

**MINUTES**  
**STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS**  
**BOARD MEETING – ANNUAL MEETING**  
**SEPTEMBER 22, 2015**

This Regular/Annual 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 12:35 p.m.

**Roll Call:**

<b><u>Members present:</u></b>	Animesh Bhatia, DPM (arrived beginning of Executive Session) Jason Macedonia, LPO Brian Weaver, LPO – Board President Tammy Daulton, LPED – Board Secretary Jeff Hagman, LP
<b><u>Members absent:</u></b>	None – two seats vacant pending appointments
<b><u>Staff present:</u></b>	Mark B. Levy, Board Director Shelley Bango, Office Assistant Matt Lampke, Assistant Attorney General (outgoing) Steve Kochheiser, Assistant Attorney General (incoming)
<b><u>Guests:</u></b>	None

**II. Agenda – Amend/Approve:** Mr. Levy pointed out changes made to the agenda as distributed today, including striking item VI. B as an unintentional carryover from the June agenda, and a correction of item numbering which had shown two items numbered “XI.” Motion by Weaver/Daulton to approve agenda as distributed, no further discussion, approved by unanimous vote.

**III. Review/Approve Minutes of June 9, 2015, meeting:** Minutes having previously been circulated, it was moved/seconded by Macedonia/Daulton to approve without amendment or correction. No further discussion, vote was unanimous in favor.

**IV. Executive Session [ORC § 121.22(G)]** -- (12:40 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. At about 1:05 p.m. staff were asked to leave Executive Session for discussion of personnel matters. Executive Session ended and the public meeting reconvened.

**V. 1:15 p.m. Settlements / Charges / Dispositions / Complaints**

A. Notices of Opportunity for Hearing – None reported

B. Consent Agreements for Consideration –

**Brent Libby, LPO.215** – To address OPPCE accrual non-compliance subsequent to audit; requires completion of deficiency of fifteen (15) units, completion of additional twenty (20) units, and payment of \$150 late fee. **Motion to accept** by Weaver, second by Daulton, no discussion, **approved unanimously**.

**Frank Denton, LPED.217** – To address the Board’s review of services offered to four (4) identified patients. Services did not meet the minimum standard of care for a Pedorthic practitioner fitting shoes and inserts for Therapeutic Shoes for Diabetics beneficiaries. Specifically: inserts that did not meet the specifications for devices to be delivered under the applicable HCPCS (Healthcare Common Procedures Coding System) billing codes; indicated by hand-written entries on service delivery and reimbursement paperwork that 3 pairs (6 items) of inserts were dispensed to consumers when only 1 pair (2 items) of devices (heat molded inserts) were dispensed; and improperly signed and dated a patient’s name to several documents without authorization to do so. In the agreement, Licensee accepts a Reprimand, a 2-month license suspension October-November 2015, and agrees to complete an additional ten (10) hours of remedial targeted Continuing Education in order to renew the license during the January 2016 renewal period. **Motion to accept** by Daulton, second by Hagman, **approved unanimously**.

C. Complaint statuses and tracking

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

- |                   |  |
|-------------------|--|
| 15 C 03 – OPPCE – | Consent Agreement compliance achieved; no further action required  |
| 15 C 17 – DME –   | Unlicensed Practice – Out of state DME inquiry regarding OTS device policy. Statement of intent to comply in file. Educative / in compliance.  |
| 16 C 02 – OPPCE   | Remediation agreement approved March 2015 meeting, CE augmentation required, late fee waived. In audit process, licensee submitted incorrect/incomplete report, has not responded to repeated informal requests for correct/complete filing. Recommend close with letter of warning/admonition |

**Motion to accept recommendations to close** by Hagman, second by Macedonia, no discussion, approved unanimously.

**VI. 1:20 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 (no report; listed inadvertently on agenda)
- C. Ethics review Case Study: OIG Report 2014-CA00018

Mr. Levy reported that this was an investigation of a violation of statutes and rules governing state of Ohio employee use of confidential personal information in searching electronic databases for information identifiable with that data. Although the search activity was generally within the scope of duties of the employee, the subject of the investigation had initiated the search activity without appropriate cause – there was no request for the search by the subject of the data, and the search activity was not appropriately initiated by workflow assignment or other appropriate trigger. The subject of the data was an agency official, and the agency employee reported initiating the activity because the subject’s name appeared in a published list of potential claimants. Even though the agency employee expressed benevolent intent in his activity and there was no indication of unlawful dissemination of the data, the unrequested search activity was found to be in violation of policy, law and rule, and the employee ended up resigning his position. A brief discussion was held regarding OPP’s recently-renewed (no change) rules [OAC 4779-13](#) series, governing agency use and maintenance of confidential personal information, agency practices and policy.

**VII 1:30 p.m. – Financial Reporting**

A. FY15 End of Year

1. Revenue and Expense, Encumbrances, Performance

FY 15 Appropriation Authority:	\$159,982.00
FY 15 Spend	\$161,084.14=100.69% (includes \$4,513.30 of FY14 funds)
FY 15 Payroll	\$126,043.42=99.90% (of original allotment )
FY15 Revenue	\$109,601.00

2. MBE = 24.24% (goal=15% of “discretionary” spend)      EDGE Participation = 7.10%      (goal=5%)

3. FY15 Encumbrance Balance Report

Original PO Amt.	\$7523.03
Liquidated Amt.	\$4199.62
Amt. to Voucher	\$3323.41

Mr. Levy called out the highlights of the end of year report, noting that because of the accounting practice allowing reservation of FY funds by encumbrance, commitment or purchase order, an agency may utilize in a subsequent fiscal year funds appropriated in the prior fiscal year as long as they are applied to an activity which occurred in the fiscal year in question. Thus, the appearance that we spent more than our allocation in FY15 is explained by understanding some services are billed in arrears and some invoices are not received before end of FY processing deadlines. He noted that we may not realize an opportunity to expense all of the “amount to voucher” from FY15, in which case the monies will return to the 4K9 rotary fund. He also made note of the agency’s compliance with MBE/EDGE spending goals.

- B. FY16 YTD --
1. HB64 Budget Allocation (FY16): \$176,950
    - a. Allotted to payroll: \$138,799
    - b. Personal Services: \$ 3,240
    - c. Operations/Maintenance: \$ 34,911
  
  2. Revenue and Expense (2 months July-August)
 

Revenue:	\$1750.	Expense:	\$25,329 (payroll = \$22,881)
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  3. Payroll Accounting, HB64 pay and parity raises, report submitted
    - a. Budget bill impacts: 2.5% increases annually; \$750 one-time supplement; E-1 pay new step
    - b. Appropriation adjustments possible per worksheet submitted:
 

FY16	\$12,572
FY17	\$17,176

Mr. Levy noted that our budget allocation for FY16 exceeds the FY15 appropriation by nearly \$20K. Although we are now in our low revenue portion of our annual cycle, the fee increase recently enacted should bring in about \$35K more during license renewal than previously realized. Based on realized FY15 income, we are projecting FY16 revenues at about \$145K. If we are not successful in gaining legislative support for an expansion of licensing or registration opportunities, another fee increase for FY17 will be necessary to further close the gap between revenue and expense. Item B-3, Payroll Accounting, is reporting on a process we engaged in on directive from OBM (Office of Budget and Management); OBM will determine if an adjustment to our appropriation is warranted due to increases in payroll obligations resulting from the new union contracts and parity increases for unclassified staff.

Mr. Levy asked for a **Motion accepting the financial report**. Ms. Daulton so moved, second by Mr. Hagman, no discussion, **vote was unanimous**.

### VIII. (1:40 p.m.) Legislative Report

Mr. Levy distributed a list of bills being tracked during the current General Assembly. Staff tracks bills with:

- (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.

In discussion, it was noted that [SB31](#) and [SB129](#) both address insurer’s reimbursement practices as regards prior authorizations, may be of strong interest to licensees and their association(s), but may not be appropriate for OPP Board influence.

Mr. Levy noted that Rep. Brinkman’s [HB213](#), to require that occupational licenses on an annual renewal cycle migrate to a 2-year renewal protocol, had a first hearing in June; and that [SB194](#) has been introduced as the latest in a long-running legislative effort to authorize various loosely defined “alternative health care” practices and to shield those that claim to offer same from being cited for unlicensed practice. It was noted that bill

language provides that “Complimentary or alternative health care services’ includes but is not limited to ... non-invasive instrumentalities.” A coalition of organizations representing allied healthcare professions – mostly associations but including some licensing boards – is coming together in opposition.

After discussion, there were no motions. A corrected Legislative tracking report, updated to include bills introduced since the June meeting, is appended to these minutes.

**IX. (1:50 p.m.) Administrative Docket**

1. ODM (Medicaid) – Rule Revisions and statuses – No new activity to report. c
2. New eLicense Database setup activity 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. A pilot implementation with three agencies each with a single license type formatted went to a successful Go Live implementation, and further deployment/on-boarding scheduling is being negotiated. OPP licensees will continue renewal under the current system for the upcoming renewal cycle.
3. Workforce Planning – staff will be working on what has become an annual Workforce Plan document in accordance with Executive Branch requirements.

**X. (1:55 p.m.) Licensing report/ratification**

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

**XI. (2:00 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: Some concern was expressed that persons who have applied for the vacancies may lose interest if applications have been pending for an extended period of time; governor’s staff are queried with some frequency as to status. Members are encouraged to explore possible nominees for the upcoming vacancy in Dr. Bhatia’s position.

**B. 5-Year Rule Review (FYR)**

1. An updated FYR schedule was distributed previously and copies were provided at the meeting, with the full text of current rules up for review attached. Decisions need to be made as to which rules may require update, and which can be reported as “no change.”

2. Members were asked for their input in designating Change / No Change priorities. Discussion documents were distributed on three rules Mr. Levy has suggested may be especially indicated for update as follows:

**4779-3-02 – Device-related and scope of practice definitions** – input solicited and received from stakeholders earlier in the year was distributed for consideration. Some comments were received directly, and some were received unattributed to a specific individual but forwarded by the Ohio O&P Association. Mr. Levy provided some historical background of the rule language, explaining that the current language was developed largely modeled on the definitions found in the CMS Quality Standards for DMEPOS Appendix C which specifically addresses facility accreditation requirements for Orthotics and Prosthetics. He asked members to consider whether the level of detail currently in the rule is helpful or if a less-detailed, more generalized approach might be considered going forward.

Initial discussion focused on the question as to whether a “positive model” as developed in a CAD/CAM procedure appropriately describes the digital modeling created in a 3D manufacture protocol. It was noted that 3D manufacture entails development of a “negative model” that often does not progress to a stage requiring fitting of a device on a tangible physical representation of the residual limb. After some further discussion, members Weaver and Macedonia volunteered to work together to come up with a proposal for consideration at the next meeting.

**4779-2-03 -- Board records** – Mr. Levy explained that the changes suggested are meant primarily to address changes that may need to be enacted in anticipation of the new eLicensing platform, which seeks to focus on external user profiling and access, eliminating redundant processes required of licensees who “touch” the state of Ohio systems at various agency entry points. As regards a name change in the system, the platform will aim toward establishing a protocol where a name change verified by one agency is accepted by other agencies without the external user being required to submit similar documentation to more than one agency.

**4779-7-01 – Original license certificate and wallet identification card** – Changes seek to update language to recognize the elimination of printed annual license renewal cards and emphasize that the website license look-up function should be considered the reliable and fee-free option for license verification by third parties.

Members were urged to consider the full range of regulatory language promulgated by the Board for opportunities to update or in the alternative eliminate language based on accuracy, timeliness or completeness. No motion was offered.

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

The history of this matter was briefly reviewed. The question is whether to revisit the Board’s prior policy determination regarding BOC CE transcript acceptance to document a BOC certificant’s CE record. Item was tabled at the June meeting at the request of BOC officials who requested more time to further develop a policy proposal. The Board’s decision to exclude BOC CE transcripts as sufficient documentation for OPPCE audit arose from a finding that BOC policy allowing a certified person to enter their own CE data into their account without

staff review of supporting documentation coupled with BOC CE audit policy appeared to undermine the accountable reliability of the data.

The question before the Board is whether to accept the new statement offered by BOC to allow reliance on a BOC transcript for these purposes. BOC statement received 09/09/2015:

**OH State Board – BOC Continuing Education Tracking Proposal**

BOC will assure the Ohio OPP Board that any BOC CEU Record sent in by a BOC certificant licensed in Ohio will not have any continuing education courses listed that were entered by the certificant online. We will ensure this happens with the following procedures:

- BOC will block any BOC certificant licensed in OH from having the ability to add online CEUs through their online account. There will be a note on their online account, explaining that they will be unable to add online CEUs and that all Ohio licensees must send proof of their CEUs to BOC for entry by BOC staff.
- BOC will use the list of current licensees in OH to determine who will be blocked and email each BOC-certified licensee in Ohio to ensure they are aware of these changes.
- BOC will check the OH OPP Board website monthly for list of current licensees so BOC's system is up-to-date.
- BOC will provide BOC CEU Records for anyone licensed in OH on a quarterly basis, or any other timeframe that is acceptable to the OH Board.

Also, regarding a question from 2013, we would like to update that answer again.

*Original Question: Given that BOC only requires CE records to be maintained for 12 months following the end of a 5-year accrual period, if a certificate holder is pulled for audit in the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or even perhaps the 5<sup>th</sup> year of a cycle, since CE is not required to be accrued annually and is only required to be reported/confirmed for the 5-year re-certification, no CE accrual is required or subject to documentation during the 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> (and maybe 5<sup>th</sup>) year of certification, **so a certificate holder would be "cleared" in the audit even if reporting no CE at that time. Is that correct?***

*Original Answer: Yes.*

*New Answer: BOC will assure the Ohio OPP Board that any BOC CEU Record that is sent in by a BOC certificant licensed in Ohio will not have any continuing education courses listed that were entered online.*

**Motion** to accept the statement and allow staff to consider BOC transcripts as reliable documentation in OPPCE audit processes **by Weaver/Macedonia**. Discussion: Member Daulton questioned whether the Board should adopt the policy in light of its prior determination that the BOC Pedorthist exam is not acceptable to qualify a candidate for licensure in Ohio as a Pedorthist. Mr. Levy pointed out in response that the question before the Board is one about Board policy for conducting OPPCE audits and does not require a change in current rule language. Determination of exams acceptable to the Board is an issue assigned to the Board's rulemaking authority as provided by [RC 4779.08 \(A\)\(3\)](#), with language promulgated at [OAC Agency Rule 4779-5-01](#). Mr. Levy suggested those concerns could be addressed in the current rule review process as discussed earlier. With no further discussion, the question was called, and **the vote was unanimous in favor**.

**XII (2:15 pm) New Business**

A. Disclosure of Criminal Convictions and Background Checks. Mr. Levy explained this is new “ban the box” policy language implementing an executive order. Long and short, questions regarding criminal history will not be addressed in the written application or during the interview process, but a candidate who is offered a position will be required to submit to a record check and the results may be considered before a final offer is made. We are required to adopt the policy. **Motion to approve by Daulton/Weaver, no discussion, vote was unanimous.**

B. Licensing policy

1. Fees: Mr. Levy advised the Board that in reviewing the new fee schedule and determining appropriate administration of same, although the inventory allows for a fee to be charged for “license issuance,” that may be an assessment best left for consideration when the new eLicense system is implemented for OPP. With new fees in place for upgrading a license from Temporary to full, and to “combo” an LP/LO to LPO, an additional charge may be a bit excessive in revenue capture protocol. It may be appropriate for utilization for a license application that is in process for an extended period of time due to application deficiencies, but after discussion, Board consensus indicated general agreement that the charge should not be applied aggressively in all cases.

2. Mr. Levy noted that the Board may wish to review its policy that allows/encourages combination of LO and LP qualifications to provide a pathway to LPO status even if exact statutory criteria for an LPO license are not evident. The policy impacts revenue; it was noted that Pennsylvania’s licensing law does not provide for a single, combined credential. This may be addressed in FYR rule activity where the regulatory language allowing the easy combination of credentials is presently embedded.

C. Personnel Matters

Mr. Weaver stated the Board is indicating an interest in providing a parking cost stipend for the Director’s position. **Motion** by Daulton/Macedonia to provide for a \$100/month parking allowance to be directly billed to the Board by the chosen parking vendor. Brief discussion regarding mechanics. **Vote was unanimous in favor.** Mr. Levy thanked the members for their consideration.

D. Election of Officers

1. President. Mr. Macedonia nominated Brian Weaver to continue in the position. Mr. Weaver accepted the nomination. **Motion** by Macedonia/Hagman for Weaver to continue as President, there were general expressions of support, **passed unanimously.**

2. Secretary. Mr. Weaver nominated Tamara Daulton to continue in the position. Ms. Daulton accepted the nomination. **Motion** by Weaver/Bhatia for Daulton to continue as Secretary, there were general expressions of support, **passed unanimously.**

**XI. 3:00 pm – Adjournment**  
consensus of the members present.

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

Respectfully submitted,

**/s/ Levy**

**/s/ Weaver**

**01.19.2016**

\_\_\_\_\_  
Mark B. Levy  
Board Director

\_\_\_\_\_  
Brian M. Weaver  
President

\_\_\_\_\_  
Date

[[ signed original on file in Board office ]]