

**MINUTES -- REGULAR BOARD MEETING
STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS**

DECEMBER 4, 2007

This regular meeting of the State Board of Orthotics, Prosthetics and Pedorthics (BOPP) was held on the above date at 77 South High Street in the Board Room on the 31st floor of the Riffe Center, Columbus, Ohio.

I. Call to Order: The meeting was called to order at 2:10 p.m.

Roll Call:

Present Board Members: David DeLuccia, LPO; Elsa Fritts, LPED; Manuel Garcia, LPO (arrived 2:17 p.m.); Howard H. Harcha, Esq.; Mark Horwitz, LPO; Doug Van Atta, LPO

Members Absent: None (1 seat currently vacant)

Staff: Mark Levy, Board Director
Jesse Cantrell, Assistant Attorney General

Guests: none

II. Amend/adopt agenda: Harcha/Fritts moved approval; no discussion; vote was unanimous.

III. Approval of minutes: **Approval of September 2007 minutes** -- Members indicated they had received and reviewed the minutes draft prior to the meeting. There was no discussion. Van Atta/Garcia moved approval, vote was unanimous.

IV. Goldman hearings:

Mr. Harcha presided over the evidentiary hearing of the matter referenced as **File No. 07-OPP-L-08 - Whether to Issue or Refuse to Issue to Michael S. Chaffin A License in Prosthetics in the State of Ohio**. Mr. Cantrell presented the evidence, consisting of Mr. Chaffin's license application file compiled with a descriptive affidavit affirmed by Mark Levy, Board Director, custodian of the Board's records. Mr. Cantrell asked the Board to deny the license based on lack of compliance with statutory requirements.

Mr. Harcha presided over the evidentiary hearing of the matter referenced as **File No. 08-OPP-L-01 - Whether to Issue or Refuse to Issue to Eric M. Watt A License in Prosthetics in the State of Ohio**. Mr. Cantrell presented the evidence, consisting of Mr. Watt's license application file compiled with a descriptive affidavit affirmed by Mark Levy, Board Director, custodian of the Board's records. Mr. Cantrell asked the Board to deny the license based on lack of compliance with statutory requirements.

Executive Session: Session was convened by unanimous roll call vote (DeLuccia, Fritts, Garcia, Harcha, Horwitz, Van Atta) at 2:35 p.m., to consider matters regarding applicant/licensee discipline/complaints, personnel, and issues requiring privileged attorney-client communications on the Motion of Harcha/Garcia, and to request Director Levy and AAG Cantrell remain in attendance. At 4:35 p.m., Mr. Levy was excused from Executive Session. The Board emerged from Executive Session at 4:50 p.m. by unanimous roll call vote (DeLuccia, Fritts, Garcia, Harcha, Horwitz, Van Atta).

VI. Settlements / Charges / Dispositions

A. The Board took up the matter referenced as **File No. 07-OPP-L-08 - Whether to Issue or Refuse to Issue to Michael S. Chaffin A License in Prosthetics in the State of Ohio**. Based on the evidence introduced, and especially the lack of a Bachelors degree, Mr. Van Atta asked for a Motion to Deny Licensure in Prosthetics, finding that the application, documentation and testimony submitted do not demonstrate compliance with the requirements of ORC § 4779.11. So moved by Mr. Horwitz, second by Mr. DeLuccia. Called for discussion; hearing none, called for vote. Aye: DeLuccia, Fritts, Garcia, Harcha, Horwitz, Van Atta. Motion carried. Mr. Levy was directed to draft and issue an Order so noting.

B. The Board took up the matter referenced as **File No. 08-OPP-L-01 - Whether to Issue or Refuse to Issue to Eric M. Watt A License in Prosthetics in the State of Ohio**. Based on the evidence introduced, and especially the lack of any documentation supporting the application -- asked for a Motion to Deny Licensure in Prosthetics, finding that the application, documentation and testimony submitted do not demonstrate compliance with the requirements of ORC § 4779.11. So moved by Mr. Garcia, second by Ms. Fritts. Called for discussion; hearing none, called for vote. Aye: DeLuccia, Fritts, Garcia, Harcha, Van Atta. Mr. Horwitz abstained. Motion carried. Mr. Levy was directed to draft and issue an Order so noting.

VII. Director's Report:

Mark Levy

A. Rules Review/Promulgation -- no report

B. Legislative update

1. HB 104 – Criminal Record Check for Licensing. This bill is in the final stages of hearings in Senate Committee, having passed the House earlier in the year. It appears to be headed for passage; when effective, will require applicants for licensure from this and most other Boards to cause a criminal background check to be reported to the Board.

2. HB 148 – Alternative Health Care. The latest version of legislation pending for the past several sessions of the General Assembly, ostensibly to promote “choice” in healthcare and alternatives. Assigned to the House Commerce and Labor Committee; a sponsor’s hearing was held in October, but no other hearings have been scheduled.

C. Fiscal

While fiscal data is unremarkable as regards revenue and expenses – both tracking within budgetary parameters and expectations – fiscal processing has been extraordinarily challenging during the FY08 due to the rollout/implementation of the OAKS Financials package; the legacy CAS (Central Accounting System) database program was fully retired with this changeover. Report formatting and generation remain problematic, although various agencies and entities are working on fixes and sharing solutions as system familiarity is gained.

D. Other activities:

1. Board/Commission Management Group – meetings held regularly to discuss issues of mutual concern among regulatory agency management and staff. (notes)

2. Ohio Investigator Association – Mr. Levy reported that he has been active with this not-for-profit association of investigators, primarily state of Ohio employees, since the mid-1990's, and is presently serving on the Professional Development Committee. The group will be co-sponsoring a one-day training in February together with the Association of Certified Fraud Examiners, and Mr. Levy reported that he is serving a central role in planning and development of the session.

VII. **Report on pending license applications:**

A. **Recommendations to Approve for Licensure:** The following candidates for licensure were approved by unanimous vote. Motion/second by DeLuccia/Garcia.

<u>License Type</u>	<u>Candidate</u>	<u>Conditions, if any</u>
Prosthetics-Orthotics	LAPINSKY, Joseph J.	
Orthotics	CARFORA, Kelly A. McKENNEY, Megan C. BIBBINS, Rafael	
Prosthetics - TEMP	SAWERS, Andrew B.	plus Approved for Exam
Pedorthics	GROVES-COPLIN, Denise G. SCHEETZ, Lisa A. HAWK, Eric N. ANGERER, Charlotte L.	
Pedorthics – TEMP	STARK, Shannon	(second issuance)

VIII. **Old Business**

A. **Website information** – license look-up: options for status and actions – Mr. Levy distributed a proposed action item regarding the license verification function on the website, including a brief discussion regarding an available functionality which would link hard data regarding any disciplinary action taken as regards a license or licensee to the licensee name and/or license number when displayed. Currently, license status is displayed, and if there is any disciplinary action in effect or as a matter of record in the license/licensee history, the searcher is prompted to contact the office for further information. Information provided to the Board included an example from the Medical Board, showing narrative summaries of documents entered into that Board's formal record of proceedings, with links to the actual documents available in PDF format. Brief discussion; comments generally indicated satisfaction with the current system. Motion to table, Garcia/Harcha, no objections.

B. Board member search: succession planning – We are still seeking to recruit an MD, DO, or DPM for the “doctor seat,” and it was noted that Mark Horwitz’ second term ends in 2 days; in December 2008, Mr. Garcia and Mr. Van Atta will “time out.” Members were asked to forward to the Board office contact information for any candidates they may want to recommend so that Mr. Levy could provide appropriate information.

C. “Orthotics” in Administrative Code -- Motion to table by Harcha, unanimous.

IX. New Business

A. Issue Introduction: Licensed Pedorthist Scope of Practice – AFO, Yes or No? – Having fielded some inquiries and been apprised of some discussion occurring at the national level, an initial background information packet had been distributed to the Board on this topic. The question is whether an Ohio-licensed pedorthist might be permitted to fit/dispense an AFO under certain limited circumstances, or whether fitting/dispensing an AFO, by definition and function, is clearly outside of the scope of practice of an Ohio-licensed pedorthist. It was noted that this question requires examination not only of national standards of practice, but also and perhaps primarily the language of the law in Ohio that sets forth the scope of practice for pedorthics.

General discussion of the topic ensued. Practitioner Board members – orthotists and pedorthist alike -- generally expressed their understanding that the scope of practice of pedorthics “ends at the ankle.” Mr. Levy noted that in terms of statutory guidance, ORC § 4779.01 – the Definitions section of the Practice Act – provides as follows:

(F) "Pedorthics" means the evaluation, measurement, design, fabrication, assembly, fitting, adjusting, servicing, or training in the use of a pedorthic device, or the repair, replacement, adjustment, or servicing of a pedorthic device.

*(G) "Pedorthics device" means a custom fabricated or fitted therapeutic shoe, shoe modification for therapeutic purposes, prosthetic filler of the forefoot, or foot orthosis **for use from the apex of the medial malleolus and below**. It does not include an arch support, a nontherapeutic accommodative inlay, nontherapeutic accommodative footwear, prefabricated footcare products, or unmodified, over-the-counter shoes. (**emphasis added**)*

It was also noted:

-- that the current Scope of Practice document available from the American Board for Certification in Orthotics, Prosthetics, and Pedorthics is adopted from the former Board for Certification in Pedorthics, and has some language referencing “below the knee,” and that an ABC committee will be reviewing the pedorthics scope of practice and testing/coursework requirements

-- that the Board of Certification in Orthotics and Prosthetics announced this year that their testing protocols were being “tweaked” to address an expanded scope of practice for BOC certified pedorthists

It was the sense of the Board that the Board should have input into the national discussion, and that it may be appropriate within the Board’s scope of responsibility to consider preparing an advisory to the Ohio licensee community regarding Ohio requirements in this regard. Mr. Van Atta volunteered to prepare a letter to send to the national certifying bodies expressing Ohio’s concerns and input regarding this matter, and the Board’s consensus was that it should be circulated for formal consideration at the next meeting of the Board.

B. **Testing Contract with American Board for Certification in Orthotics, Prosthetics and Pedorthics** -- A draft of a contract with ABC to govern testing arrangements was circulated for preliminary review. With the incorporation/assimilation of BCP/C.Ped. testing under ABC, that organization has become the testing administrator for all three professional areas of practice. Mr. Cantrell has drafted the basic agreement in compliance with general state of Ohio contracting standards and to address the unique considerations of the arrangements between this Board and that professional certifying organization. A more finalized document will be offered for the Board's further consideration subsequently.

C. **Leave Policy – elections poll work** -- State of Ohio HR policy allows and somewhat encourages state of Ohio employees to assist with the electoral process by serving as poll workers (PEO's – Poll Election Officials) through local Boards of Election. However, it is incumbent on each agency to determine whether a policy allowing an employee to take administrative leave to do so – leave for which the employee is paid their regular rate for the day (no overtime) and not requiring the employee to return the election day pay from the county Board of Elections to the state of Ohio – is appropriate for the agency. Mr. Levy reported that he worked the November election on Mr. Van Atta's authorization, and would present a policy statement in this regard for the Board's consideration at its next meeting. Brief discussion did not indicate any concerns among Board members that the leave should be disallowed.

D. **"Suspected Wrongdoing" reporting directive/policy** -- the Governor's office circulated a memorandum and protocol for state of Ohio employees and agents to follow in the case of knowledge or suspicion of wrongdoing on behalf of another state of Ohio employee or agent. The language was provided to the Board for each individual's understanding and consideration.

E. **Schedule meeting dates/hearings:** after brief discussion, members agreed to hold the next meetings on **Tuesday, February 12, 2008, at 2:00 p.m.**, and tentatively for **Tuesday, May 13, 2008.**

F. **Board Director Compensation** – Mr. Van Atta asked for this item to be added to the agenda. He advised the Board that ordinarily this is the time frame in which the Board would consider a compensation increase for the director position; however, a recent directive from the Governor's office in consideration of general budgetary concerns counseled appointing authorities against approving, recommending or requesting pay increases for exempt, unclassified staff -- where no pay "schedule" is authorized or required by statute. Mr. Van Atta requested authority to communicate with appropriate personnel toward approving a 3% increase to take effect with the first pay period in 2008, noting that the increase is less than what was budgeted for in the current biennial budget and funds are available. Motion to approve by Horwitz/Fritts, passed unanimously.

X. **Adjournment:** There was consensus that the meeting adjourn at 6:00 p.m.

Respectfully Submitted,

Approved:

/s/ *Mark B. Levy*
03/12/2008

/s/ *Douglas B. Van Atta*

Mark B. Levy
Board Director

Douglas B. Van Atta
President

Date