% of Group 2)  
Audit letters were mailed to all of the 37 license holders on 5/8/15.  
28 (76%) Licensees have responded ; of these, 23 have passed their audit  
Certified/RRR mail process initiated for non-responders

OPPCE Remediation Agreements:

Staff requests approval/ratification of OPPCE Remediation Agreements pursuant to OAC Agency Rule 4779-9-03 for the following individuals for the reasons indicated:

- **Sarah Cannon**, LPED.212, **William C. Cummings**, LPO.294 owe late fees and request respective extensions to December 2015 to complete. Worksheets state plans to complete their respective deficiencies and augmentation hours
- **Thomas Shaw**, LPED.210 filed a remediation agreement and paid late fee due to audit; hours were completed without augmentation in January 2015

**MOTION by Macedonia/Bhatia** to approve the Remediation Agreements with licensees Cannon, Cummings and Shaw was called for discussion, passed unanimously.

C. Legislative Report: Mr. Levy distributed a list of bills being tracked during the current General Assembly. Staff tracks bills with a (a) direct impact on state agency operations, (b) a healthcare regulatory nexus, (c) that would revise or create a practice act of another allied healthcare or licensed profession, and (d) any bill that may contain provisions altering/amending Chapter 4779. HB 64, the biennial budget bill, is still in process, but it does not appear that any budget language addressing OPP Practice Act concerns has been incorporated. Legislative tracking report is **appended to these minutes**.

D. Administrative Docket

1. ODM (Medicaid) – Rule Revisions and statuses – No new activity to report; update from ODM regarding the Orthopedic Shoe rule and Diabetic Therapeutic Shoe rule promulgation indicates that language may still be several months away from formal consideration.

2. New eLicense Database setup activity – This long-running initiative to mount a new eLicense enterprise-wide database has now progressed from a “2.0” implementation with a vendor determined not to have an appropriately strong customer focus to a newer “3.0” platform with a more vigorous and results-oriented team. Director Levy continues service on the implementation Steering Committee as the Small Agency representative. A more rapid-deployment strategy is being driven on a Salesforce.com cloud-based platform and appears to be progressing well. Three agencies each with a single license type being formatted expect to roll out these limited license types to Go Live by the end of the summer, and depending on a successful implementation, more full-scale deployment will be planned going forward. It is likely that OPP licensees will continue renewal under the current system for the next renewal cycle.

**IX. (4:00 p.m.) Licensing report/ratification**

A. Approve/ratify license issuance. The report as distributed and **appended to these minutes** was **Moved by Weaver/Bhatia**, approved unanimously.

**X. (4:05 p.m.) 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)
  - b. Brian Weaver, LPO
  - c. Tamara Daulton, LPED

Discussion: Dr. Bhatia indicated he is not seeking re-appointment, as he is seeking/entering a leadership position with the Ohio Foot and Ankle Medical Association. It was noted that Board members seeking re-appointment should send a letter to the Governor expressing that interest but need not submit a new application, assuming they were appointed during the current administration.

- B. Social Media Update – Ms. Buehl presented the current results of the Board’s social media program. While it was the sense that a social media presence beyond the Board’s basic website offerings could prove valuable, the Board’s foray into this realm was largely guided/facilitated by the skill set brought to the Board by Ms. Buehl. With her imminent departure from service as a state of Ohio/OPP Board employee, continued development in this area may be dependent upon future staffing capabilities.
- C. 5-Year Rule Review – Mr. Levy requested the Board turn its attention to the rule set which was the subject of today’s pre-meeting Public Hearing.
1. The set of information and exhibits presented at the hearing was provided for the Board’s full consideration. It was noted that no testimony, evidence or statements were provided for the Board’s consideration by stakeholders or other interested parties during the process or presented at hearing. There was no further discussion offered.
  2. Mr. Levy requested a **Motion to approve the rule package for final filing** conditioned upon no action being taken by JCARR (Joint Committee on Agency Rule Review) at its hearing scheduled for 06/22/2015, and to final file the rules with an effective date of September 1, 2015. **SO MOVED by Daulton/Weaver**, discussion noted the effective date was recommended based on the new rule language which requires the set fee schedule to be posted to the website at least 60 days before it is to be considered effective. Motion was **approved unanimously**.
  3. Mr. Levy requested a **Motion to approve the proposed fee schedule** to be adopted pursuant to the new fee rule language as shown below. The schedule has been posted to the website since 05/11/2015, was distributed to Board members in advance of the meeting and was distributed for further review at this meeting. **SO MOVED by Weaver/Daulton, approved unanimously**.

	Current Fee	Proposed Maximum Fee	Proposed FY2016 Fee
Full license application	\$ 125.00	\$ 200.00	\$150.00
Temporary license application	\$ 150.00	\$ 200.00	\$150.00
License renewal (annual)	\$ 300.00	\$ 500.00	\$400.00
Reinstatement/late fee (+ renewal)	\$ 150.00	\$ 250.00	\$200.00
OPPCE late filing	\$ 150.00	\$ 250.00	\$200.00
Replace license card	\$ 5.00	\$ 25.00	\$15.00
Replace wall certificate	\$ 10.00	\$ 50.00	\$25.00
Upgrade temp to full (+ temp application)	\$ -	\$ 200.00	\$100.00
Consolidate LP & LO to LPO	\$ -	\$ 200.00	\$100.00
Certified license verification	\$ -	\$ 50.00	\$25.00
License issuance (+ application)	\$ -	\$ 300.00	\$100.00
Name change in database	\$ -	\$ 50.00	nc
Review/approval of new OPPCE activity	\$ -	\$ 50.00	\$50.00
Fine for violation, per violation	\$ -	\$ 500.00	\$250.00

- D. Pedorthist Training for AFO Competence – Ms. Daulton advised there is no report to be offered at this time. No discussion, no action was taken.
- E. Health Professions Data Warehouse / Stay in or Opt out

Mr. Levy requested the Board turn its attention to information distributed regarding the topic. Staff has been tracking activity on this initiative which has gained increasing emphasis in the era of Medicaid expansion and a general increase in access to healthcare under the Affordable Care Act. Mr. Levy reported on the initiative spearheaded by Governor Kasich's [Office of Health Transformation](#), in a partnership with the [Health Policy Institute of Ohio](#), the Ohio Colleges of Medicine [Government Resource Center](#), and the [Ohio Department of Health](#). It can be generally understood as a push to better aggregate and analyze the data needed to effectively inform Ohio healthcare planning policy. A [one-page overview](#) of the MEDTAPP (Medicaid Technical Assistance and Policy Program) HPDW (Health Professions Data Warehouse) was referenced and circulated for the Board's review. Mr. Levy reported that the issue has been processed closely with the Ohio O&P Association, whose leadership has reportedly endorsed board staff's efforts to reserve an opportunity for O&P practitioners to be recognized in the process, advising that the professions had not been included in the original survey of licensing agencies targeted for inclusion. Language for a Memorandum of Understanding to govern data protection and privacy interests in the endeavor is being worked on by the HHS section of the Office of the Ohio Attorney General but is reportedly not ready for the Board's consideration at this time. If and when fully implemented, the protocol will require a brief census-like survey to gain pertinent demographic data from license applicants and renewing licensees. No formal action was requested at this time, but Mr. Levy advised that based on association input and Board discussion, he considered it to be the **sense of the Board that staff should remain engaged in the process** to assure OPP licensees are included in the data to be derived.

**XI. (4:30 pm) New Business**

- A. Re-review OPPCE transcript acceptance policy – BOC statement of compliance

History of this matter was briefly reviewed. Question is whether to revisit the Board's prior policy determination as to whether a BOC CE transcript can be generally accepted to document a BOC certificant's CE record. Item was tabled at the request of BOC officials who requested more time to further develop a policy proposal.

- B. Licensing policy

Mr. Levy advised the Board that he intended but failed to develop a discussion document to review administrative licensing policy in light of current statutory and regulatory language. Discussion was tabled pending further development.

- C. Rule Review agenda

Mr. Levy noted that with the conclusion of a rule review and promulgation process that extended over a nearly 12-month period, the Board is called on again to review rules ripe for 5-year review based on their prior review dates. An initial outreach for feedback on device

definition language to determine whether it sufficiently addresses innovations in 3-D printing technology yielded some feedback but may require further examination. In addition, feedback from the association Spring Meeting suggested a need for attention to supervision standards, although model language or suggested changes have not been offered by the constituency. Discussion was tabled pending further development.

D. Personnel Matters

Mr. Levy reported that he had reluctantly accepted Ms. Buehl's letter of resignation, terminating her exemplary service to the Board for just over three years, having been hired on in April 2012. Her letter of resignation and his letter accepting same were provided for review. The Board expressed its appreciation for the level of skill and competence Ms. Buehl brought to the Board and wished her well in her future endeavors in the private sector.

**XI. 4:40 p.m. – Adjournment**  
consensus of the members present.

With no further business raised, the meeting was adjourned by general

Respectfully submitted,

**/s/ LEVY**

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Mark B. Levy  
Board Director

**/s/ WEAVER**

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Brian M. Weaver  
President

**09.22.2015**

\_\_\_\_\_  
Date