

Record of Public Hearing
State Board of Orthotics, Prosthetics, and Pedorthics
Rules Hearing 29 January 2013

This is a record of the public hearing of the State Board of Orthotics, Prosthetics, and Pedorthics called pursuant to Section 119.03 of the Ohio Revised Code concerning the adoption, amendment, or rescission of rules governing the practice of orthotics, prosthetics, and pedorthics. The hearing was convened as scheduled at 2:30 pm by Board Director Mark B. Levy. It was noted that the proposed language that is a subject of the hearing is being considered pursuant to the Board's responsibility to conduct regular reviews of its rules, no less frequently than every five years, to comply with Section 119.03 of the Ohio Revised Code; and its general responsibility to assure that the regulatory language within the Board's purview is appropriate to its jurisdiction and the proper conduct and administration of the Practice Act, codified as Chapter 4779 of the Ohio Revised Code.

Mr. Levy noted his role as Director of the Board and responsible for rule filing actions and processes. Also in attendance were Mr. William C. Neu, III, President of the Board; Ms. Meloney Buehl, Office Assistant for the Board; and Ms. Ashley Frustaci, representing the Joint Committee on Agency Rule Review (JCARR).

Mr. Levy stated for the record that the rules package being considered was approved for promulgation at a regular meeting of the Board held on December 12, 2012, by a unanimous vote of the members present at that meeting, constituting a quorum. The purpose of the hearing today was explained as to provide an opportunity for any person affected by the proposed Rules to appear to be heard in person, by his or her attorney, or both. An affected person could present his or her positions, arguments or contentions orally or in writing, and may offer and examine witnesses and present evidence tending to show that the proposed adoption of the Rule, if adopted, will be unreasonable or unlawful.

This record shows that consistent with the Public Notices of this hearing, the hearing convened on time at 2:30 pm Wednesday, January 29, 2013, in Room 1938, on the 19th floor of the Vern Riffe Center for the Government and the Arts, 77 South High Street, in the city of Columbus. Copies of the proposed Rules have been available through the Board office and on the Register of Ohio since being filed in December, 2012, and revised filed on January 2, 2013.

Reading of the proposed Rules was waived as no person in attendance stated an objection.

It was noted that the Board is interested in hearing all ideas, comments, and interests regarding these Rules. It was also be noted that written statements of witnesses may be admitted into evidence after they have been marked and designated as an exhibit. Mr. Levy stated that the Board would keep a record of these proceedings open until COB January 31, 2013, for the submission of any supplemental written comments.

No witnesses were in attendance requesting to provide documents or testimony.

Mr. Levy then introduced into the record his two-page affidavit signed, dated and notarized January 29, 2013, in which he attested to his responsibility to process and maintain the following records as regards this matter:

- A. A copy of the Stakeholder Advisory notice dated June 7, 2012, advising the Board's constituent stakeholders of the Five-Year Rule Review process, noting the rules pending review, links to further information at the board's website, and inviting input and feedback.
- B. A copy of the Business Impact Analysis dated October 16, 2012, revised December 5, 2012, filed on the Register January 2, 2013, listing the rules being offered as "change" and "no change."
- C. A copy of the Common Sense Initiative (CSI) memo dated December 10, 2012, indicating no recommendations regarding the matter and concluding that the Board may go forward with filing the rules with JCARR and on the Register of Ohio.
- D. A copy of the State Board of Orthotics, Prosthetics, and Pedorthics response to the CSI office, advising the Board approved the packages to move forward at its meeting of December 12, 2012.
- E. The portion of the Draft Minutes of the State Board of Orthotics, Prosthetics & Pedorthics meeting held on December 12, 2012, which at section 4, beginning on document page 8, denotes the Board's action approving the original filing for adoption of the rule proposals known as the 2012 Language Updates package.
- F. The public notice filed on the Ohio Business Gateway on December 27, 2012, and the confirmation receipt of the filing.
- G. The revised Public Hearing Notice filed on the Register of Ohio on January 2, 2013, providing legal notice regarding this hearing.
- H. The certification letters and business impact analysis generated by the Electronic Rule Filing system and the Register of Ohio, documenting that with this action, the rules were also filed electronically with the agencies and entities required by law, in this case the Secretary of State, the Legislative Service Commission, the Joint Committee on Agency Rule Review, and the Department of Development on January 2, 2013, as well as the certification letter generated documenting the revised filing of rules 4779-4-01, 4779-5-02, 4779-5-04, 4779-9-01, 4779-9-02 and 4779-11-01 within the package.
- I: The set of rule proposals that comprise the 2012 Language Updates package, amending and updating rules currently found in Chapter 4779 of the Ohio Administrative Code.

Mr. Levy then introduced into the record a compendium of stakeholder statements provided for the Board's consideration of this matter. Those statements include the following:

<u>Correspondent</u>	<u>Date Received</u>
Claudia Zacharias, MBA, CAE Board of Certification/Accreditation (BOC)	1/25/2013
Julie Bush, LO, President Advanced Medical Supply, Inc.	1/25/2013
Richard L. Grope, LPO	1/25/2013
Mark Malinowski, LPED, BOCPD, COF	1/25/2013

Michael D. Veder, LO, LPED, CO, CPED Gaitwell O&P	1/28/2013
Joseph R. Garcia, LCPO, BOCOP, LTP	1/28/2013
Frank Horvath, LP Horvath Medical Supply, Inc.	1/28/2013
Michael T. Jablonski, CO, BOCO	1/28/2013
Janet Malinowski, LPED, CFO, COF	1/28/2013
Mark Malinowski, LPED, CFO, COF	1/28/2013
Pamela Haig, CPED, President Elect The Robert M. Palmer, M.D. Institute of Biomechanics, Inc.	1/29/2013

The record of this hearing remained open until COB January 31, 2013. No additional documentary evidence and materials relevant to the consideration of this matter were provided, however the Board remains willing to weigh all testimony and evidence presented for this hearing and subsequent thereto before considering any action on this matter. Any future action by the Board on these rules will be at a regular meeting of the Board, which is open to the public. Any formal action will be in compliance with Sections 119.03 and 119.04 of the Revised Code.

The Rules hearing was adjourned at approximately 2:40 p.m., January 29, 2013, and this record closed as of 5:00 p.m., January 31, 2013.

Respectfully submitted¹,

Mark B. Levy
Board Director
State Board of Orthotics, Prosthetics, and Pedorthics
77 S. High St., 18th floor
Columbus, OH 43215

¹ This is a good-faith rendition of the record of the hearing, not a stenographic record. An audio recording of the hearing remains on file with the Board.

BEFORE THE STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS
77 S. High Street, 18th floor
Columbus, OH 43215

PUBLIC RULES HEARING – 29 JANUARY 2013
Room 1938 – Vern Riffe Center for Government and the Arts

STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

AFFIDAVIT OF MARK B. LEVY

The undersigned, Mark B. Levy, Board Director, State Board of Orthotics, Prosthetics, and Pedorthics, 77 S. High St., 18th floor, Columbus, Ohio 43215, first being duly sworn and cautioned, says:

1. Within the scope of my duties for the Board, I am responsible for the appropriate filing of rule proposals (a) with the Office of the Common Sense Initiative along with the filing of a Business Impact Analysis as provided for in Chapter 107 of the Revised Code and (b) on the Register of the State of Ohio in compliance with the requirements of the electronic rules filing system and Section 119.03 of the Ohio Revised Code and Chapter 4779 of the Ohio Revised Code.
2. Attached or included with this affidavit are the following documents regarding the rule proposals which are subject to public hearing as noticed by the Board for January 29, 2013:
 - A. A copy of the Stakeholder Advisory notice dated June 7, 2012, advising the Board's constituent stakeholders of the Five-Year Rule Review process, noting the rules pending review, links to further information at the board's website, and inviting input and feedback.
 - B. A copy of the Business Impact Analysis dated October 16, 2012, revised December 5, 2012, filed on the Register January 2, 2013, listing the rules being offered as "change" and "no change."
 - C. A copy of the CSI memo dated December 10, 2012, indicating no recommendations regarding the matter and concluding that the Board may go forward with filing the rules with JCARR and on the Register of Ohio.
 - D. A copy of the State Board of Orthotics, Prosthetics, and Pedorthics response to the CSI office, advising the Board approved the packages to move forward at its meeting of December 12, 2012.
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document page 8, denotes the Board's action approving the original filing for adoption of the rule proposals known as the 2012 Language Updates package.

- F. The public notice filed on the Ohio Business Gateway on December 27, 2012, and the confirmation receipt of the filing.
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- H. The certification letters and business impact analysis generated by the Electronic Rule Filing system and the Register of Ohio, documenting that with this action, the rules were also filed electronically with the agencies and entities required by law, in this case the Secretary of State, the Legislative Service Commission, the Joint Committee on Agency Rule Review, and the Department of Development on January 2, 2013, as well as the certification letter generated documenting the revised filing of rules 4779-4-01, 4779-5-02, 4779-5-04, 4779-9-01, 4779-9-02 and 4779-11-01 within the package.
- I: The set of rule proposals that comprise the 2012 Language Updates package, amending and updating rules currently found in Chapter 4779 of the Ohio Administrative Code.

FURTHER AFFIANT SAYETH NAUGHT.



MARK B. LEVY
BOARD DIRECTOR
State Board of Orthotics, Prosthetics, and Pedorthics

Sworn to and subscribed in my presence this January 29, 2013
(date)



Notary Public, State of Ohio

Carolyn S. Krause
Notary Public, State of Ohio
My Commission Expires: 7/11/15

My commission expires 7/11/2015

Levy, Mark B

From: Levy, Mark B
Sent: Thursday, June 07, 2012 9:50 AM
To: dfarabi@columbus.rr.com; 'richbutchko@ohiochapteraaop.com'
(richbutchko@ohiochapteraaop.com)
Cc: David DeLuccia Bill Neu; Ed Niehaus;
Elsa Fritts];
Subject: Rules Pending Review

Dianne Farabi, Executive Director
Ohio Orthotic and Prosthetic Association

Richard Butchko, Executive Director
Ohio Chapter, American Academy of Orthotists and Prosthetists

Dear Ms. Farabi and Mr. Butchko –

As you are aware, the State Board of Orthotics, Prosthetics and Pedorthics is required to review each of its Rules in the Administrative Code every five (5) years to determine if language should be rescinded, amended or left unchanged.

While the Board has always practiced transparency in this process, informing and seeking to involve constituent licensees, employers and stakeholders in rule development and analysis, new requirements under Executive Order 2011-01K and S.B. 2 establishing the Common Sense Initiative instruct agencies to more fully document stakeholder outreach. The Board understands the intent of the initiative is to assure the constituent community is informed and involved at the earliest stages of the rule development and/or review process.

More information about the CSI office and rule-review interface is available here: <http://www.governor.ohio.gov/PrioritiesandInitiatives/CommonSenseInitiative.aspx>.

We have identified a total of 25 rules that are due or overdue for their 5-year reviews. Most of these (23) are suggested to be “No Change” rules; only two (2) have so far been identified as requiring updated language. Both sets – No Change and Language Update -- have been posted to the agency’s website with information about content and process, with an invitation for comment and a request for feedback. <http://opp.ohio.gov/rp.stm> . Email alerts were sent out to all Ohio licensees and identified stakeholders and interested parties.

I believe these rules are all necessary and address non-controversial administrative matters, and would appreciate and request your review and any comments or input the Association may wish to offer. Thank you for your consideration.

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215
tel: 614-466-1157
fax: 614-387-7347
email: bopp@exchange.state.oh.us
website: <http://opp.ohio.gov>



CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Orthotics Prosthetics and Pedorthics (OPP)

Regulation/Package Title: Package 96557 – no change rules 2012 AND
Package 96577 – language updates 2012

Rule Number(s): NO CHANGE: 4779-1-01; 1-02; 5-05; 6-01; 9-03; 10-02; 11-02; 11-03; 11-04; 11-05; 11-06; 11-07; 11-08; 11-09; 11-10; 11-11; 11-12

AMEND: 4779- 4-01; 5-01; 5-02; 5-04; 9-01; 9-02; 11-01

Date: October 16, 2012 Revised: December 5, 2012

Rule Type:

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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CSIOhio@governor.ohio.gov

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Brief Description: No-change rules and amended rules pursuant to the Agency's 5-year rule review requirement. The scope of language included addresses educational program standards, license application requirements, license exam procedures and vendor approval, continuing education requirements, and formal hearing procedures.

The Rules listed and detailed in Package #96557, designated "no change rules 2012", are being proposed to continue without amendment, replacement or elimination. They are for the most part administrative guidelines governing how the Board conducts its business. There are no unnecessary paperwork requirements and no unreasonable adverse impacts on business: a license application (4779-6-01) requires documentation that the candidate meets basic statutory standards; the criminal record check requirements rule (4779-5-05) is modeled after language recommended by the Ohio Attorney General to implement the requirements affecting all licensing agencies; and the series includes a rule (4779-9-03) designed to provide a "diversion" option for licensees who miss their Continuing Education requirements, with allowance to keep the license status unaffected while addressing the deficiency through a measured administrative process. The 4779-11 series are rules specifically to provide a "rules of procedure" structure for any administrative hearings that may be held.

The Rules listed and detailed in Package # 96577, designated "language updates 2012", are being proposed for amendment.

- Rule 4779-4-01, proposed to amend, updates language on standards for the Board to approve certain educational programs. The changes reflect changes in the external credentialing community and clarification of existing language.
- Rule 4779-5-01 specifies approved exams for licensure; the Board is engaged in a fact finding process to determine if the amendment is appropriate. That review is not yet complete.
- Rule 4779-5-02, the amendment is proposed to allow the Board to designate additional license exam vendors, and to provide for the "timing out" after 36 months of an Approval to Sit for Exam authorization.
- Rule 4779-5-04, the amendment is proposed to eliminate redundant language that appears twice in the same rule.
- Rule 4779-9-01, the amendment is proposed to allow for the implementation of recommendations of the Human Trafficking Task Force requiring licensed professionals to engage in profession-specific training appropriate for recognizing and addressing suspected incidents of human trafficking.

- Rule 4779-9-02, the amendment updates OPPCE coursework language to include offerings addressing the subject of human trafficking recognition and response.
- Rule 4779-11-01, the amendment is a technical change correcting a citation to a section of the Ohio Revised Code.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

[ORC 4779.08](#) -- (A) The state board of orthotics, prosthetics, and pedorthics shall adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this chapter ...

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

NO. Ohio is not required to license these professions under federal law. However, please see the answer to #4 below. Given that Ohio has chosen to license these professions, federal healthcare reimbursement policy requires providers to meet state licensing requirements.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

At the federal level, this allied healthcare sector is generally regulated under the DMEPOS (Durable Medical Equipment, Prosthetics/Orthotics & Supplies) provisions of the CMS Medicare Fee-for-Service Provider reimbursement protocols. 42 CFR part 424 Section 57 stipulates that where a state requires licensure to provide a service, a Medicare/Medicaid supplier must be in compliance with the state language.

(c) Application certification standards. The supplier must meet and must certify in its application for billing privileges that it meets and will continue to meet the following standards:

(1) Operates its business and furnishes Medicare-covered items in compliance with the following applicable laws:

(ii) *State licensure and regulatory requirements.* If a State requires licensure to furnish certain items or services, a DMEPOS supplier—

(A) Must be licensed to provide the item or service; and

(B) May contract with a licensed individual or other entity to provide the licensed services unless expressly prohibited by State law.

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The 123rd General Assembly determined in SB 238 “to establish the State Board of Orthotics, Prosthetics, and Pedorthics and provide for the licensure of Orthotists, Prosthetists, and Pedorthists ...”. The Board has sought since its inception to align the Ohio regulatory scheme with known national standards to the extent its authority will allow. The rules in the packages moving forward address the basic administrative functions of the Board in administering the chapter, and represent the Board’s understanding as to how the Ohio language can best align with the national and federal marketplace. Educational program requirements seek to defer to the national standards-setting organizations; license exam requirements defer to established practitioner exams already utilized by credentialing partners who subscribe to the recognized standards, and do not require re-administration for admission to licensure.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Chapter 4779, Ohio Revised Code, establishes the Board for the general purpose of protecting the public who are consumers of these specialized, customized medical devices. The statute as implemented through the rules seeks to establish minimum standards of education, training and care for the allied healthcare professionals who deliver the services.

[ORC Section 4779.08](#) requires (“shall adopt rules”) the Board to develop and implement rule language to carry out the chapter’s purposes, including all the subjects covered in this rule review.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Except for the Continuing Education language, this is not a new regulatory initiative or regulation to implement a new or different program. Most of this regulatory language guides the Board’s administrative operations. Some of the updates to language would allow the Board more flexibility in administering the license approval process. The CE language “success” will be measured by compliance determined through annual CE audits. The “License Application Procedure” language already incorporates administrative improvements made previously to eliminate the requirement that a new application be filed to “graduate” a license from Temporary to Full Practitioner status, easing both an administrative burden on the Board office and an extra application fee from the candidate’s portfolio of professional expenses.

Separate and apart from this CSI/BIA process, the Board is engaged in an internal process to better quantify and track available performance measures across its major administrative functions: license application receipt and review; renewal processing; complaint intake and investigation.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

In June 2012, two “OPP Rule Review” documents were uploaded to the Board’s website and an announcement was issued 06/07/2012 by email to **licensees, employers and other stakeholders as maintained on the Board’s Stakeholders Distribution List, which includes representatives of Ohio and National professional trade associations and credentialing partners.** The documents listed all the rules pending review with short descriptions, and included a “Stakeholder response form” to assist in providing feedback relevant to the rule review process and the particular requirements of ORC 107.52. Information regarding the pending review was also noted with invitations to review and respond in the Board’s newsletters issued subsequent to the June 13, 2012 and September 12, 2012 meetings. **The Director met with trade association leadership on July 12, 2012 and reviewed these rule actions as well as other agenda items of interest to the profession.**

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Minimal feedback was received, and addressed language technicalities such as style of references to other entities. Trade association representatives had no substantive input and considered the changes non-controversial and non-adverse. One rule (exam vendor) is the subject of continuing discussion and feedback documented through the agency website.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

None – not relevant to this process.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?

The enabling statutory language in the Orthotics, Prosthetics and Pedorthics Practice Act sets forth very specific requirements for licensing. Wherever possible, the Board has sought to conform the Ohio requirements to the recognized national standards through its rule promulgation authority.

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11. Did the Agency specifically consider a performance-based regulation? Please explain. Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

None – not relevant to this process. These regulations largely govern the administrative operations of the Board. The statute requires the standards set forth in the rules.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

A review of all of the Board's regulatory language. No other regulations govern this jurisdiction. Where possible, the Board generally seeks to assure agreement where its language intersects with other requirements, i.e., Ohio Medicaid reimbursement policies. Those cross-regulatory concerns are not addressed in this set of rules.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

We will incorporate the language as required or necessary into Office Policy and Procedure protocols.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The impacted business community primarily includes professional providers of Orthotic, Prosthetic and Pedorthic services – individuals licensed or certified to provide these services, and the business/facility owners who employ them.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The regulatory requirements include costs to meet educational standards (time, tuition and fees), but the educational requirements mirror the current status quo in the private credentialing

community. Additionally, there are licensing fees including late fees, the time and cost for an application, and the time and cost for license renewal/

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Criteria for educational attainment to enter the professions have been on the uptick; national credentialing standards in orthotics and prosthetics are migrating from Bachelors degree with specialized post-graduate work, to a Masters program with a specialty in the professions. These are costs that already exist in the private sector and are not replicated or enhanced by the Ohio regulatory scheme.

Northwestern University publishes cost estimates for its post-grad program at around \$45,000 including room and board:

http://chicagofinancialaid.northwestern.edu/tuition/prosthetics_orthotics.html#1213

University of Pittsburgh publishes costs for out of state tuition, Masters program in O&P at upwards of \$26,000.

<http://www.ir.pitt.edu/tuition/pghosgrad.php>

Costs for specialty education in Pedorthics, requiring a baseline of a high school education for admission and encompassing a generally 3-week, 120 hour blended protocol of classroom, online and hands-on training, tend to range from \$3000 - \$5000, depending on vendor and location.

Representative examples:

http://www.rmpi.org/index.php?submenu=Our_Courses&src=gendocs&ref=OurCourses&category=Main

<http://www.eneslow.com/inner.cfm?siteid=4&itemcategory=35819&priorId=22505>

License exam fees are set by the license exam vendor. Fee is \$250 per exam administration.

License application fees are \$125-\$150, plus costs for obtaining criminal record checks (\$65 - \$100). Time required to complete the application form and the related requirements: two to three hours.

Annual license renewal fee is \$300; time to complete the application, less than 30 minutes.

Late renewal fee is \$150.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Any adverse impact is driven by the specific requirements contained in the statutory language.

Renewal fees are set at a level required for the Board to meet its budgetary needs, based on number of licensees and basic costs of agency operations.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No – compliance requirements treat all businesses the same, and all compliance requirements are driven by statutory language. Virtually all of the Board’s stakeholders exist in the small business sector.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

No fines or penalties required. The general orientation of the Board is to seek cooperative compliance. Included rule language establishes a mechanism to minimize the incidence of first-time paperwork violation and to provide for an informal remediation protocol. See [OAC 4779-9-03 OPPCE accrual deficiency and remediation](#)

18. What resources are available to assist small businesses with compliance of the regulation?

Board office staff offer assistance as needed upon contact and request.



MEMORANDUM

TO: Mark Levy, State Board of Orthotics, Prosthetics and Pedorthics

FROM: Paula Steele, Regulatory Policy Advocate

DATE: December 10, 2012

RE: **CSI Review – Five-Year Rule Review (OAC 4779-1-01; 1-02; 4779- 4-01; 5-01; 5-02; 5-04; 5-05; 6-01; 9-01; 9-02; 9-03; 10-02; 11-01; 11-02; 11-03; 11-04; 11-05; 11-06; 11-07; 11-08; 11-09; 11-10; 11-11; 11-12)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of seventeen (17) no change rules and seven (7) amended rules related to licensure of the allied health professionals administered by the State Board of Orthotics, Prosthetics and Pedorthics. The rules are being proposed under the five-year review required by ORC 119.032. The rules were submitted to the CSI Office on October 18, 2012, and the comment period expired on November 30, 2012. There was one favorable comment received during that time.

Ohio statute requires the majority of what is prescribed in the proposed rules including the educational programs, licensing, and continuing education requirements. According to the Board, a portion of the rules maintain alignment of Ohio's requirements with national educational standards. Amendments to the existing rules include changes in the national accreditation organizations, recognition of the pedorthic practitioner-level exams offered by the *Board for Certification International*, authority for the Board to approve more test vendors for license examinations, and clarification that approval to take the exam is valid for 36 months. Other

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changes include the deletion of redundant verbiage and the incorporation of a training program on identifying cases of human trafficking as recommended by the Human Trafficking Task Force in 2012.

In its BIA, the Board staff described a comprehensive outreach process which included a June 2012 email notification to licensees, employers, trade associations, and credentialing partners of the pending review. Stakeholder input was minimal.

Because the rule package includes public notification rules, the CSI Office followed-up with the Board to ensure it was aware of Ohio's publicnotice.ohio.gov web site; a free web site for Ohio government organizations to post various types of public notices. The Board was not aware of the site but said it would investigate its use.

Review of the Board's BIA and proposed rules prompted several discussions with Board staff and a request for a revised BIA. The CSI Office asked the Board to acknowledge and justify the proposed rules' adverse impacts which were primarily the time and expense of obtaining and maintaining a license, including fees. While specific fee amounts were not included in the proposed rules under review, the fees were referenced and ultimately included as an adverse impact. Fees are required in statute but are not quantified. The Board sets the renewal fees at \$300 per year (OAC 4779-12-01). Licensure fees are the funding mechanism for the Board that enables it to carry out the duties as required by Ohio law. Therefore, the Board's justification for the proposed rules adverse impacts are that either it is required by statute or, it funds the Board in order implement the ORC requirements.

Although the expense of obtaining and maintaining licensure for these allied health professions is high in comparison to other licensed professionals, the CSI Office believes that the Board has engaged in an open, transparent, and thorough process to review the rules and has justified the potential adverse impacts to businesses.

Recommendations

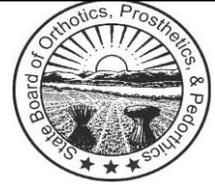
For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Board should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Director of Regulatory Policy

State Board of Orthotics, Prosthetics, and Pedorthics



HTTP://OPP.OHIO.GOV

JOHN R. KASICH, GOVERNOR
WILLIAM C. NEU, III, LPO, BOARD PRESIDENT

TO: Paula Steele, Regulatory Policy Advocate

FROM: Mark Levy, State Board of Orthotics, Prosthetics and Pedorthics

DATE: December 18, 2012

RE: CSI Review – Five-Year Rule Review (OAC 4779-1-01; 1-02; 4779- 4-01; 5-01; 5-02; 5-04; 5-05; 6-01; 9-01; 9-02; 9-03; 10-02; 11-01; 11-02; 11-03; 11-04; 11-05; 11-06; 11-07; 11-08; 11-09; 11-10; 11-11; 11-12)

Handwritten signature of Mark Levy in cursive.

Thank you for your memorandum dated December 10, 2012, providing “clearance” for the Board to proceed with the Administrative Rule 5-year Review package presently pending consideration. This has been a detail-intensive learning process, and I appreciate the personal attention and attention to detail that you have devoted to our compilation.

The Board reviewed the entire matter at its meeting of December 12, 2012, and approved the filing to move forward pursuant to the approval provided by your office. We expect to formalize the filing before the end of this month, and will proceed in accordance with JCARR requirements.

Since you have noted the recommendation in your approval memo, I will note that the agency has experienced some technical difficulty in obtaining enrollment in the publicnotice.ohio.gov portal of the Ohio Business Gateway. However, we will seek to work through those challenges so as to be able to utilize the web resource as indicated.

Again, thank you for your guidance, patience, and direction.

77 S. High St., 18th floor
Room #1854
Columbus, OH 43215-6108

Phone: 614-466-1157
Fax: 614-387-7347
Email: bopp@opp.ohio.gov

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.

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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

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UNAPPROVED

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.

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UNAPPROVED

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 ~~114~~ 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]

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UNAPPROVED

Transaction Confirmation and Receipt

Company Name	State of Ohio
Company ID	*****4820

The following transactions will be sent to the respective agency that administers the service. Please note the session confirmation number when calling the OBG Help Desk (866-644-6468).

If your transaction(s) includes payment, please note that this confirmation acknowledges that payment instructions have been received, but it does not acknowledge that funds have been transferred from your account. Payment instructions may not be processed for reasons that include insufficient funds and prohibited or blocked payments. You should review your account statement to ensure that funds have been transferred (settled). For ACH debit payments, settlement is projected to be two business days after the date of this confirmation (or the selected deferred payment date, if applicable). If the date falls on a weekend or holiday, settlement is projected to be two business days after the next business day. The actual settlement date is dependent upon the processing times of the agency and their bank.

If multiple agencies are being paid, payments will be processed separately so you will see multiple entries on your account statements.

Date/Time	12/27/2012 12:23 PM
Confirmation #	32046039
Receipt #	11759373

Transaction	Defer Date	ACH	CC	CC Fee
File a Public Notice	N/A	N/A	N/A	N/A

State Board of Orthotics, Prosthetics, and Pedorthics



HTTP://OPP.OHIO.GOV

JOHN R. KASICH, GOVERNOR
WILLIAM C. NEU, III, LPO, BOARD PRESIDENT**NOTICE OF PUBLIC HEARING**

This notice is being made in accordance with section 119.03 of the Ohio Revised Code and Rule 4779-1-01 of the Ohio Administrative Code.

This is a notice to inform all interested parties that the State Board of Orthotics, Prosthetics, and Pedorthics will conduct a **Public Hearing on TUESDAY, JANUARY 29, 2013 at 2:30 PM in Room 1938 on the 19th floor of the Vern Riffe Center for Government and the Arts located at 77 S. High St., Columbus, Ohio, 43215.**

The following **Amendments** (changes) to the **Board's Current Rule Series** are being proposed for adoption to more effectively and efficiently govern the operations of the State Board of Orthotics, Prosthetics and Pedorthics, and to more accurately and clearly define regulatory requirements for its licensees and other stakeholders.

4779-4-01 Approval of educational programs. – (Amend)

Updates language on standards for the Board to approve certain educational programs. The changes parallel those in the external credentialing community and clarify existing language.

4779-5-02 Admission to the examination. – (Amend)

Changes are proposed to allow the Board to designate additional license exam vendors, and to provide for the "timing out" after 36 months of an Approval to Sit for Exam authorization.

4779-5-04 Limited reciprocity. – (Amend)

Changes are proposed to eliminate redundant language that appears twice in the same rule.

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

Changes are proposed to include the requirement of one-unit or one hour continuing education coursework on the subject of human trafficking recognition and response.

4779-9-02 Activities which meet the OPPCE requirements. – (Amend)

Changes are proposed to include coursework authorized by the Ohio department of health or the Ohio department of education on the subject of human trafficking recognition and response.

4779-11-01 General information and definitions. – (Amend)

Technical / typographical correction of Revised Code reference.

Persons intending to testify are encouraged to pre-register by sending an email to bopp@opp.ohio.gov. Testimony may be presented in person or in writing; written testimony timely received will be introduced at the hearing. A copy of the referenced rules may be obtained at the board's website, <http://opp.ohio.gov>, or by contacting the Board by email or fax, or at the Register of Ohio site: <http://www.registerofohio.state.oh.us/>

77 S. High St., 18th floor
Room #1854
Columbus, OH 43215-6108Phone: 614-466-1157
Fax: 614-387-7347
Email: bopp@opp.ohio.gov



Electronic Rule Filing

The Honorable Jon Husted
Secretary of State
180 E. Broad St., 15th Floor
Columbus, OH 43215

Mark Flanders, Director
Legislative Service Commission
77 South High St., 9th Floor
Columbus, OH 43215

Larry Wolpert, Director
Joint Committee on Agency Rule Review
77 South High St., Concourse Level
Columbus, OH 43215

It is hereby confirmed that the State Board of Orthotics, Prosthetics, and Pedorthics **original** filed the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 96577

File Date and Time: 12/27/2012 11:14 AM

Confirmation Number: 708127aed8f9b396c28c442a679764

ORIGINAL FILE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4779-4-01	Amendment	Y	Y	03/13/2013			Approval of educational programs.
4779-5-02	Amendment	Y	Y	03/13/2013			Admission to the examination.
4779-5-04	Amendment	Y	Y	03/13/2013			Limited reciprocity.
4779-9-01	Amendment	Y	Y	03/13/2013			Continuing education requirements and reporting (OPPCE).
4779-9-02	Amendment	Y	Y	03/13/2013			Activities which meet the OPPCE requirements.
4779-11-01	Amendment	Y	Y	03/13/2013			General information and definitions.



Electronic Rule Filing

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Columbus, OH 43215

Larry Wolpert, Director
Joint Committee on Agency Rule Review
77 South High St., Concourse Level
Columbus, OH 43215

It is hereby confirmed that the State Board of Orthotics, Prosthetics, and Pedorthics **revise filed** the following rule(s) pursuant to section 119.03 of the Ohio Revised Code.

Package Number: 96577
File Date and Time: 01/02/2013 09:25 AM
Confirmation Number: 2d5dcdf7e697b91185bea6784315712

REVISE

Rule Number	Type	FYR	CSI	JE Date	Eff Date	Next FYR	Tagline
4779-4-01	Amendment	Y	Y	03/13/2013			Approval of educational programs.
4779-5-02	Amendment	Y	Y	03/13/2013			Admission to the examination.
4779-5-04	Amendment	Y	Y	03/13/2013			Limited reciprocity.
4779-9-01	Amendment	Y	Y	03/13/2013			Continuing education requirements and reporting (OPPCE).
4779-9-02	Amendment	Y	Y	03/13/2013			Activities which meet the OPPCE requirements.
4779-11-01	Amendment	Y	Y	03/13/2013			General information and definitions.

4779-4-01

Approval of educational programs.

- (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.

Effective:

R.C. 119.032 review dates: 12/27/2012

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4779.08
Rule Amplifies: 4779.25 ; 4779.26
Prior Effective Dates: 08/09/2002; 11/01/2008

Rule Summary and Fiscal Analysis (Part A)**State Board of Orthotics, Prosthetics, and Pedorthics**

Agency Name

Division

Mark B. Levy

Contact

77 S. High St. 18th Floor Columbus OH 43215-0000 614-466-1157

Agency Mailing Address (Plus Zip)

Phone

614-387-7347

Fax

mark.b.levy@exchange.state.oh.us

Email

4779-4-01

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Approval of educational programs.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **4779.08**
5. Statute(s) the rule, as filed, amplifies or implements: **4779.25 ; 4779.26**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

5-Year rule review; update of language regarding approved educational programs.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule regarding approval of educational programs updated to identify the national

accreditation programs currently accepted for orthotic, prosthetic and pedorthic professions.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Corrected the date of the hearing on the public hearing notice.

12. 119.032 Rule Review Date: **12/27/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

00.00

No expenditure by or revenue to the Board from this language.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

N/A

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction,

or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

In some cases, the Board may receive a report of a candidate's completion of a program accredited in accordance with this language, but this particular language does not require an expenditure or a report.

4779-5-02

Admission to the examination.

- (A) An applicant for Ohio examination must have an approved application for licensure form on file with the board. Before an applicant may be issued a license or be approved to sit for the examination as an Ohio candidate, the applicant must demonstrate that the applicant meets the eligibility requirements of section 4779.09 of the Revised Code as well as the requirements for the particular license type.
- (B) In the case of an applicant for licensure pursuant to sections 4779.10, 4779.11, and 4779.12 of the Revised Code, if the applicant has not already taken and passed the written and written simulation examinations as administered by the American board for certification in orthotics prosthetics, and pedorthics (ABC) for the respective practitioner areas of practice, the board shall notify the American board for certification in orthotics, prosthetics, and pedorthics of the applicant's approved status for taking the Ohio license exam in orthotics or prosthetics, whichever is indicated. The applicant is responsible for exam fees and all costs and fees associated with that exam shall be paid to the ABC or its contracted testing agency.
- (C) In the case of an applicant for licensure pursuant to section 4779.13 of the Revised Code, if the candidate has not already taken and passed the exam for certification in pedorthics, the board shall notify the American board for certification in orthotics, prosthetics, and pedorthics (ABC) of the applicant's approved status for taking the Ohio license exam in pedorthics, and of the board's approval of the candidate's application. The applicant is responsible for exam fees and all costs and fees associated with that exam shall be paid to the ABC or its contracted testing agency.
- (D) In the case of an applicant for a temporary license pursuant to section 4779.18 of the Revised Code, the successful application submitted and processed shall be considered to stand as the application for a full license pursuant to section 4779.10, 4779.11, 4779.12, or 4779.13 of the Revised Code, and the successful applicant shall be issued an approval to sit for exam notice pursuant to the arrangements between the state board of orthotics, prosthetics, and pedorthics, and the American board for certification in orthotics, prosthetics and pedorthics. Such an approval to sit for exam notice shall be effective for up to two years, in accordance with the statutory limitation of the duration of the temporary license as provided for in section 4779.18 of the Revised Code. An application for a temporary license pursuant to section 4779.18 of the Revised Code shall also comply with the requirements of rule 4779-6-01 of the Administrative Code.
- (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.

Effective:

R.C. 119.032 review dates: 12/27/2012

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4779.08
Rule Amplifies: 4779.09, 4779.10, 4779.11, 4779.12, 4779.13,
4779.15, 4779.18
Prior Effective Dates: 8/9/02, 04/09/2007; 11/01/2008, 11/01/2010

Rule Summary and Fiscal Analysis (Part A)**State Board of Orthotics, Prosthetics, and Pedorthics**

Agency Name

Division

Mark B. Levy

Contact

77 S. High St. 18th Floor Columbus OH 43215-0000

Agency Mailing Address (Plus Zip)

614-466-1157

Phone

614-387-7347

Fax

mark.b.levy@exchange.state.oh.us

Email

4779-5-02

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Admission to the examination.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **4779.08**

5. Statute(s) the rule, as filed, amplifies or implements: **4779.09, 4779.10, 4779.11, 4779.12, 4779.13, 4779.15, 4779.18**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

5-Year rule review; adds language allowing Board to select additional test; enacts a 3-year limitation of validity for approval for admission to exam.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule regarding admission to the examination required for full licensure. Rule is being updated to allow for the approval of additional test vendors in the future at the board's discretion, and to limit validity of approval to sit for exam to thirty-six months.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Corrected the date of the hearing on the public hearing notice.

12. 119.032 Rule Review Date: **12/27/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date

for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$10,000.00

The agency books about \$10,000 in license application fees over a two-year period; this language will neither increase nor decrease that amount.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

License application costs are \$125 - \$150.

Costs to comply with licensing requirements are detailed in other RSFA reports.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

Details requirements specified in statutory language to qualify to sit for exam.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Denial of application may lead to a Notice of Opportunity for Hearing to defend/constest the denial.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

License application fees and submission of an application form with required data and documentation.

4779-5-04 **Limited reciprocity.**

(A) In accordance with division (A)(4) of section 4779.17 of the Revised Code, an applicant who holds a license issued by another state may obtain a license to practice orthotics, prosthetics, or pedorthics in the state of Ohio if the out-of-state applicant:

- (1) Qualifies for licensure in the state of Ohio, except for the passage of the examination as required under sections 4779.09 and 4779.15 of the Revised Code; and
- (2) Holds a valid license issued by the appropriate licensing entity of another state and has not been issued a license in another state that has been revoked or is currently under suspension or probation or remains under the effect of any other current disciplinary action.

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

- (1) Complete a profession-specific application form and file this form with the Ohio orthotics, prosthetics, and pedorthics board.
- (2) Submit any documentation necessary to support the qualifications mentioned in paragraph (A)(1) or (A)(2) of this rule, and pursuant to the profession-specific requirements of paragraphs (B) to (E) of rule 4779-5-03 of the Administrative Code.
- (3) 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.
- (4) Applicants that fail to meet the qualifications for this exemption will be subject to the procedures and requirements contained in paragraphs (A)(1) to (A)(3) of rule 4779-5-03 of the Administrative Code.

(C) Out-of- state residents shall update the Ohio orthotics, prosthetics, or pedorthics board within thirty working days of any change in orthotics, prosthetics, or pedorthics employment in the state of Ohio or any change in state-of-residence or state-of-employment status.

~~(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~~

4779-5-04

2

~~Administrative Code.~~

Effective:

R.C. 119.032 review dates: 12/27/2012

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4779.08
Rule Amplifies: 4779.17
Prior Effective Dates: 8/9/02, 01/23/03, 11/01/2008

Rule Summary and Fiscal Analysis (Part A)**State Board of Orthotics, Prosthetics, and Pedorthics**

Agency Name

Division

Mark B. Levy

Contact

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Agency Mailing Address (Plus Zip)

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4779-5-04

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Limited reciprocity.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **4779.08**
5. Statute(s) the rule, as filed, amplifies or implements: **4779.17**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

5-Year rule review; clarification of qualification language of reciprocity rule.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule regarding limited reciprocity is being updated to note that applicants seeking

licensure through limited reciprocity need only be licensed in another jurisdiction but may both reside and practice in Ohio; removal of redundant language.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Corrected the date of the hearing on the public hearing notice.

12. 119.032 Rule Review Date: **12/27/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

00.00

N/A

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

License application fee is \$125.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

Provides standards for license reciprocity with other licensing state.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Denial would be cause to issue a Notice of Opportunity for Hearing.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

License application form with data and documentation supporting application.

4779-9-01

Continuing education requirements and reporting (OPPCE).

- (A) All licensees shall verify the successful attainment of approved OPPCE as set forth in rule 4779-9-02 of the Administrative Code.
- (1) A licensed orthotist or prosthetist must achieve forty-five OPPCE units during each three-year accrual period.
 - (2) A licensed orthotist and prosthetist or licensed prosthetist-orthotist must achieve seventy-five OPPCE units during each three-year accrual period.
 - (3) A licensed pedorthist must achieve thirty-three OPPCE units during each three-year accrual period.
- (B) OPPCE hours must be earned no later than thirty days prior to the license expiration date for that renewal period. An excess of approved hours attained during a renewal period will not be applied towards future requirements, unless they are earned after signature date on the renewal application for that period.
- (C) The application for renewal shall include a section for verification of OPPCE compliance. Licensees shall complete the section to certify the completion of the required hours of OPPCE for the current renewal period.
- (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 requirements of section 4779.20 of the Revised Code or the requirements of section (A) of this rule.
- ~~(D)~~(E) It shall be the responsibility of the licensee to maintain and keep all records to serve as documentation for any audit pertaining to the completion of OPPCE requirements; including, but not limited to certificates of completion, transcripts, letters of attendance, or attendance registers. Records shall be maintained for a period of four years beyond the renewal date requiring attestation of OPPCE compliance for the holders of a license issued under sections 4779.10, 4779.11, 4779.12, 4779.13, 4779.16, and 4779.17 of the Revised Code. Legible copies shall

be sent to the board only in response to an audit.

~~(E)~~(F) Failure to meet OPPCE requirements or failure to provide attestation of completion of necessary OPPCE hours sent to the board by January thirty-first of any relevant renewal year may result in automatic suspension of license by April first of that year, pursuant to section 4779.20 of the Revised Code. Failure to verify completion of necessary OPPCE hours within thirty days after receipt of an audit request from the board may result in disciplinary action pursuant to section 4779.28 of the Revised Code. If reinstatement is desired, such individual shall be required to submit a formal request for reinstatement of licensure.

4779-9-01

3

Effective:

R.C. 119.032 review dates: 12/27/2012

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4779.08
Rule Amplifies: 4779.20, 4743.07
Prior Effective Dates: 8/9/02, 1/23/03, 4/9/2007, 11/01/08

Rule Summary and Fiscal Analysis (Part A)**State Board of Orthotics, Prosthetics, and Pedorthics**

Agency Name

Division

Mark B. Levy

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4779-9-01

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Continuing education requirements and reporting (OPPCE).**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB262**General Assembly: **129**Sponsor: **Fedor**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **4779.08**

5. Statute(s) the rule, as filed, amplifies or implements: **4779.20, 4743.07**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

5-Year rule review; additional language allowing for inclusion of coursework about professional responsibility regarding suspected Human Trafficking.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule regarding continuing education requirements and reporting (OPPCE) is being modified to include language allowing for inclusion of coursework on the subject of human trafficking recognition and response for licensees.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Corrected the date of the hearing on the public hearing notice.

12. 119.032 Rule Review Date: **12/27/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No

Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

00.00

Language neither generates revenue to nor requires specific expenditures by the agency.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Any CE coursework developed to comply with the rule would be offered free of charge to licensees and applicants.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to

engage in or operate a line of business? **Yes**

The rule details the Continuing Education requirements for maintenance of licensure in accordance with the governing statutory language.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Failure to comply could lead to formal action against license.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

Requires reporting of appropriate continuing education coursework, may require response to random audit. Costs to accrue continuing education vary by profession, vendor, medium, and site/venue. However, the CE requirements detailed in the statute and enforced by rule roughly approximate the requirements for maintenance of private certification, so in most cases no additional cost to licensee.

4779-9-02

Activities which meet the OPPCE requirements.

Applicants for renewal shall successfully complete the required number of OPPCE hours according to section 4779.20 of the Revised Code and rule 4779-9-01 of the Administrative Code. The board will accept as continuing education units all courses approved by the board for orthotist/prosthetist certification (BOC), and the American board for certification in orthotics, prosthetics, and pedorthics (ABC).

The board will also accept continuing education units as specified by section 4779.24 of the Revised Code.

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.

Effective:

R.C. 119.032 review dates: 12/27/2012

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4779.08
Rule Amplifies: 4779.20, 4743.07
Prior Effective Dates: 8/9/02, 1/23/2003, 11/01/2008

Rule Summary and Fiscal Analysis (Part A)**State Board of Orthotics, Prosthetics, and Pedorthics**

Agency Name

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4779-9-02

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Activities which meet the OPPCE requirements.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB262**General Assembly: **129**Sponsor: **Fedor**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **4779.08**

5. Statute(s) the rule, as filed, amplifies or implements: **4779.20, 4743.07**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

5-Year rule review; updated language allowing for the acceptance of continuing education coursework authorized by the Ohio department of health or the Ohio department of education on the subject of human trafficking recognition and response.

7. If the rule is an AMENDMENT, then summarize the changes and the content

of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule regarding activities which meet the OPPCE requirements is being updated to allow for the acceptance of continuing education coursework authorized by the Ohio department of health or the Ohio department of education on the subject of human trafficking recognition and response.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Corrected the date of the hearing on the public hearing notice.

12. 119.032 Rule Review Date: **12/27/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this

rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

00.00

N/A

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

N/A

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

None.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

Makes allowance for additional types of continuing education coursework.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Re-states the requirement for accrual of continuing education coursework for maintenance of licensure for 3 or more years.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

Continuing education accrual is required to be reported at every third license renewal; costs are those that exist in the field. There would be no cost options for the additional coursework authorized by the new language, if developed.

4779-11-01

General information and definitions.

- (A) For the purpose of this chapter of the Administrative Code:
- (1) "Respondent" means the person to whom the board has issued a notice of opportunity for hearing as provided in Chapter 119. of the Revised Code.
 - (2) "Hearing examiner" means the attorney appointed by the board to conduct a hearing pursuant to section 119.09 of the Revised Code.
 - (3) "Representative of record" means the respondent or legal counsel for respondent who has filed a notice of appearance in accordance with rule 4779-11-02 of the Administrative Code and the assistant attorney general representing the state of Ohio.
- (B) The compilation of all time periods set forth in this chapter of the Administrative Code shall be in accordance with section ~~4-14~~ 119 of the Revised Code.
- (C) Filing or mailing a motion or notice for a board adjudication proceeding shall be in accordance with the following:
- (1) Any notice specifying the date, time, and place for a hearing shall be mailed by certified mail to respondent and, if applicable, to counsel for respondent who has filed a notice of appearance in accordance with rule 4779-11-02 of the Administrative Code.
 - (2) The date of mailing any document concerning a board adjudication proceeding, including, but not limited to, a notice of opportunity or adjudication order, shall be the date appearing on the certified mail receipt, if inscribed by the USPS, or the next business day following the date mailed as indicated by board records.
 - (3) A document is filed with the board when the document is received and time stamped at the board office located in Columbus, Ohio.
- (D) A certified copy of a conviction, plea of guilty to, or a judicial finding of guilt of any crime from a court of competent jurisdiction shall be conclusive proof of the commission of all elements of that crime.
- (E) The "Ohio rules of evidence" may be taken into consideration by the board or the hearing examiner in determining the admissibility of evidence but shall not be controlling. The board or hearing examiner may permit the use of electronic or photographic means for presentation of evidence.

(F) The board may consider circumstances when making a decision regarding charges or disciplinary action. Circumstances the board may consider include, but are not limited to the following:

- (1) Whether the act is willful, intentional, irresponsible, or unintentional;
- (2) The frequency of the occurrence of the act at issue;
- (3) Whether the act represents a pattern of commissions or omissions;
- (4) The outcome of a licensee's or applicant's actions; or
- (5) The level of harm or potential harm to a client.

Effective:

R.C. 119.032 review dates: 12/27/2012

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4779.08
Rule Amplifies: RC 119.06, 119.09, 4779.08, 4779.28
Prior Effective Dates: 01/23/03, 01/23/08

Rule Summary and Fiscal Analysis (Part A)**State Board of Orthotics, Prosthetics, and Pedorthics**

Agency Name

Division

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4779-11-01

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

General information and definitions.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **4779.08**

5. Statute(s) the rule, as filed, amplifies or implements: **RC 119.06, 119.09, 4779.08, 4779.28**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

5-Year rule review; correcting citation to Revised Code contained in the rule.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule regarding general information and definitions for section 119 hearing rules of procedure was changed to refer to section 119 of the Revised Code, correcting a typographical or data entry error citing a non-existing section.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Corrected the date of the hearing on the public hearing notice.

12. 119.032 Rule Review Date: **12/27/2012**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No

Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

00.00

Rules of procedure for hearings held pursuant to section 119 of the Revised Code. Hearing costs are unpredictable and unbudgeted.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

ALI 973609 is the appropriation line item from which any costs for a 119 hearing would be drawn.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Rules of procedure for hearings held pursuant to section 119 of the Revised Code. Incidence is exceptional, not an ordinary cost of business.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

Rules of procedure for hearings held pursuant to section 119 of the Revised Code.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

Rules of procedure for hearings held pursuant to section 119 of the Revised Code.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

Rules of procedure for hearings held pursuant to section 119 of the Revised Code.

Statements for Public Rules Hearing 1/29/13

<u>Correspondent</u>	<u>Date Received</u>
Claudia Zacharias, MBA, CAE Board of Certification/Accreditation (BOC)	1/25/2013
Julie Bush, LO President Advanced Medical Supply, Inc.	1/25/2013
Richard L. Grope, LPO	1/25/2013
Mark Malinowski, LPED, BOC PD, COF	1/25/2013
Michael D. Veder, LO, LPED, CO, CPED Gaitwell O&P	1/28/2013
Joseph R. Garcia, LCPO, BOCOP, LTP	1/28/2013
Frank Horvath, LP Horvath Medical Supply, Inc.	1/28/2013
Michael T. Jablonski, CO, BOCO	1/28/2013
Janet Malinowski, LPED, CFO, COF	1/28/2013
Mark Malinowski, LPED, CFO, COF	1/28/2013
Pamela Haig, CPED, President Elect The Robert M. Palmer, M.D. Institute of Biomechanics, Inc.	1/29/2013



25 January 2013

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215

Comments for the public hearing on the rules scheduled for January 29, 2013

Dear Mr. Levy.

Thank you for the opportunity to submit additional comments from the Board of Certification/Accreditation, International (BOC) for consideration as a testing agency for licensure in prosthetics, orthotics, and pedorthics. We are grateful to the Board to allow us to clear up some misconceptions that may have arisen during the rule-making process.

Earlier this week I called Pam Haig to obtain her insights about how we could more effectively partner with the Ohio State Board of Orthotics, Prosthetics and Pedorthics. She was kind enough to outline for me some of the comments she provided, and I noted that many of her perceptions were inaccurate. I would like to suggest that she may not have been the most expert of resources on whom to call. If I am not mistaken, she will be submitting some additional feedback.

I am concerned about the small number of respondents (three) who commented on the proposed rule-making. In the case of the lone podiatrist, he did not note – as we did – the fact that NCCA does not certify NCOPE requirements. The other comment that we were “not helpful” is also misleading. We take great care in providing excellent customer service. In fact, this week we were notified that BOC is a finalist for a national customer service award. Although the Ohio Board had shown good faith in attempting to be transparent in gathering data, these examples show the shortcomings in the process.

BOC was founded in 1984 as an independent, not-for-profit agency dedicated to meeting the demands for quality patient care by offering highly-valued credentials for practitioners and suppliers of comprehensive orthotics and prosthetics (O&P) and durable medical equipment (DME).

BOC currently offers certification programs in six professional areas: orthotist, prosthetist, pedorthist, orthotic fitter, mastectomy fitter, and durable medical equipment specialist. As a credentialing leader, BOC recognized a need and is responsible for creating the certified orthotic fitter, mastectomy fitter, and durable medical equipment specialist certifications.

In 2008, BOC joined with other major O&P organizations in signing what has become known as “The Historic Agreement.” This agreement set minimum educational levels for future orthotists and prosthetists. BOC has met and exceeded the requirements of this agreement and, as a result, BOC’s orthotist and prosthetist eligibility criteria include a CAAHEP-accredited education and an NCOPE-approved residency.

Currently, BOC is the only O&P credentialing organization with National Commission for Certifying Agencies (NCCA) accreditation for **all** of its O&P certification programs. On a personal note, I am proud to report that I recently was elected to the Board of Directors for the Institute of Credentialing Excellence, NCCA’s parent organization. I believe this demonstrates the credentialing community’s high regard for BOC.

The Centers for Medicare and Medicaid Services (CMS) recognize BOC as one of ten accrediting organizations for DMEPOS suppliers, and facilities can earn accreditation through BOC for all CMS billing categories. Many other third party payors recognize BOC Facility Accreditation as demonstrating a commitment to patient care and sound business practices.

BOC is committed to providing the O&P community with psychometrically sound assessments of the highest quality, relevance, and accuracy. This commitment requires that the development process be detailed, time-intensive, participatory, and consultative. In order to meet these high expectations, the process follows industry standards and psychometric principles to ensure valid and reliable testing instruments.

Assessments are the outcome of job task analyses authorized by BOC’s Board of Directors. A job task analysis (JTA) determines objectively and scientifically the actual skills, tasks, and knowledge necessary for a particular job. BOC’s job analyses are developed to ensure legal defensibility. Analyses are completed every five years for each certification.

A committee of subject matter experts (SMEs) – comprised of experienced, certified practitioners with both academic and clinical backgrounds – is formed to create an extensive list of all the tasks it believes might be performed at any time by the target audience. The tasks collected are compiled into a job analysis survey. After review, the survey is distributed to practicing professionals to rate each task on several criteria, including significance (i.e. frequency and importance); statistical analyses are then performed. The primary points of interest address the average significance of each task and the percent of respondents performing the task.

The final stage of development is to use the results of the JTA to develop the actual test specifications (detailed content outline) and items. The test specifications express specific competencies that practitioners must possess. Each content area is assigned a weight (i.e. number of test items indicating its importance relative to other areas). Then, SMEs receive training in item construction.

With the test specifications finalized, another group of SMEs authors items directly linked to the detailed content outline. After the items are written, edited, and checked for accuracy, the

assessment is formed; a score-setting review takes place. BOC uses the widely-accepted psychometric standard – the modified Angoff method – to create a cut (passing) score.

Candidates for the orthotist and prosthetist certifications also take a video practical exam. In this test, the candidate is videotaped performing a series of representative clinical activities. The video is then independently graded by three trained, experienced, expert scorers.

BOC and its testing vendor maintain communications throughout the year via conference call and in-person meetings to ensure testing instruments remain legally defensible and psychometrically sound.

BOC currently contracts with Applied Measurement Professionals (AMP) as its test development and delivery vendor. AMP has more than 100 clients and over 25 years of testing experience. Other AMP clients include the American Academy of Pain Management, National Board of Surgical Technology, and Orthopedic Nurses Certification Board.

Steven S. Nettles, EdD, Senior Vice President of Psychometrics, is the lead psychometrician assigned to BOC. He has performed professional assessment and applied research since 1972.

In partnership with AMP, BOC offers its multiple choice and clinical simulation tests year-round on most business days and some weekends at selected H&R Block sites nationwide. Candidates receive instant results at their testing facility upon completion of their tests.

In order to sit for any of BOC's certification exams, candidates must meet all eligibility requirements and pay the required fees. Maintaining BOC certification requires payment of annual renewal fees, meeting continuing education requirements, and upholding the BOC Code of Ethics.

There are several methods by which BOC would collaborate with the Ohio Board to provide proof of valid certification. The BOC Practitioner & Facility Directory is always available online at <http://go.bocusa.org> and all certificants who have given permission to have their information shared are listed there. Certificants in Ohio wishing to apply for licensure could also provide the Ohio Board with a copy of their most recent BOC certificate. If the Ohio Board would prefer an alternate arrangement—perhaps a periodic spreadsheet of all BOC certificants in Ohio—we would be happy to comply with its request.

As is our practice with all licensure states, BOC would keep the Ohio Board apprised if there were ethics violations involving Ohio licensees. Similarly, we invite and encourage communication from the Ohio Board should there be issues of concern involving BOC certificants.

As you can see, we see this additional information as important to the Ohio decision-making process. We are more than willing to provide the Board with any other information that would aid in an objective review of our qualifications. We appreciate your willingness “to make a different determination at a later date based on newer or different information.” We believe the items noted here qualify as that information.

Again, thank you for the opportunity to apprise the Ohio Board of our competence and expertise as a test delivery and credentialing organization. I believe we meet and exceed the requirements of the Board. Now that the amended rules enable the Board to select another testing vendor, I trust that the Board will choose BOC as a partner in contributing to the provision of quality patient care in Ohio.

If I may provide any additional information, please do not hesitate to contact me directly at claudia@bocusa.org or 877.776.2200.

Sincerely,



Claudia Zacharias, MBA, CAE
President and CEO

**ADVANCED MEDICAL SUPPLY, INC.
4840 WEST BROAD STREET
COLUMBUS, OHIO 43228
614-870-0111**

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215
tel: 614-466-1157
fax: 614-387-7347
email: mark.levy@opp.ohio.gov

Mr. Levy,

Please include this message as input for the public hearing on the rules scheduled for January, 29, 2013.

I am writing in support of the rule amendment that was approved at the Board's December 12, 2012 meeting:

*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.***

The current policy of accepting only the ABC exam precludes many qualified BOC-certified practitioners from practicing in our state. This makes it difficult for business owners to recruit experienced practitioners from other states and ultimately results in limiting access to care for the citizens of Ohio.

BOC's exams are nationally accredited and are accepted by the VA, CMS, and the vast majority of other states. I ask that you accept BOC as another testing option and remedy this restriction as soon as you can. It hurts both Ohio businesses and Ohio patients.

Please contact me if I may provide additional information. Thank you for the opportunity to contribute to this important discussion.

Sincerely,

Julie Bush, L.O. President

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215
tel: 614-466-1157
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Sincerely,

Richard L. Grope, LPO

330-792-6826

Rec'd 01.25.2013 - State Board of OP&P

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215
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Mark Malinowski, L.Ped, BOCPD, COF

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215
email: mark.levy@opp.ohio.gov

Mr. Levy,

As a successful, respected and seasoned (24 years) BOC employer and practitioner, I have found that BOC certified practitioners can impress and exceed their patients and referring physicians' expectations. The false impressions that some organizations and their members are implanting seem almost criminal due to their lack of objective evidence.

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Sincerely,

Michael

Michael D. Veder, LO, LPed, CO, CPed
Gaitwell O & P
gaitwellmv@yahoo.com
937.336.2000



Levy, Mark B

From: jgar5240@aol.com
Sent: Sunday, January 27, 2013 9:24 PM
To: Levy, Mark B
Subject: Ohio examination

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High St., 18th Floor
Columbus, OH 43215
tel: 614-466-1157
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Sincerely

Joseph R. Garcia LCPO,BOCOP,LTP
330-670-8263



Horvath Medical Supply, Inc.

9930 Johnnycake Ridge Road, Unit 1C
Mentor, Ohio 44060
(440) 357-2371 • Fax (440) 357-2381

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
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Please contact me if additional information is needed. Thank you for the opportunity to contribute to this important discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Horvath', written over a horizontal line.

Frank Horvath, LP 0051
Horvath Medical Supply, Inc.
9930 Johnnycake Ridge Rd Unit 1c
Mentor, Ohio 44060
(440) 357-2371 Office
(440) 796-4330 Cell

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Cell # 440-479-8494
Email: mjablonski@nationalrehab.com

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Mr. Levy,

I have been working in Ohio for many years and truly believe that Ohio should accept BOC as well as ABC. I am dually certified with both organizations. I found the testing and requirements to be equally challenging.

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LPed, CFO and COF

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LPed, CFO and COF



The Robert M. Palmer, M.D., Institute Of Biomechanics, Inc.

A 501 (3)(c) Not-For-Profit School

Contact Us At: www.rmpi.org
1601 Main Street, Elwood, IN 46036
Phone: 765-557-7216 | Fax: 765-557-7223

January 28, 2013

Mark B. Levy, Board Director
State Board of Orthotics, Prosthetics and Pedorthics
77 S. High Street, 18th Floor
Columbus, OH 43215

Thank you again for inviting me to speak at the Ohio State Board of Orthotics, Prosthetics and Pedorthics last month. Since the decision to add BOC as a testing agency for Ohio OP&P licensure is an important one that will affect many people, I believe I should reiterate topics while reflecting more accurately on others which may impact your decision.

- 1) As mentioned, I can not validate that the BOC exam meets or exceeds the ABC pedorthic exam. I too cannot attest that ABC's inherited exam meets the competency level of a modern day pedorthist. At this time I have been informed that only the BOC provides instant testing; while not confirmed with the impending deadline for tomorrow's meeting. I recommend this be a requirement of all certification exams of any allied health profession.
- 2) While the minutes for our meeting last month do not reflect our discussion of the infraction to the curriculum I participated in during a BOC Orthotic Fitters Course they are not the only accrediting organization who has these same infractions by their educators. I do however feel that an educator represents the sponsor or accrediting organization and should comply with ethical standards complimentary of the accrediting organization. I strongly recommend that students be required to complete a survey and directly submit it to the sponsoring or accrediting organizations before departing any course and sealed in an envelope for direct delivery to the accrediting organization.
- 3) I have learned more about the work experience verification process for the orthotic fitter certification as well as the orthotist certification process and I have been assured that the BOC has protocols established to ensure that a person who has not officially participated in work experience can not participate in the BOC exam. I would need to inspect the work experience verification process to retract my statement, as our staff reflects unanimously on the statement made by the BOC approved educator whether accurate or inaccurate. This statement was during the years of 2010 and may not reflect the current standards established by the BOC.

Please contact me if I can answer any additional questions or assist in any way towards improving the academic standards or protocols of pedorthic education.

Respectfully,

Pamela Haig, C.Ped.
President Elect