

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

MARCH 12, 2008

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 2:15 p.m.

Roll Call:

Present Board Members: David DeLuccia, LPO; Elsa Fritts, LPED; Manuel Garcia, LPO; Howard H. Harcha, Esq.; Doug Van Atta, LPO

Members Absent: None (2 seats currently vacant)

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

Guests: none

II. Amend/adopt agenda: Mr. Levy noted an addition to the agenda of Item X.E: Designate Lapsed Licenses. Harcha/Fritts moved approval as amended; no discussion; passed by consensus.

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

IV. Executive Session: Session was convened by unanimous roll call vote (DeLuccia, Fritts, Garcia, Harcha, Van Atta) at 2:20 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. The Board emerged from Executive Session at 3:30 p.m. by unanimous roll call vote (DeLuccia, Fritts, Garcia, Harcha, Van Atta).

VI. Settlements / Charges / Dispositions

A. The Board took up the matter referenced as a proposed Notice of Opportunity for Hearing in **File No. 08-OPP-C-01 - Whether to limit, revoke, or suspend the Orthotics license LO.201 issued under this chapter, or reprimand or place on probation [the] license holder.** The Board having reviewed the document in Executive Session, was asked for **a motion approving the Notice.** So **moved by Harcha/Fritts.** Called for discussion; hearing none, called for vote. Aye: DeLuccia, Fritts, Garcia, Harcha. **Motion carried.** Mr. Levy was directed to work with Mr. Cantrell in finalizing the document.

B. The Board took up the matter referenced as a proposed **Consent Agreement with Richard Mittica, LPED.158**. The Board having reviewed the document in Executive Session, was asked for a **motion approving the Agreement** entailing surrender/revocation of the license. **Harcha/Garcia moved to approve** the agreement and authorize the Board President and AAG Cantrell to sign off on the matter on behalf of the Board. Called for discussion; hearing none, called for vote. Aye: DeLuccia, Fritts, Garcia, Harcha. **Motion carried.**

VII. **Director's Report:**

Mark Levy

A. **Rules Review/Promulgation:**

1. **Criminal Record Check language**
2. **Pedorthic Scope Practice**

1. Draft language was presented for the Board's consideration. The language on criminal record checks is based on language utilized by others and as recommended by the Attorney General's BCI&I division. A typo was noted in the language presented, but otherwise the proposed language was not subject to significant discussion.

2. Two proposals were presented for the Board's consideration to address scope of practice in pedorthics, consistent with the language in the statutory definition of "pedorthic device" (ref: ORC§4779.01 "... a custom fabricated or fitted [device] for use from the apex of the medial malleolus and below.")

To Add to OAC Rule 4779-3-01 - Definitions

(M) The phrase "for use from the apex of the medial malleolus and below" as used in Section 4779.01(G) of the Revised Code means that the pedorthic device does not physically extend proximal to the apex of the medial malleolus.

OR

(M) The phrase "for use from the apex of the medial malleolus and below" as used in Section 4779.01(G) of the Revised Code means that the function of the pedorthic device is to control and correct anatomical functioning or deformity from the point of the ankle bone down to and including the foot, but does not significantly affect the functioning of the lower leg.

Mr. Levy reported that the language in the first suggestion was taken from the draft of Mr. Van Atta's proposed letter to ABC on the scope of practice question. The second example sought to use less technical language, and to allow dispensation of a device whose "target area," so to speak, is ankle and below, although the device may rise above the ankle bone somewhat. Discussion ensued. It was suggested that the second proposal lacked appropriate clarity and did not appear to recognize the interdependent anatomical structures of the lower leg, ankle and foot. There was no support among the board members present for the language of the second proposal.

Further discussion suggested that the first proposal, although favored for its technical specificity, could benefit from some plain language explication. Further discussion yielded the following language as consensus:

(M) The phrase “for use from the apex of the medial malleolus and below” as used in Section 4779.01(G) of the Revised Code means that the pedorthic device does not physically extend proximal to the apex of the medial malleolus, meaning not extending higher than the middle of the ankle bone.

Requested a **motion** to proceed with these proposed changes to the administrative code rules. **So moved by Garcia/Harcha, passed unanimously.** Mr. Levy to proceed in accordance with legal requirements and report back at next meeting.

B. Legislative update

1. **HB 104 – Criminal Record Check for Licensing** – passed conference committee in December, signed by the Governor and **enacted with an effective date of 03/24/2008.** Requires applicants for licensure from this and most other Boards to cause a criminal background check to be reported to the Board.

C. Fiscal

Mr. Levy reported that he, and others, are still challenged by the new OAKS accounting environment, with difficulty accessing all the Board’s financial activity in unified reporting format; however, we are running within budgetary parameters. Income/revenue for the fiscal year is running ahead of usual experience, with about \$108K booked from 7/1/2007 through the end of February 2008; last year’s experience was about \$105K and the prior year was \$102K for the same period.

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 co-sponsored a one-day training in February together with the Association of Certified Fraud Examiners. The program materials were distributed to the members for general information.

3. IT security – office systems and email. As an outcome from the data loss/theft experienced by the state of Ohio in early 2007, a number of policy initiatives and directives have been developed and handed down to address issues of IT security. Many call for attention to infrastructure issues that are beyond the realm of this agency’s control. A number of “solutions” are being offered by state of Ohio IT and that may impact the everyday business functions of this agency, especially as regards communications between staff and

board members. For example, all mobile/portable IT equipment (laptops, etc.) are required to have encryption software loaded to protect the data stored therein and to secure e-communications conducted through the device. All “sensitive” data must be protected through these measures; that includes not only personal ID info with SSN’s, etc., but also confidential and other non-public record information. More information will be shared as it becomes available.

E. Ethics issues and compliance

1. Staff and Board member trainings – recent communications from the Governor’s office regarding ethics training initiatives and opportunities was shared with Board members previously, and members were asked to report on their training experience or plans. Ms. Fritts has attended; Mr. DeLuccia and Mr. Van Atta are scheduled later this month, and Mr. Garcia is scheduled in May. Mr. Levy attended the training for Board and Commission staffers last year.

2. Gift response – two issues arose recently for which Mr. Levy reported seeking advice and guidance:

a. A “token item” (value less than \$25) was received from a licensee who had been assisted in the administrative processes required for license reinstatement. Although the value was within permitted limits, because the gift was made by a regulated individual, we were advised to return the item at the agency’s expense.

b. The Ohio O&P Association extended a complimentary invitation to new member appointee (appointment pending at the time) Rosalind Batley, M.D., to attend the Spring Meeting and Technical Update session on March 15th. As registration exceeded the “token” amount, and was offered by the association that represents the regulated professionals governed by the Board, we sought guidance as to whether the invitation could be accepted and under what terms. We were advised that the member could attend, but either the member or the Board should pay the registration fee. Mr. Levy asked for a **motion authorizing the Board to pay the \$220 registration fee** to allow Dr. Batley’s attendance; **Harcha/Fritts so moved, passed unanimously.**

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	RIORDAN, Timothy S. WATT, Eric M.	(now LPO) Approved for Exam ONLY
Prosthetics - TEMP	ALBURY, Alexander W. DESHPANDE, Aarti A. HAGMAN, Jeffrey A. MACEDONIA, Jason P. POEPELMAN, Michelle A.	plus Approved for Exam plus Approved for Exam plus Approved for Exam plus Approved for Exam plus Approved for Exam
Orthotics	RUDOLPH (now STRAUB) Tiffany D.	
Orthotics - TEMP	MILLER, Megan L. SORCI, Elena M.	plus Approved for Exam plus Approved for Exam
Pedorthics	CUNNINGHAM, Jennifer L. MALINOWSKI, Mark A.	upgrade from Temp upgrade from Temp
Pedorthics – TEMP	SEILER, Jeffrey G.	

VIII. Old Business

A. Website information – license look-up: options for status and actions – tabled at meeting of December 2007; discussion deferred.

B. Board member search: succession planning – although not in attendance today due to prior scheduling commitments, it was reported that appointment paperwork for a new member filling the “doctor” seat (must be an MD, DO, or DPM per statute) is nearly complete for **Rosalind J. Batley, MD.**, certified in physical medicine and pediatrics, on the faculty at Ohio State University and on the medical staff at Nationwide Children’s Hospital. Another appointment for an O&P practitioner seat, vacated by Mark Horwitz in December, is pending. Two more seats will come open in December, when Mr. Van Atta and Mr. Garcia’s terms expire.

C. Licensed Pedorthist Scope of Practice -- The board considered the proposed text of a letter to ABC presented by Mr. Van Atta, circulated prior to the meeting. The intent is to inform the national discussion regarding pedorthist scope of practice with information regarding statutory considerations and regulatory concerns in Ohio. Board discussion determined an interest in further clarifying the language in one paragraph as follows (amended language **underscored and bolded**):

Interpreting the law in a traditional fashion and in the spirit in which it was written most appropriately protects the citizens of Ohio. The fitting of an orthotic device that extends proximal to the apex of the medial malleolus **(i.e., rises above the ankle)** requires **both** the educational prerequisites **and** the training required to be an Ohio-licensed orthotist. The use of increased leverage and anatomic area as is inherent in **the application of** any orthotic device extending proximal to the apex of the medial malleolus is, **in accordance with the plain language of the Ohio Practice Act, restricted to an Ohio-licensed orthotist, prosthetist-orthotist, or other appropriately licensed professional [ref: ORC § 4779.02 (B)(1)], and is beyond the permissible scope of an Ohio-licensed pedorthist.** This restriction is interpreted to include any ~~supramalleoli~~ **supramalleolar** orthosis (a "SCFO" being an example), a molded gauntlet (an "Arizona" style AFO being one of a plethora of these designs), "CRO Walkers" or any type of orthosis that physically extends proximal to the apex of the medial malleolus.

D. Testing Contract with American Board for Certification in Orthotics, Prosthetics and Pedorthics – Mr. Levy reported he had not completed updating the language to cover pedorthics. Discussion deferred.

E. Leave policy – elections poll work – Mr. Levy noted that for the past two elections held, he served as a precinct election official under administrative leave from his state of Ohio position with the approval of Board President Van Atta. The intent of this agenda item was to bring the policy question to the Board; however noting new administrative directives regarding agency time and attendance policies, Mr. Levy suggested the Board defer review of this issue until further time is spent with the new directives and a review of current office policies. Discussion deferred.

IX. New Business

A. Executive Order: Common Sense Business Regulation -- Governor Strickland's executive order was distributed for brief review and discussion. It was noted that the Board is in the process of reviewing regulatory language in the administrative code.

B. Executive Order: Time and Attendance Review -- Governor Strickland's executive order was distributed for brief review and discussion. It was noted that strict application to this agency on all points would impose some interesting challenges, given limited staffing; however the intent of both this and the business regulation order were recognized. Mr. Harcha moved that the minutes reflect that these matters have been brought to the attention of the Board, and the Board will consider the policy implications in the course of our ongoing review of administrative rules and the board's policies and procedures. Approved by consensus.

C. **Procedures: Criminal Record Checks for licensing** -- Mr. Levy distributed the process and fact sheet developed to provide direction for realizing the criminal record check requirement. Although subject to minor modification, basic content is appropriate. The protocols need to be in place by March 24, 2008, the effective date of the legislation.

D. **Schedule meeting dates:** The Board discussed scheduling meetings for the remainder of the year; Director Levy provided the schedule of ABC testing dates, and suggested the Board consider a schedule that coincides appropriately with the testing schedule, for administrative efficiency in licensing operations. However, it was clear that strict attention to the testing schedule would likely result in the number of meetings per year being reduced from 5 or 6 (five or six) to 4 (four). Discussion did not yield support for a reduction in meeting numbers, and the following dates were determined for the remaining meetings this year:

May 14, 2008

July 16, 2008

September 17, 2008

December 10, 2008

E. **Designate lapsed licenses:** Director Levy presented the Board with a list of licensees who had not renewed their licenses nor notified the Board of their intent not to renew. All such licensees had been sent reminders and notice regarding this pending Board action. Fritts/Harcha moved the licenses be placed on lapsed status. Vote was unanimous.

X. **Adjournment:** There was consensus that the meeting adjourn at 6:30 p.m.

Respectfully Submitted,

Approved:

/s/ Mark B. Levy

Mark B. Levy
Board Director

/s/ Douglas B. Van Atta 05/14/2008
Douglas B. Van Atta Date
President