

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

December 12, 2012

This Regular Meeting of the State Board of Orthotics, Prosthetics and Pedorthics (OPP) was held on the above date in the Board Room, 31st 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 at 2:10 p.m.

Roll Call:

Members present: David DeLuccia, LPO; Elsa Fritts, LPED (arrived after roll call into Executive Session); Jason Macedonia, LPO; Bill Neu, LPO; Edwin Niehaus, LP; Robert Reed, consumer

Members absent: Rosalind Batley, M.D

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

Guests: Cheryl Hawkinson, Assistant Attorney General (introduction only); Katherine Bockbrader (introduction only)
Pamela Haig, C.Ped., Palmer Institute/Biomechanics

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

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

IV. Executive Session: Roll call vote was taken 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 2:15 p.m. DeLuccia, Macedonia, Neu, Niehaus and Reed so voted, requesting staff and AG representative to remain. Ms. Fritts arrived at 2:20 p.m. Unanimous roll call vote out of Executive Session occurred at 2:50 p.m.

V. - 2:50 pm Settlements / Charges / Dispositions / Complaints

A. OPPCE Audit non-responder: The Board was presented with a Notice of Opportunity for Hearing in file number 13 C 15, charging Respondent with non-compliance regarding OPPCE audit response and reporting requirements. **Motion to approve and issue the Notice for the reasons stated therein by Fritts, second by Reed, passed unanimously.** Respondent identified after the vote as David A. Games, II, Licensed Pedorthist.

B. Complaint statuses and tracking

The Board accepted the FY13 Complaint Status report with no discussion. Fifteen (15) complaint files opened in FY13; Nine (9) remain in process; six (6) have been closed. We are tracking more activity as indexed case files, explaining some of the jump in case numbers (number of files opened now double all of FY12 experience).

<u>Date</u>	<u>Track #</u>	<u>Complaint Type</u>	<u>Status</u>	<u>Member review</u>	<u>Last Opened</u>
7/9/12	<u>13 C 01</u>	unlicensed practice; fraud	pending review; fact finding in process	approved to open	12/10/12
7/9/12	<u>13 C 02</u>	unlicensed practice; fraud	pending review; fact-finding in process	approved to open	12/10/12
7/18/12	<u>13 C 05</u>	unlicensed practice	initial review	approved to open	11/19/12
8/21/12	<u>13 C 08</u>	standard of care	Complaint form and releases received; pending notice to subject	pending notice to licensee	12/11/12
9/11/12	<u>13 C 10</u>	unlicensed practice	recommend close, opened in error	pending review	9/11/12
9/11/12	<u>13 C 11</u>	fraud / standard of care	pending receipt of formal complaint	pending review	9/11/12
9/11/12	<u>13 C 12</u>	unlicensed practice	pending review; pending response from DME company	in process; correspondence	10/2/12
9/26/12	<u>13 C 14</u>	unlicensed practice	initial intake -- cross reference 13C12 -- Employer file	in process; correspondence	10/3/12
11/21/12	<u>13 C 15</u>	CE Audit Non-Responder	recommend issue NOH	pending citation	11/21/12
12/4/12	<u>13 C 16</u>	standard of care; unlicensed practice	pending formal complaint	pending receipt of complaint	12/4/12

VI - 3:00 pm Consent Agenda: Director's Report

A. Fiscal – Revenue and Expense

Spreadsheet data as presented to the Board is appended.

1. FY13 Performance data – Revenue and Expense – comparative metrics offered
2. FY13 Activity YTD and Projections
 - Beginning FY appropriation was \$114,218
 - 11.09.2012 Controlling Board approved increase of \$18,382 to \$132.600
 - Expenses running in line with projections. With onset of renewal, we have just begun our heavy revenue inflow period, will continue through mid-February.

3. FY14-15 Budget submitted – requesting \$276,500 two-year appropriation.
4. License renewal rollout and status
 - Online renewals went live 11/12/12
 - 408 Licenses went into 'Active in Renewal' status 11/12/12
 - 117 (28.7%) Licenses have been renewed as of 12/11/12

B. Legislative Report

1. Legislative Docket / Tracking – CE and Human Trafficking

A report was presented with a number of items were in tracking status due to nexus of the health care field or general government reform and regulation. Bills addressing acupuncture/"oriental medicine", nurses and physician assistants had passed or appeared primed for passage; bills to revise counselor licensing, psychology licensing and the cosmetology law which had cleared the House appeared to have stalled out in the closing days of the Senate session. The Cosmetology piece had become a targeted vehicle for other initiatives, including to address Human Trafficking CE Learning opportunities for professional licensees, which may have hindered its progress. This history shows the importance of strong constituent support for legislative success.

2. Practice Act review – status and open issues. Chapter 4779 reform did not clear LSC drafting to introduction, but remains a priority for the coming session.

C. Administrative Docket

1. ODH – Bureau of Regulatory Compliance – Provider qualifications in Nursing Homes and Residential Care Facilities

Administrative advocacy to include profession protective language in Rules governing Qualifications and Health of Personnel in Residential Care Facilities (OAC 3701-17-55); same language already exists in Rules governing Qualifications and Health of Personnel in Nursing Homes (OAC 3701-17-07)

"All individuals used by the residential care facility who function in a professional capacity shall meet the standards applicable to that profession, including but not limited to, possessing a current Ohio license, registration, or certification, if required by law."

2. ODJFS – 10/23/2012 -- Meeting with Medicaid/Health Plan Policy staff and data administrators, seeking to obtain reliable utilization data regarding state of Ohio expenditures for the O&P sector of the DMEPOS covered services index. Request still pending.

3. Attended meetings of the Board and Commission Management group – Sept. 27th, Oct. 25th, Nov. 29th.

4. Attended Ohio Attorney General's Executive Director's Summit – November 9th
5. "Attended" Dept of Public Safety Emergency Notification Training Webinar -- November 7th

D. Reports filed – Privacy bundle (Cyber Security Plan, Privacy Impact Assessment, Data Inventory and Analysis, Policy on Protecting Privacy)

1. Director provided a package documenting fifteen (15) points of compliance with IT Security and Privacy Requirements/Standards for state agencies.
2. Director presented a **Policy on Protecting Privacy**, developed from a recommended model, for the Board's review and approval. **Motion to approve by Reed/Macedonia, vote in favor was unanimous.**

E. Ethics Review – Holidays, Gifting and Public Service

In compliance with current directives, the Board engages in a review of topics addressing Ethics in government at each meeting. Director presented information suggesting caution in the acceptance of gifts by Members who may be used to the casual practice of gift exchange in the personal and private sectors. In the public sector, such practices raise issues of conflict of influence and the appearance of impropriety. The Board reviewed information from the Ohio Ethics Commission, reviewing the statutory language, Financial Disclosure requirements, and Frequently Asked Questions. Materials were provided in hand-outs and distributed electronically for retention and review.

VII. A. License Applications and Licenses Issued: Macedonia / Levy (4:50 p.m.)

Report was circulated for consideration, a short report, typical for the end of the year: four (4) applications, one each in Prosthetics (Temporary), Orthotics, Prosthetics-Orthotics (from Orthotics only), and Pedorthics (by Reciprocity). **Approval moved by Macedonia, second by Niehaus; passed unanimously, no absentions.**

VIII. - 3:45 pm Old Business

- A. Board Continuity – three seats open December 2012 – applications filed

Mr. Levy reported that we are aware of at least one application filed for each of the three seats that are now up for new appointment; pending action of the Office of the Governor.

B. Five-year rule review: No Change, and Language Updates

1. Licensing Exam language – OAC Rule 4779-5-01

The Board welcomed Pamela Haig, C.Ped., of the Robert M. Palmer Institute of Biomechanics (RMPI) in Ellwood, Indiana. She is presently an adjunct faculty member of the IU School of Medicine, residency training department. She spends much of her time devoted to clinical applications of pedorthic biomechanics as well as sharing her expertise as a corporate educator to many international foot wear and foot care companies. Mr. Levy explained that he had reached out to Ms. Haig as the Board's review of its testing vendor requirements extended, noting some public statements indicating she was researching the history of pedorthic license examinations. She agreed to appear before the Board to share information and respond to questions for minimal consideration, roughly the equivalent of mileage and a modest per diem (\$350).

Ms. Haig explained her vision of the role of RMPI in contemporary pedorthic education and training, stating that they have been pushing for an increase in educational standards for entrance to the field, preferring a Bachelor's level education as a baseline. She noted with concern that only one school devoted to pedorthic education remains out of a field of eight(8) that existed a few years ago. She reported significant concern regarding the quality of work being performed by recent entrants to the field, stating she has personally engaged in field practice in nursing home settings and has observed substantial deficits in medical documentation and practical device application and fitting.

As regards the competing pedorthic exams, Ms. Haig said she was familiar with the older BCP exam, but has not personally taken or reviewed the BOC exam or the current ABC version of the inherited BCP exam. She stated that it is her perception that many or most of the NCOPE approved pedorthic education providers "teach to the test," whereas it is RMPI's orientation to teach the theory and practice of pedorthics. RMPI is currently in process to find an appropriate post-secondary educational institution with which to partner to advance a sound, comprehensive pedorthic education curriculum.

Upon questioning, she stated that it is her view that the ABC exam and exam review/updating process fosters a greater clinical orientation to the practice than does the BOC exam.

There being no further questions for Ms. Haig, she was thanked for her willingness to attend the meeting and offer her insights.

- a. Vendor/administrator acceptance and/or selection - Pedorthics
- b. Vendor/administrator acceptance and/or selection – O&P

Board discussion moved to the language of the proposed change to the testing vendor rule. It was noted that two out of the three comments generated in response to the discussion posted to the website indicated a professional preference for ABC based on content and style of responses to questions. Mr. DeLuccia stated his belief that there is value to the Board in choosing a single exam administrator for administrative efficiencies and to avoid competitive confusion. He noted as well the indication that the ABC exam emphasizes clinical competence to a greater degree. Mr. Neu stated that he has experience sitting for both the ABC and BOC Orthotic exams, and found the ABC exam to be more demanding.

Mr. Reed moved, second by Niehaus, that the Board propose NO amendment to the current language of the testing vendor rule, OAC Rule 4779-5-01; that the rule move forward without the proposed changes shown in the rule review package. Call for further discussion, Ms. Fritts stated her understanding that for the pedorthic exam, there does not appear to be enough of a demonstrable difference to support the lack of a choice and would be voting against the motion. With no further discussion, the question was called with 4 ayes supporting no change, 1 nay. Motion passed.

Mr. Levy then asked for consideration of the other rules in the package.

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

Ms. Fritts moved the additional language be added to the rule as follows:

(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 months from date of initial issuance of the approval letter or the associated temporary license, whichever is the later date if different.

Second by Macedonia, approved by unanimous vote.

3. Other proposed language and amendments.

4779-4-01 Approval of educational programs.

Motion by Niehaus/Reed to amend the rule as follows:

(A) The board hereby approves orthotics; and prosthetics; ~~or pedorthics~~ educational programs that are accredited by or are under a letter of review from the committee on accreditation for orthotics; and prosthetics; ~~or pedorthics~~ under the auspices of the commission of accreditation of allied health educational programs (CAAHEP) or their successor organization(s); for pedorthic educational programs, the board hereby approves programs accredited by the national commission on orthotic and prosthetic education or its successor organization; and

(B) The board shall recognize ~~an~~ a post-secondary educational program that complies with the requirements of section 4779.25 of the Revised Code.

(C) The board may recognize an educational program that meets these standards upon request of an officer or official of the educational program; upon request of an applicant for

licensure; or upon request of any person that has a recognized interest in the fields of orthotics, prosthetics, or pedorthics.

Discussion indicated the changes bring the regulatory language into alignment with the current and forward-looking configuration of the national accrediting organizations.

Approved by unanimous vote.

OAC Rule 4779-5-04 – Limited reciprocity

Motion by Macedonia/Fritts to amend the rule as follows:

(B) Prior to practicing in Ohio, non-residents applicants who are licensed in another jurisdiction must:

*~~**(D) An applicant seeking his or her first license issued by the state board of orthotics, prosthetics, and pedorthics shall comply with the criminal record check requirements of section 4779.091 of the Revised Code and rule 4779-5-05 of the Administrative Code.**~~*

Discussion indicated the changes promote accuracy and reduce redundancy. **Approved by unanimous vote.**

4779-9-01 Continuing education requirements and reporting (OPPCE).

Mr. Levy presented updated language as follows to amend:

(D) As a condition of license renewal beginning with the license expiration and renewal date of January 31, 2014, an individual renewing an active license issued by this board, if attesting to completion of required OPPCE for the renewal to process in accordance with the requirements of Section 4779.20 of the Revised Code, may be required to verify subject to documentation completion of at least a one-unit or one hour continuing education course approved by the Ohio department of health or the Ohio department of education or such other coursework as the Board may determine is appropriate for the professions it licenses on the subject of human trafficking recognition and response training for allied healthcare professionals. The Board shall include on its website information regarding such approved training and a link to state of Ohio authorized online resources for the attainment of such training. This section does not increase the minimum OPPCE attainment requirements of Section 4779.20 of the Ohio Revised Code or the requirements of Section (A) of this rule.

Mr. Levy explained that as part of the Human Trafficking legislation and Task Force report, staff had been working with other boards and commissions and identified leaders in formulating appropriate statutory changes to implement the proposal for targeted Continuing Education for Licensed Professionals. However, legislation authorizing the changes may not pass the current session, so the language here is permissive anticipating such a change may be enacted.

The proposed amendment was moved by Niehaus, second by Fritts, approved unanimously.

4779-9-02 Activities which meet the OPPCE requirements.

Mr. Levy requested consideration of the proposed amendment on the same basis as the prior rule.

The board will also accept any continuing education coursework authorized or offered by the Ohio department of health or the Ohio department of education on the subject of human trafficking recognition and response training for allied healthcare professionals.

The proposed amendment was moved by Niehaus, second by Fritts, approved unanimously.

4779-11-01 General information and definitions.

Mr. Levy explained the change is a technical/typographical correction.

(B) The compilation of all time periods set forth in this chapter of the Administrative Code shall be in accordance with section ~~1.14~~ 119 of the Revised Code.

The proposed amendment was moved by Niehaus, second by Fritts, approved unanimously.

4. Review Rule Promulgation Timeline

Mr. Levy reported that the rule package had “passed” review of the Office of the Common Sense Initiative after making some suggested changes to the Business Impact Analysis document, and presented a tentative planning timeline for the package to move forward.

Requested a motion to proceed as indicated. So moved by Macedonia/Fritts, vote was unanimous. Under the outline as presented:

- A. Rules to be “proposed”/filed in the Electronic Rule Filing/Register of Ohio system no later than 12/27/2012
- B. Public Rules hearing to be scheduled/held 1/29/2013
- C. Likely JCARR hearing date: 02/25/2013
- D. Board meeting 03/13/2013 – final consideration, language changes, set effective date
- E. Projected final file date: 03/19/2013
- F. Recommended effective date: 04/01/2013

[No “IX” item on agenda]

A. OPPCE Audit policy – acceptance of transcripts in lieu of direct documentation

Mr. Levy introduced the topic by noting that OPPCE audit policy has allowed licensees to submit CE transcripts from their credentialing organizations in lieu of direct documentation from CE vendor/supplier confirming attendance. It has recently come to our attention that BOC has initiated a process apparently allowing certificate holders to enter their own CE accrual information directly into the BOC tracking database. The question is raised as to whether that allowance impacts the validity of the transcript as a document verifying coursework completion. After some general discussion, the Board suggested Mr. Levy contact BOC directly to obtain additional information.

B. Record retention and document destruction – refinements and implementation

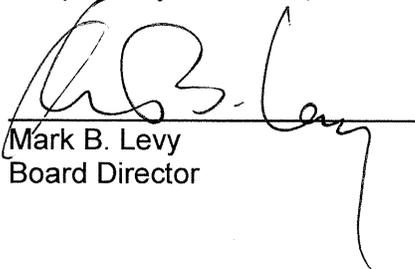
Ms. Buehl introduced the topic by noting that after careful administrative review, the standard State of Ohio retention policy for documents relating to the Board’s business (one year) may be too aggressive. After some general discussion, the Board agreed to a retention policy of one year on-site for hard-copy documents relating to closed license, hearing and investigation files; two years hard-copy archive for files closed prior to FY13; two years electronic storage for those files (FY13 and beyond) with destruction of the hard copies to take place after two years storage (pre-FY13 files) or one year after close (FY13 files and beyond). The Board decided to defer a decision regarding the retention schedule for electronic files until more analysis of the cost, benefits and risks could be completed.

C. Process improvement and performance metrics

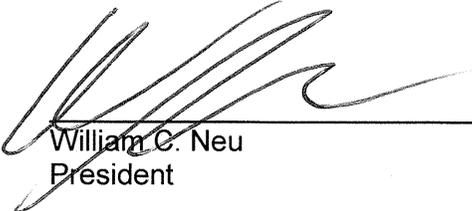
Ms. Buehl introduced the topic by noting that Board staff has been receiving an increasing number of requests for measurement of its efficiency. As such, major Board processes such as Applications, Investigations and Board Meetings are currently undergoing process mapping and other evaluations. Some improvements have already been applied, although the initiative is currently focused on measurement of the processes. Once measurement is complete, improvements derived from the Lean and 6 Sigma methodologies may be applied.

XI. Adjournment

Respectfully submitted,



Mark B. Levy
Board Director



William C. Neu
President

3/6/2013
Date