

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

MAY 14, 2008

This regular meeting of the State Board of Orthotics, Prosthetics and Pedorthics (OPP) 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 scheduled for 2:00 p.m. was called to order at 2:20 p.m.

Introductory: President VanAtta welcomed Dr. Rosalind Batley to the Board for her first meeting as a member of the Board of Orthotics, Prosthetics and Pedorthics.

Roll Call:

Present Board Members: Rosalind Batley, M.D.; David DeLuccia, LPO; Elsa Fritts, LPED; Manuel Garcia, LPO; Howard H. Harcha, Esq.; Douglas VanAtta, LPO

Members Absent: None (1 seat currently vacant)

Staff: Mark Levy, Board Director
Peter Casey, Assistant Attorney General

Guests: none

II. Amend/adopt agenda: Harcha/Garcia moved the agenda as presented and updated for approval. No discussion. Vote was unanimous.

III. Approval of minutes: **Approval of March 12 minutes** - Harcha/DeLuccia moved approval. No discussion. Vote was unanimous.

IV. Executive Session: Session was convened by unanimous roll call vote (Batley, DeLuccia, Fritts, Garcia, Harcha, VanAtta) at 2:30 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 Peter Casey remain in attendance. The Board emerged from Executive Session at 3:55 p.m. by unanimous roll call vote (Batley, DeLuccia, Fritts, Garcia, Harcha, VanAtta).

The Board took a short break and re-convened at 4:10 p.m. (*Director's note upon drafting minutes: no **Item V.** on the agenda.*)

VI. Settlements / Charges / Dispositions

A. Settlements/ Charges/ Dispositions. Mr. Levy asked all these matters which were discussed in executive session to be moved under one motion as an enforcement report.

1. withdrawal of Notice of Opportunity for Hearing, 08-OPP-C-01, regarding orthotist Dennis Nalls. It was noted that the subject had deceased since issuance of the notice.
2. File 08-OPP-L-02: whether to issue or refuse to issue a license in Pedorthics
3. File 08-OPP-L-03: whether to issue or refuse to issue a license in Orthotics
4. File 08-OPP-L-04: whether to issue or refuse to issue a license in Orthotics.

Batley/Fritts moved approval of all four items. Approved unanimously by all Board members present. After the vote, Director Levy identified the following individuals as subject of the referenced notices:

08-OPP-L-02	Carlos Owens
08-OPP-L-03	Farah Ghazala, LP. 154
08-OPP-L-04	Matthew DeLay, LPED.145

VII. Director's Report:

Mark Levy

A. Rules Review/Promulgation:

Mr. Levy presented a packet of administrative rules to propose for promulgation, rescission or amendment. The packet presented was updated from the set provided by mail of the meeting. While many changes are stylistic or technical, Mr. Levy highlighted the following items as the major substantive initiatives:

4779-3-01: Definition of Terms:

*Some minor typographical changes; major change in the language of defining the **Pedorthic Scope of Practice.***

4779-5-03: License Application Procedure:

*Proposes rescinding the entire current rule language and promulgating new language. The major change has to do with eliminating language regarding the expired pathways to licensure; also **provides for the application for a temporary license being the entrance application for exam and not requiring an additional application to be filed once all of the qualifications for full licensure have been completed.***

4779-6-01: Temporary License Application Procedure:

Again, proposes eliminating the filing of an additional application to progress from temporary to full license and contains a policy choice for the Board as well, regarding whether those procedures should be followed for Pedorthic licensure as well as Orthotic and Prosthetic.

4779-5-05: Criminal Record Check Procedures:

new language to address requirement for new license applicants.

4779-10-01: Ethical and Professional Conduct:

*Proposing adding sub-paragraph K on **Prevention of Duplication of Services.***

Rule 4779-9-01: General OPPCE Requirements: *Add language that specifies Pedorthic licensure requires the accrual of 33 units over the three year period.*

Rule 4779-9-03: OPPCE Accrual, Deficiency and Remediation: *Would be promulgating a new rule that will codify the administrative correction process that the Board has instituted by policy to process the circumstance of licensees who have failed to accrue the appropriate amount of CE over their three year reporting period or have failed to realize that they have failed to accrue the appropriate CE in time for the deadline license registration renewal date.*

Pedorthic Scope of Practice:

The Board first took up the matter of the proposed addition to the definition of terms of the Pedorthic Scope of Practice. Board discussion centered around some of the feedback that the Board had received, that had been made available to the Board in the Public Comment file that was compiled to reflect feedback received as of May 9, 2008. Comments from the Board indicated that some of the correspondents seemed to have misunderstood the Board's responsibility and authority in this regard. Conversely, some of the discussions presented focused on, in large part, the real-life issues faced by Orthotists and Pedorthists treating consumers in the current healthcare environment and indicated concern for the dynamics that occur in that regard.

Mr. Levy noted that, although he didn't include it in that packet, he has responded in writing to virtually every individual who submitted a comment and sought to focus their comments or asked for their continued review of the information with a focus on the task which the Board faces, defined as: given that static nature of the language in the statute that only the legislature can change, the Board has focused on developing appropriate rule language in the definitions section that clarifies and appropriately communicates the apparent legislative intent. Mr. Levy requested that each correspondent examine the task from that perspective and see if they could come up with language that advanced their position or at least reflected an understanding that the language and the rule must conform to the language in the statute, but could offer further clarification or delineation regarding that particular language.

Mr. Levy was requested to include his return correspondence in any future publications of the public comment file just so that it appropriately shows on the record.

Mr. DeLuccia stated that he had gone through the public comment file in some detail and wanted to make a number of points regarding the information he read and his perspective on same:

- Even if AFO's are mentioned in Pedorthic training, it does not mean that pathology, biomechanics and anatomy are adequately covered. Northwestern spends approximately 6 weeks on AFO's alone in coursework for orthotists. Pedorthic training is approximately 160 hours total.
- Just because ABC and BOC allow for CEU's does not establish baseline competencies in regards to scope. They give credits for attending surgical, vascular and other courses as well.
- One letter mentions work boot and shoes which are excluded from this conversation, as all shoes are carved out of the scope conversation with a strict definition of "shoe".
- Argument for Arizona style AFO's are that they are for PTTD (posterior tibial tendon dysfunction) and do not affect areas above the ankle. This is a gross misunderstanding of biomechanical principles of the relationship of an AFO to the knee (P/F or D/F – Plantar Flexion/Dorsi Flexion). Additionally, we cannot allow devices to be fit based on diagnosis and such an approach could not be effectively governed.
- The argument for more leverage is self defeating because if more leverage is required, one would have to believe there is more technical knowledge needed for proper biomechanical / anatomical fit.
- This is a slippery slope as there is no restriction to going above the knee for the same reason (more leverage and to effect the foot), i.e. OA knee orthosis (osteoarthritis) to change foot angle.

In concluding his remarks, Mr. DeLuccia noted that one letter had mentioned that at the time the Board initially forwarded this proposal there was no Medical Board-licensed member on the State Board (that seat was vacant). Mr. DeLuccia asked Dr Batley if she would have a specific comment for the Board's efforts in this regard. Dr. Batley indicated general agreement with everything that Mr. DeLuccia had stated, and stated further that a Pedorthist has 120 -160 hours of instruction which is essentially 3 - 4 weeks of instruction. Orthotists and Prosthetists under current standards in Ohio have at least a bachelors degree. While services are prescription-based, many physicians do not understand much about orthotics and will refer based upon requests from a PT or OT (physical therapist or occupational therapist). She stated it is in the patients' best interest that the orthotist/prosthetist have enough education to engage in an appropriate discussion with the prescriber to determine whether the diagnosis given is in line with the type of device ordered for the particular patient's presentation and history. She indicated she would also expect the practitioner to refer a patient back to the physician if the patient is experiencing more swelling, erythema (redness and inflammation) than would be expected.

In response to one of the Board's correspondents, Dr. Batley also questioned whether a pedorthist would be appropriate to treat posterior tibial tendon problems. She explained that the muscle which causes the tendon to move is up deep in the calf. "I doubt after 4 weeks of education that a pedorthist would even understand what the posterior tib tendon does, what other tendons are there. Spasticity and club feet are two presentations that cause problems and they cannot be treated with shoe inserts. The cause of the problem can be in the muscle, tendon, nerve, or spinal cord. I would not want anyone without more education to treat it. Serious illness could be missed."

Other Board members having no further comment, Mr. Levy asked the Board to review again the language that was proposed to amend Administrative Code Rule 4779-3-01 Definition of Terms, the new language at sub-section M, regarding Pedorthic Scope of Practice. No changes were suggested to the language as presently proposed and Mr. Levy was requested to proceed with those changes

Mr. Levy then directed the Board to the balance of the Rules changes at issue and requested the Board's indulgence in moving through them one by one to be assured that any changes are in line with policy concerns and considerations.

4779-1-01 on Public Hearings on Adoption, Amendment, Or Rescission of Rules,

Mr. Levy noted that the changes in paragraph A are mostly of the plain language variety, seeking to reduce the more technical or legalistic kind of language and state the requirements more in plain English.. Language was reviewed and there were no comments or suggestions.

Rule 4779-1-02: Notice of Board Meetings:

To be amended. Minor update information considered non-controversial.

Rule 4779-3-01: *In addition to the change in the Pedorthic Scope language, Mr. Levy proposed to move the large section beginning at sub-section B, regarding certificate programs, into its own rule, taking it out of the definitions. Since it is a substantive treatment of the statutory language, it seems to exceed the scope of a simple definition change, to be numbered **Rule 4779-4-02.** Other substantive changes suggested other than the Pedorthic Scope definition were tabled pending further study **except for the correction of the statutory reference to 4779.29** of the Revised Code in the certificate program language, which should have always been a reference to **4779.26** of the Revised Code.*

Rule 4779-4-01: Approval of Educational Programs:

Minor changes and typos were noted; no additional changes were requested.

Rule 4779-5-01: The Examinations:

Amending language, which updates this section to reflect that the American Board for Certification in Orthotics and Prosthetics, is now the American Board for Certification in Orthotics, Prosthetics and Pedorthics and is the administrator for all the exams for licensure by this board.

Rule 4779-5-02: Admission to the Examination:

Mostly technical administrative updates, eliminating language referring to the Board for Certification in Pedorthics, which no longer exists, its functions having been taken over by the American Board for Certification. No further changes were offered.

Rule 4779-5-03: License Application Procedure:

Proposes rescission of the entire rule current language and replacing with language that more appropriately reflects currently effective statutory language. Mr. Levy noted that several alternate pathways to licensure, which were created when the Board first formed, have expired and most of the language being eliminated is no longer relevant to administration of the statute. The language that is being proposed proscribes a more efficient application review process, reducing some of the timelines required for completing an application and proposing automatic conversion to a Prothetist-Orthotist license when a licensed Orthotist or a licensed Prothetist gains approval to add the other profession to their license status and provides for withdrawal of applications and notification to the applicant of the option of withdrawing a license application that does not appear to meet statutory criteria.

Rule 4779-5-04: *Previously titled Out-of state practice of Orthotics, Prosthetics or Pedorthics has been proposed to be changed and titled to: Limited Reciprocity. The Board reviewed the language as proposed, which seeks to clarify and conform the language to the current administrative license application review process. The body of the changes proposed and the amendments proposed are not considered controversial and there are no changes to the body of the proposed language.*

A proposed new rule, Rule 4779-5-05 Criminal Records Check is all new language, to comply with that new statutory requirement.

Rule 4779-6-01 Temporary License Application Procedure –

Prior language being rescinded and new language prescribed. Conforms to the language as suggested in the new license application procedure language in 4779-5-03. An initial application for a temporary license in any of the professions will also stand as the application to sit for exam and once approved, will not require the submission of an additional application after all of the application requirements have been met. The Board was offered the opportunity to suggest different language for Pedorthic license process, but determined that the same essential process should apply.

Rule 4779-7-01 Original License Certificate and Wallet Identification Card –

Amended slightly to clarify that most licenses issued under this act, but not all, expire on the thirty-first day of January, noting that a license issued under the Temporary License provision, expires on an anniversary date one year after issuance and can only be renewed once. No changes to the proposed language offered.

Rule 4779-8-01 Renewal of License:

Again, similar changes regarding the effective date and the renewal of the temporary license are reflected in these changes, and the process to address licensees who failed

to renew and designating licenses as lapsed when the licensee has not notified the Board of an intent not to renew. No changes offered.

Rule 4779-9-01 OPPCE Requirements and Reporting Mechanism:

Amended to specify in the administrative code the number of CE units required to be approved by each license holder, depending on the license they hold. For Orthotics and Prosthetics, it's already stated in the statute and reflected in the rule. The statutory language regarding Pedorthists indicates the CE required by the Board for Certification in Pedorthics or an equivalent successor organization. The Board for Certification in Pedorthics no longer exists. The equivalent successor organization is the American Board for Certification in Orthotics and Prosthetics. That organization requires 55 units to be accrued over a five-year period; thus this rule states that a licensed Pedorthist in Ohio must achieve 33 OPPCE units during each three-year period. No further changes to that rule were suggested.

Rule 4779-9-02 Activities Which Meet the OPPCE Requirements:

Technical update changes. No further changes suggested.

Rule 4779-9-03 OPPCE Accrual Deficiency and Remediation:

New language that would codify the CE remediation protocol the Board has been utilizing by policy for the last two or three years and would simply codify or put in rule format that protocol involving the ability of a licensee who catches a deficiency before the license expiration date to make up the deficiency before the license expires. If that is not possible: if the remediation extends past the license expiration date, there will be required payment of a late fee, to make up the deficiency in CE and perform some augmented CE to be reported to the Board. No changes to the proposed language.

Rule 4779-10-01 Ethical and Professional Conduct:

New language proposed at Section K, which sought to address circumstances that came to the Board in a complaint, of a practitioner providing services in a hospital setting, having seen a patient one day, took measurements for a modification to a pre-fabricated device that had been ordered based on the patient's presentation. Apparently, the next day, another practitioner was called in to review the order and the chart and provided a pre-fabricated unit on the spot. This language would simply impose the obligation on a provider to whom it is evident that the patient is receiving services being provided by another provider. Based on the same or similar medical orders, the second provider has a professional duty of care to contact the first provider and have that provider be notified of the additional request for services and see if the first provider would have an opportunity to complete their services. Some changes were noted to the language that was presented and those changes will be noted on the language that goes forward from this point.

Rule 4779-10-02 Proper Use of Credentials:

Proposing new language: that a licensee shall not use any title, initials, or acronym reflecting ownership or possession of an advanced degree when such a document was not earned through the auspices of a recognized, accredited educational institution. A "diploma mill" amendment. No changes offered.

Rule 4779-12-01 Fees:

An amendment to include the OPPCE late certification fee.

Rule 4779-12-02 Replacement of License or Certificate:

Simply technical language changes offered.

Mr. Levy asked for the Board's approval of the package minus the major substantive changes in the certificate program language, but including moving the certificate program out of the definitions section and into its own rule, and incorporating the Pedorthics scope of practice language, incorporating any format changes required by moving and re-numbering. After brief discussion indicating a general Board concurrence on the rules package, **Garcia/DeLuccia moved/seconded that Mr. Levy proceed with filing the rules**, if possible under the proposed schedule, allowing for the Board to review the matter again at its July meeting. The vote was **unanimous**.

B. Legislative update

Mr. Levy referred to the information sheet he distributed regarding H.B.130, which is a very lengthy bill on criminal sentencing and community corrections. The original version had contained some language that sought to alter the disciplinary codes of virtually all the professional licensing boards. That has been addressed by limiting language in the bill to those boards which have provision for the automatic denial without a hearing for persons who have a record of conviction of certain criminal charges. That is not the circumstance that the OPP Practice Act presents and so language in the bill has no apparent current effect on Revised Code 4779.

C. Fiscal

Mr. Levy deferred to the information that has been distributed previously and contained on the agenda, regarding budget performance and upcoming budget processes.

D. Other activities:

Report deferred given press of time.

E. Ethics issues and compliance

Requested reports from members on the trainings they have attended.
Report deferred for concerns of time and timeliness.

VIII. Report on pending license applications:

- A. Recommendation to Approve for Licensure** upon completion of documentation, with license card then to be issued. Approved by unanimous vote.
Motion/second by DeLuccia/Harcha.

<u>License Type</u>	<u>Candidate</u>	<u>Conditions, if any</u>
Orthotics – Temporary	BUCHANAN, Jennifer L.	Needs documentation of supervision

IX Old Business: 5:30 p.m.

A. Website information license lookup and options for status in actions

Report deferred.

B. Board Member search and succession planning

Mr. Levy noted that there is one known candidate apparently engaged in process with the Governor’s office that has been offered appointment. Two more seats become available later this year. Mr. Levy will continue to work with possible candidates referred to him and make information available regarding Board composition and appointment opportunities.

C. Testing contract with the American Board for Certification in Orthotics, Prosthetics and Pedorthics.

Mr. Levy reviewed the contract in its current draft form, noting a couple of sections that need some work. The contract would be a formal document memorializing the testing agreement between this Board and the American Board for Certification, now the vendor for all of the exams for the practitioners licensed by this Board. Contract is expected to come back to this Board at the July meeting in final form for final approval. **It was moved/seconded by Fritts/Garcia that the Board go forward with the contract. The vote was unanimous.**

D Time and Attendance, Office Policies and Leave Policy

No report. Matter deferred.

Howard Harcha left the meeting at 5:40 p.m.

X, New Business

A. Memo of Understanding with Ohio Department of Job and Family Services: Medicaid Section.

Reviewed the basic terms of the memorandum as authorizing exchange of enforcement data between the Board and Ohio Medicaid and providing for the timely reporting of certain information between the two entities. Standard contract language has been teased out fairly extensively between the various offices involved. This is an agreement that is being executed with most of the professional licensing boards who have, among their constituents, professionals who provide services under the Ohio Medicaid program. Moved/seconded by Batley/Fritts for the director to sign off on the document on behalf of the Board.

B. Meeting dates reminder

No new information.

No changes were offered to the balance of the meeting schedule.

XI Adjourment – 5:50 p.m.

Motion made by Ms. Fritts; seconded by Mr. DeLuccia. Motion was unanimous.

Respectfully Submitted,

Approved:

/s/ Mark B. Levy

Mark B. Levy
Board Director

/s/ Douglas B. Van Atta

Douglas B. Van Atta
President

07/16/2008

Date