

**MINUTES  
STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS  
ANNUAL MEETING**

**September 12, 2012**

This Annual Meeting of the State Board of Orthotics, Prosthetics and Pedorthics (OPP) was held on the above date in the Board Room, 31<sup>st</sup> floor of the Riffe Center, 77 South High Street, Columbus, Ohio.

**I. Call to Order:** The meeting scheduled for 2:00 p.m. was called to order on time.

**Roll Call:**

**Members present:** Rosalind Batley, M.D (arrived at beginning of Executive Session); David DeLuccia, LPO; Elsa Fritts, LPED; Jason Macedonia, LPO; Bill Neu, LPO; Edwin Niehaus, LP; Robert Reed, consumer

**Members absent:** None

**Staff present:** Mark B. Levy, Board Director  
Meloney Buehl, Office Assistant  
Sally Ann Steuk, Assistant Attorney General  
(Executive Session only)

**Guests:** Ronald Verrilla  
Robert Graham  
Michael P. Marmer

**II. Agenda – Amend/Approve:** The agenda as distributed was briefly reviewed; Motion to approve agenda by Niehaus/Fritts, no discussion, approved by unanimous consent.

**III. Review/Approve Minutes of June 13, 2012, meeting:** Minutes having previously been circulated, moved/seconded by Neu/Reed without amendment or correction. No further discussion, vote was unanimous.

**IV. Consent Agreement Review**

A. Consent Agreement with Ronald G. Verrilla

Mr. Levy summarized this matter for the Board. Mr. Verrilla entered into a Consent Agreement with the Board effective 12/7/2011 to resolve a Notice of Opportunity for Hearing charging “misrepresentation” for failure to disclose a disciplinary history related to his professional licensure in another state. The agreement provided for the issuance of a Temporary License in Pedorthics; required quarterly reporting to the Board by an identified supervisor; required a regimen of agreed continuing education and remedial coursework; placed Mr. Verrilla on probation during the effective term of the agreement; required compliance with its terms within 12 months; allowed for submission of an application for a full license in Pedorthics no sooner than the September 2012 meeting of the Board.

A packet of documentation provided by Mr. Verrilla evidencing compliance with the terms of the agreement was distributed for the Board’s consideration. Mr. Levy reported that the compliance documentation was complete and addressed all terms. Mr. Verrilla was asked if he wished to address the Board, and after introducing Mr. Graham as his sponsor in recovery, he stated he was

thankful to the Board and the Board's staff for the opportunity to address the concerns raised on a professional level, and stated the process was humbling, educational and beneficial to him.

Mr. DeLuccia thanked Mr. Verrilla for his appearance and comments, stated the matter would be discussed in Executive Session, that he would be welcome to stay, but that in any case, he would be informed of any action taken by the Board. Mr. Verrilla and Mr. Graham then left the meeting.

B. Consent Agreement with Michael P. Marmer

Mr. Levy summarized this matter for the Board. Mr. Marmer entered into a Consent Agreement with the Board effective 03/11/2009 to resolve an Order of Suspension issued 03/28/2007 and the related Notice of Opportunity for Hearing charging chemical dependency impairment and violations attendant to that finding. The agreement required a psychological and substance abuse evaluation reported to the Board, and an ongoing protocol of substance abuse testing, continuing treatment, and monitoring with reporting to the Board; provided for reinstatement of Mr. Marmer's licenses in Orthotics and Pedorthics as Temporary licenses subject to a single annual renewal (reinstated in July 2009; renewed in July 2010); required successful completion of the Ohio license exams for the licensed profession in order to restore the licenses to unencumbered status, and allowed completion of the Orthotics exam act as a waiver of the Pedorthic exam requirement; and provided that the terms and conditions may be modified or terminated in writing "upon consent of Mr. Marmer and the Board."

A Limited Modification to the Agreement, effective 07/11/2011, allowed for a "one more time" renewal of the Temporary licenses when Mr. Marmer was unable to report successful completion of both of the Orthotics exams. The licenses LO.81-TEMP and LPED.26-TEMP expired as of 07/20/2012. A Memorandum of Understanding effective 07/19/2012 authorized Mr. Marmer to sit for another administration of the required exam, and that exam results would be considered by the Board at the 9/12/2012 meeting along with consideration of compliance with the terms of the Agreement. Mr. Levy reported that although the process had been difficult and was not lacking in paperwork compliance concerns over the term, it appeared Mr. Marmer had substantially complied with the monitoring, substance abuse testing and reporting requirements, he had apparently been unable to successfully complete both portions of the Orthotics license exam in spite of having over three (3) years and at least a dozen opportunities to sit for the exam.

Having requested an opportunity to address the Board, Mr. Marmer was recognized for this purpose. He provided the Board for consideration a copy of a Certificate from the (now defunct) Board for Certification in Pedorthics recognizing 25 years of service, issued in 1999; a copy of his appointment by Gov. Bob Taft as a Member of the Board for a term beginning 1/9/2001 and ending 12/6/2002; and a copy of a Certificate of Completion of a 5-day course of study in Pedorthic Management of the Foot, March 1980, Northwestern University Medical School Prosthetic-Orthotic Center (NUPOC).

Noting his prior service as a member of the first Board, Mr. Marmer briefly related the impact of substance abuse on a personal level, with losses personal and professional. He stated his recovery began with a six-month stay in a residential treatment facility in 2007 and his continuing treatment on an outpatient/aftercare basis since that time.

Mr. Marmer related his history of service in the profession dating back to 1968 when he was first certified by the Professional Footwear Association as a professional shoe fitter. His father had

been a leader in the profession, and he tried to follow a similar path. He stated the Board “did not honor” his first two (2) years in recovery, during which time he engaged in extensive volunteer work at and in relation to a substance abuse treatment center in the Cincinnati area.

Dr. Batley asked Mr. Marmer to what extent he had engaged in continuing medical education during the past few years to keep up with advances in the field and to prepare for the exams. He stated he had engaged in an online course review offered by the University of Texas Southwest Medical Center, but he also stated that he recognizes he did not adequately commit to the task of studying for the exams while he was engaged in fairly extensive recovery activities. He stated he had specialized in lower extremity work for most of his 30 years in practice.

Mr. Levy asked Mr. Marmer to clarify what he was asking the Board to do at this point, and stated that communications with the Board office in recent weeks seemed to indicate he was requesting the Board recognize outright his competence in Pedorthics. Mr. Marmer stated that he was requesting another opportunity to sit for the Orthotics exam, or at a minimum that the Board recognize his near miss on the recent administration as a basis along with his years of service to simply reinstate his license in Pedorthics.

Mr. Marmer was thanked for his appearance and comments, was advised the matter would be discussed in Executive Session, that he would be welcome to stay, but that in any case, he would be informed of any action taken by the Board. Mr. Marmer then left the meeting.

**V. Executive Session** – Roll call vote was taken at 2:30 p.m. 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 at 3:10 p.m. DeLuccia, Fritts, Macedonia, Neu, Niehaus and Reed so voted, requesting staff and AG representative to remain. Mr. Levy was excused from Executive Session at 3:45 p.m. Roll call vote out of Executive Session occurred at 3:55 p.m., with Dr. Batley added to the roll call block.

A short break was called.

Coming out of Executive Session, Fritts/Neu moved/seconded that the Board find Mr. Verrilla complied with the terms of the Consent Agreement, that the Agreement’s terms be noted as complete, that probationary status be lifted, and that the Board may consider his new application for licensure in Pedorthics. Passed unanimously.

Neu/Reed then moved/seconded that the Board find Mr. Marmer did not achieve full compliance with the terms of the Consent Agreement. Passed unanimously. No further action was taken.

**VI. Settlements / Charges / Dispositions / Complaints** -- 4:00 p.m.

- A. OPPCE Audit non-responded – this item was deferred for further administrative action.
- B. Report of Investigation Referral – reported in item C below.

C. Complaint statuses and tracking – Mr. Levy reported the following matters were active on the Board’s complaint/enforcement docket:

<u>Date Opened</u>	<u>Track #</u>	<u>Complaint Type</u>	<u>Status</u>	<u>BOARD ACTION REQUESTED</u>
2/14/12	12C04	supervision, practice below standards	ROI prepared	referral to enforcement partners
7/9/12	13C01	unlicensed practice; fraud	awaiting response	Approve continue pending correspondence clarifying services
7/9/12	13C02	unlicensed practice; fraud	awaiting response	Approve continue pending correspondence clarifying services
7/9/12	13C03	unlicensed practice; fraud	awaiting response	corrective action taken, educative. recommend close after member review
7/18/12	13C04	unlicensed practice	Closed	Approve to close. Lack of jurisdiction, educative letter issued
7/18/12	13C05	unlicensed practice	rec'd; pending evaluation	Approve pending further fact development
7/26/12	13C06	unlicensed practice	rec'd; pending evaluation	Approve continue pending further compliance documentation
8/8/12	13C07	unlicensed practice	awaiting response	related case 13C06 - Approve continue pending confirmation of implementation of compliance plan
8/21/12	13C08	standard of care	rec'd; pending evaluation; pending response from complainant	rec'd on referral other board; pending evaluation; pending response from complainant

**VII. Consent Agenda: Director’s Report**

(4:40 p.m.)

A. Fiscal – Revenue and Expense

1. FY12 Performance data – Revenue and Expense

2. FY13 Activity YTD and Projections -- As is usual 2-3 months into the fiscal year, expenses are running ahead of revenue. Most annual revenue is booked December – February. Report attached. Projections indicate expenses will exceed budget allocation for the second year of the biennium, demonstrating a need to seek an adjustment from the Controlling Board.

3. Pending Controlling Board request provided for review

4. Budget request preparation is in process and must be completed before the end of the month. Increases in expense and revenue are being tied to need for practice act overhaul.

B. Financial Policies and Procedures – report deferred pending AOS audit report.

### C. Legislative Report

1. Docket/tracking – report deferred; HB 259, Alternative Practitioners, remains a concern and the Director is tracking the work of a broad coalition of licensed professions coordinating educative and effective opposition strategies.

2. Practice Act review – status and open issues. LSC is drafting language at the request of an identified legislative sponsor; no new developments to report. However, this will be a major staff initiative during the coming months.

### D. Reports filed -- Copies distributed and attached:

Legislative/Lobbying Activity Reports – Legislative Inspector General – every 4 months.

Legislative Service Commission – data report for unified Boards and Commissions report  
Workforce Planning

E. Website update and redesign – Generally positive feedback was noted regarding the website update; Ms. Buehl was given credit and commendations for most of the web-wizardry involved. Members are encouraged to continue review of content and functionality and to provide ongoing feedback regarding design and substance.

F. Workforce Planning – report filed and distributed.

G. Ethics Review – OIG Report – Superintendent of Public Instruction – As part of the Board's "continuing education" approach to ethics training, this meeting provided for distribution and discussion of a recent Ohio Inspector General report on the state's top education official, who resigned after a report found he had expended state resources in pursuit of a private sector job with an educational testing company that he had recommended for a multi-million dollar contract with the state, while he was seeking and being offered the job. It was noted that although the circumstances of scale differ greatly between those events and any conflicts that may be faced by this Board or its staff, the message of caution against becoming engaged in discussions "on the side" that may affect or influence official business was emphasized as an issue that can surface in various contexts. Mr. DeLuccia reminded Board members that the best course of action if approached regarding Board business outside of the meeting context is to refer the inquiring party to the Board's office and staff.

H. Ohio Human Trafficking Task Force Report – Recommendations Affecting the O&P Community.

Ohio has enacted a major piece of legislation addressing the crimes of human trafficking, [Am. Sub. HB 262](#). The Report is an outgrowth of the legislation and a Governor's Order directing broad implementation. President DeLuccia expressed some knowledge of the problem and support for the initiative, noting that the concerns are not restricted to prostitution and sex crimes, but include child abduction, international trade in workers under slave-like conditions, and reach into service sector businesses such as beauty and nail salons, where undocumented workers have been found housed in squalid conditions in back rooms and storage areas under threat of physical harm or harm to families in home countries. While most of the enforcement components are directed at various law enforcement agencies and officers, educational outreach extends to social service and licensed professionals who frequently interact with vulnerable populations. Two report recommendations appear to have relevance to the Ohio O&P community:

1. Recommendation 15: To seek a statutory amendment to revoke the individual license of persons convicted of human trafficking or revoke the license of businesses used in the commission of the crime of human trafficking.

2. Recommendation 21: To incorporate human trafficking training into Continuing Education (CE) learning for licensed professionals.

VIII. A. Report on Pending License Applications and Licenses Issued: Neu / Levy  
(4:50 p.m.)

Report was circulated for consideration. It was noted that four (4) of the thirteen (13) applications are presented for approval pending completion of requirements and/or documentation. Four (4) applications are for Prosthetics, two (2) of which as Temporary; three (3) applications are for Prosthetics-Orthotics, one (1) of which as Temporary; six (6) are for Pedorthics, four (4) of which as Temporary. Approval moved by Neu, second by Batley; passed unanimously, with the record reflecting the following absentions: Mr. DeLuccia as to Steinmetz and Verrilla; Reed as to Steinmetz; Fritts as to Agnew and Mayer. Report as approved is attached.

IX. Old Business (5:00 p.m.)

A. Board Continuity – three seats open December 2012 DeLuccia / Levy  
There was a brief discussion regarding upcoming vacancies, recruitment efforts to date, and members were requested to consider discussing with known professionals who may be good candidates. There is a known candidate for the O&P practitioner seat, application submitted; Director has been in contact with the Medical Association and the Podiatric Medical Association, as well as the Governor's office. Recruitment activities continue.

B. Application content and review -- new forms Neu / Levy / Buehl

A current draft of a new / updated application form was provided for review and discussion. In developing the content and format, staff sought to review the forms currently utilized by other agencies to consider different elements and attributes. Board guidance was requested on two points in particular; consensus of discussion was to eliminate the "attestation of practice of care" section which sought to have applicants indicate particular presentations and interventions within their experiential training, and to limit employment history questions to the prior two (2) practice-related employment experiences.

C. 2013 Meeting Dates: Understanding that new Board members may bring a different perspective, the following meeting dates were approved for calendar year 2013 (all Wednesdays):

March 13, 2013      June 12, 2013      September 11, 2013      December 11, 2013

D. Five-year rule review: two rule sets – No Change, and Language Updates.

1. Licensing Exam language – OAC Rule 4779-5-01
  - a. Vendor/administrator acceptance and/or selection - O&P
  - b. Vendor/administrator acceptance and/or selection – Pedorthics

Mr. Levy introduced the topic by noting that the Board had identified the rule identifying a license exam vendor as a possible “candidate” for change; recent discussion indicated a question and interest in determining whether the BOC Pedorthist exam may be appropriate to stand as an entrance exam in Pedorthics in addition to the ABC C.Ped. exam. The office has engaged in correspondence with the two entities in an effort to find an objective standard upon which to base a determination, and noting the imminent uptick in BOC entrance standards for O&P, expanded the inquiry to review O&P testing considerations as well. The correspondence, responses and documentation have been posted to the website for general review, and staff had sought to summarize the major points.

Board discussion sought to focus on whether and how the Board can relate entrance educational standards to test content as a measure of baseline competence for Ohio practice. Mr. Levy suggested the task may be easier in review of the Pedorthics piece than it is for the O&P professions. Data developed seem to indicate that the C.Ped. and the BOC Orthotic Fitter exam were both utilized in the original BOC Pedorthist study to arrive at appropriate exam content areas. Thus, there is a case to be made from that perspective that both exams are or at least were originally oriented toward testing for the same competencies and the same learning content.

Mr. Neu noted that statutory language may limit the Board’s ability to choose a competing exam vendor. ORC § 4779.13 Eligibility for pedorthics license. provides, in part:

*To be eligible for a license to practice pedorthics, an applicant must meet all of the following requirements:*

***(C) Has completed the education, training, and experience required to take the certification examination developed by the board for certification in pedorthics or an equivalent successor organization recognized by the board.***

Discussion indicated an interest in determining answers to the following questions:

How does the vendor assure that the exam tests for learning identified as required for professional competence by NCOPE educational standards?

Does an external entity review NCOPE standards and the vendor’s exam to assure the exam test for learning of NCOPE content requirements?

Does an external entity review the reliability of testing procedures?

How does the vendor insure the exam stays congruent with changing NCOPE standards?

Consensus reached was for staff to continue to review data available along with Board members to determine if we have information to answer those questions, or whether another round of inquiry through correspondence may be indicated.

2. Admission to Exam language – OAC Rule 4779-5-02

Mr. Levy stated he had identified the noted rule for inclusion in the language update rules package we are preparing to move forward. The language as written provides for the Board to approve a candidate to sit for exam, but has no limitation on the lifetime of such an approval. Board discussion focused on the question as to the length of time an admission to exam should be valid. Arriving at the understanding that 3 years/36 months seems to be the standard applied by certification entities serving the profession, the Board by consensus approved the following proposed amendment to the rule:

(E) An applicant for Ohio examination approved for admission to exam by the state board of orthotics, prosthetics, and pedorthics, shall comply with any and all deadlines established by the American board for certification in orthotics, prosthetics, and pedorthics (ABC), **or other test vendor approved for license exam administration by the state board of orthotics, prosthetics, and pedorthics**, and any contracted testing agencies. **An approval for admission to exam issued by the state board of orthotics, prosthetics, and pedorthics is valid for thirty-six (36) months from date of initial issuance of the approval letter or the associated temporary license, whichever is the later date if different.** (new language emphasized)

X. New Business (5:45 p.m.)

A. Election of Officers – Nomination and Vote

1. President -- Bill Neu was nominated from the floor. Mr. Neu accepted the nomination. Vote in favor was unanimous.

2. Secretary – Jason Macedonia was nominated from the floor. Mr. Macedonia accepted the nomination. Vote in favor was unanimous.

B. Mr. Levy asked the Board to recognize the extraordinary term of service outgoing President David M. DeLuccia has given the Board during his nearly six (6) years of service, with four (4) served as President. Mr. DeLuccia was roundly commended for his commitment to the Board and the professions.

XI. Adjournment (5:50 p.m.)

Respectfully submitted,

Mark B. Levy

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

*William C. Neu.*

\_\_\_\_\_  
William C. Neu  
President

12/12/12

\_\_\_\_\_  
Date