

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

March 06, 2013

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

I. Call to Order: The meeting scheduled for 2:00 p.m. was called to order at 2:15 p.m.

Roll Call:

Members present: Animesh Bhatia, DPM;
Jason Macedonia, LPO;
Bill Neu, LPO;
Edwin Niehaus, LP;
Robert Reed, consumer;
Orthotist/Prosthetist seat – Vacant;
Pedorthist seat - Vacant

Members absent: none

Staff present: Mark B. Levy, Board Director
Meloney Buehl, Office Assistant
Cheryl Hawkinson, Assistant Attorney General

Guests: Shakeba Dubose, attorney at law
Cheryl Edwards, court reporter

II. Agenda – Amend/Approve: The agenda as distributed was briefly reviewed; Mr. Niehaus inquired whether new business from the December agenda was carried over to today's agenda; after brief discussion, motion to approve agenda by Macedonia/Reed, no further discussion, approved by unanimous vote.

III. Review/Approve Minutes of December 12, 2012, meeting: Minutes having previously been circulated, it was moved/seconded by Niehaus/Reed to approve without amendment or correction. No further discussion, vote was unanimous in favor.

IV. Record Hearing and Deliberation in re: Notice of Opportunity for Hearing issued to David

A. Games, II: Neu/Macedonia moved/seconded to recess the regular meeting of the Board to commence the hearing as noted at 2:30 p.m., motion approved unanimously. Mr. Neu presided as Hearing Officer, Ms. Hawkinson presented for the state of Ohio, and Mr. Levy was called as a witness. The record was taken by court reporter Cheryl Edwards. The hearing concluded at 2:50 p.m., and it was moved/seconded by Macedonia/Bhatia to enter closed deliberations. Mr. Levy, Ms. Hawkinson, Ms. Buehl, the court reporter and Ms. Dubose were excused. Deliberations were concluded and Ms. Buehl, Ms. Hawkinson, Mr. Levy, Ms. Dubose and Ms. Edwards were asked back into the room. At about 3:05 p.m., Mr. Neu reviewed the evidence presented and gave the Board's findings of fact and conclusions of law. Based on consideration of all the information available and presented, Mr. Neu asked the members present to order the revocation of Mr. Games' license to practice Pedorthics in the state of Ohio, and all members present signed a statement affirming their vote to revoke. It was moved/seconded (Neu/Macedonia) that Mr. Levy issue an adjudication order consistent with the Board's findings and decision, the motion carried. The Adjudication Order is attached to these minutes and incorporated by reference.

V. Executive Session: At 3:20 p.m., roll call vote was taken to enter Executive Session pursuant to ORC Section 121.22 (G), to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; to consider the investigation of charges or complaints against licensees; and to consider matters required to be kept confidential by federal law or regulations or state statutes. Bhatia, Macedonia, Neu, Niehaus and Reed so voted, requesting staff and AG representative to remain. Unanimous roll call vote out of Executive Session occurred at 4:35 p.m.

VI. - 4:40 pm Settlements / Charges / Dispositions / Complaints

A. Hearing Disposition – Findings, conclusions and order recognized for the record.

B. Complaint statuses and tracking

The Board accepted the FY13 Complaint Status report (below) with no discussion. Nine (9) FY13 complaint files recommended to close; six (6) remain in process. It was noted that about 75% of complaint files processed address unlicensed practice allegations.

<u>Date</u>	<u>Track #</u>	<u>Complaint Type</u>	<u>Status</u>	<u>Member review</u>	<u>Last Opened</u>
7/9/12	13 C 01	unlicensed practice; fraud	recommend close, refer AG of Ohio	approved to open	2/19/13
7/9/12	13 C 02	unlicensed practice; fraud	pending review; fact-finding in process; resolving regulatory jurisdiction	approved to open	2/19/13
7/18/12	13 C 05	unlicensed practice	Recommend Close - Voluntary term'd NPI status	approved to open	2/5/13
8/21/12	13 C 08	standard of care	pending responses from licensee and complainant - related file 13 c 15	pending status review 03/11/13	2/20/13
9/11/12	13 C 12	unlicensed practice	recommend close as in compliance	pending member review	2/13/13
9/26/12	13 C 14	unlicensed practice	recommend close -- cross reference 13C12 -- Employer file	pending member review	2/25/13
11/21/12	13 C 15	CE Audit Non-Responder	pending hearing, NOH issued	pending hearing	1/24/13
12/4/12	13 C 16	standard of care; unlicensed practice	licensee response recd 02/20/2013; pending hospital records	pending completion of initial fact finding	2/20/13
12/12/12	13 C 17	unlicensed practice	pending Board Mmbr review, recommend close, notice provided	pending review, recommendation	2/13/13
1/2/13	13 C 18	unlicensed practice	pending recommendation to close, complaint incomplete and complainant not responding	pending review, recommendation	2/14/13
1/22/13	13 C 19	unlicensed practice	pending review, recommend close file, in compliance	pending review, recommendation	2/13/13

1/30/13	13 C 20	standard of care	pending Board Mmbr review	approved to pursue informally	2/13/13
2/1/13	13 C 21	unlicensed practice, level of care, billing	pending response expected 03/29/13	approved to open	2/13/13
2/1/13	13 C 22	unlicensed practice	pending board member review, recommend close, notice provided	pending review, recommendation	2/28/13
1/30/13	13 C 23	renewal self-report	pend indefinitely, report required, no complaint filed with Board	approved to track status, AAG reviewed	2/14/13

VI - 4:45 pm Consent Agenda: Director's Report

A. Fiscal – Revenue and Expense

Spreadsheet data as presented to the Board is appended.

1. FY13 Performance data – Revenue and Expense – comparative metrics offered
2. FY13 Activity YTD and Projections
 - Beginning FY appropriation was \$114,218, increased to \$132.600 per Controlling Board 11.09.2012 .
 - Expenses running in line with projections. With conclusion of renewal, we have just completed our heavy revenue inflow period.
 - FY13 YTD Revenue (7 months): \$101,580
 - FY13 YTD Expense (7months): \$ 84,862.
3. FY14-15 Budget submitted – requesting \$276,500 two-year appropriation.
4. License renewal report; Approve OPPCE Remediation Agreements
 - 408 Licenses went into 'Active in Renewal' status 11/12/12
 - Online renewals ended 2/15/13
 - 392 (96%) Licensees have responded or renewed as of 3/5/13
 - OPPCE Remediation Agreements (OAC Rule 4779-9-03)
 - **Michael Adams, LP.247** and **Christopher Glass, LPED.108** submitted worksheet advising utilization of the 4779-9-03(B) option, completing OPPCE accrual before 1/31/2013 and thus avoiding the late filing fee and the augmentation requirement.
 - **Jason Timmer, LO.288** paid a late fee and requests an extension until July 2013 to complete. His worksheet states a plan to complete his 20 unit deficiency plus a 15 unit augmentation.
 - **Connie Yorko, LPED.149** filed a worksheet requesting an extension until August 30, 2013, to make up her deficiency of 29 units plus an augmentation of 11 units. Ms. Yorko requested and Director Levy granted a waiver of the late filing penalty fee under the cited provisions of ORC § 119.14 "Waiver of penalties for first-time paperwork offenses."

Director requested a motion to approve his administrative approval of the four (4) OPPCE Remediation Agreements indicated. Motion/second Niehaus/Macedonia, no discussion, approved unanimously.

B. Legislative Report

1. Legislative Docket / Tracking – appended as presented
2. Budget testimony 02.20.2013. House Finance subcommittee testimony circulated in advance and distributed at the meeting. Members were asked for feedback/direction regarding prospective Senate testimony.
3. Practice Act Review – no report.

C. Administrative Docket

1. ODJFS/Medicaid – Request for Review of proposed amended rule 5101:3-10-05 – Reimbursement for Covered Services (NOT the O&P Covered Services rule and index specifically, but language generally governing DMEPOS services).

The proposed changes to this rule pending review/revision by ODJFS/Medicaid were presented in some detail. Language is primarily in implementation of federal “face to face” documentation requirements – that prescribers have a face to face encounter with a patient for whom a prescription is written within a defined period of time prior to the order, and that suppliers document that data in their claims submissions. O&P Providers can expect similar language to visit the O&P Covered Services rule at 5101:3-10-20 when it next comes up for review and revision, which may be very soon.

2. ODJFS/Medicaid List of Mandatory RT / LT Modifiers

Reimbursement rules will require claims and documentation to support and specify “right – left” for items that are billed for treatment of limbs/extremities. The list of affected HCPCS codes for O&P was circulated and is appended to these minutes.

D. Designate Lapsed Licenses

Director requested a motion to designate the non-renewed licenses listed on the report presented to the Board and appended to these minutes as Lapsed in accordance with ORC 4779.19 and 4779.20 and OAC Rule 4779-8-01. Moved/second by Bhatia/Reed, no discussion, passed unanimously.

E. Ethics Review – Financial Disclosure: Requirements, Process, and Why

In compliance with current directives, the Board engages in a review of topics addressing Ethics in government at each meeting. Director presented information from the Ohio Ethics Commission, reviewing the statutory language, Financial Disclosure requirements, and Frequently Asked Questions. OEC has rolled out a new online reporting/filing interface, and basic reporting requirements and access issues were reviewed. Members were encouraged to notify the board office upon completion of filing, and were advised that the Board pays the filing fees. Materials were provided in hand-outs and distributed electronically for retention and review.

F. MBE/EDGE Program compliance – verbal report only.

Director reported that the office that tracks compliance with the Minority Business Enterprise (MBE) and Encouraging Diversity Growth Equity (EDGE) programs is presently reporting OPP as “0.0%” compliant with the MBE side of the program for the current fiscal year. Program rules require agencies to “set aside” 15% of their “eligible spend” for competitive bidding by MBE certified vendors. We are reported as of the end of FY13Q2 as fully compliant -- over and above minimums (goal 5%, spending 85%) on the EDGE side, which does not tie into a competitive bidding requirement. Virtually all of the services the Board engages by contract are covered by standard contracts negotiated by the Ohio Department of Administrative Services, and the Board is required to utilize those contracts where those services are required. The Board by policy contracts exclusively with MBE and/or EDGE vendors for any IT and/or equipment needs when possible. Thus, although we expect to exceed our goal for MBE spending by a factor of at least 666% (spend goal = \$330; spend actual = \$2750), we are being reported “in the red” and not in compliance with program requirements.

VIII. License Applications and Licenses Issued: Macedonia / Levy (5:00 p.m.)

Report was circulated for consideration: eight (8) applications reported, two each in Prosthetics, Orthotics, and Prosthetics-Orthotics, and two in Pedorthics (Temporary). Three licenses were reported as upgraded from Temporary (one each LO, LP, LPO) as the applicants/licensees reported passing scores on exams. **Approval moved by Macedonia, second by Reed; passed unanimously, no absentions.**

IX. - 5:05 pm Old Business

A. Board Continuity – two seats are pending appointment; one candidate who had applied for the Pedorthics seat has withdrawn; there remains one known candidate for each vacant seat; appointment authority lies with the Office of the Governor.

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

1. No Change Package – move to approve
2. Language Updates Package – move to approve

Director requested a motion to approve Rule Packages numbered 96557 (No Change rules) and 96577 (Language updates) as they are currently constituted to move forward in the promulgation process, noting that the amendments package cleared JCARR review on February 25, 2013, and the No Change package, still pending JCARR jurisdiction, has had one rule removed To Be Refiled. Motion/second by Neu/Bhatia, approved unanimously.

3. Set effective date – no sooner than 10 days after Board action

Director requested a motion to set effective date of the Amended rules, no sooner than 10 days after today’s meeting. Motion to set the effective date as April 1, 2013, by Macedonia/Reed, approved unanimously.

4. To Be Re-filed: OAC Rule 4779-6-01

The text of the proposed amended rule – pulled from the No Change package at JCARR staff request – was circulated for review and consideration, in advance and at the meeting. Director explained that the major change is implementation of the “incorporation by

reference” requirement of ORC 121.72, tying the rule’s reference to a form required or prescribed by the Board to the rule itself.

It was noted that the new license application forms that are on the agenda for approval today will be considered part of the rule language going forward, thus any substantive change to the forms in the future will require refiling of the rule and all that is entailed in that process, including CSI/BIA (Common Sense Initiative/Business Impact Analysis) development and review. Motion by Reed/Bhatia to re-file the rule in accordance with requirements; approved unanimously.

C. New Application Forms – to be referenced in TBR OAC Rule 4779-6-01

- a. Orthotics & Prosthetics – unified form
- b. Pedorthics – unified form

Current and proposed final draft of new application forms were circulated in advance and at the meeting. Members were asked for their careful review. Mr. Neu noted a typo correction for the O&P form on page 3 at item 3 (remove extraneous word “either”), and motion was made (Bhatia/Reed) to accept the forms and to include as appropriate for the rule filing. Passed unanimously.

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

As reported in December, Mr. Levy introduced the topic by noting that OPPCE audit policy has allowed licensees to submit CE transcripts from their credentialing organizations in lieu of direct documentation from CE vendor/supplier confirming attendance. Agency rule language still requires a licensee to maintain OPPCE documentation “for a period of four years beyond the renewal date requiring attestation of OPPCE compliance ...” (OAC Rule 4779-9-01). It had recently come to our attention that BOC has initiated a process apparently allowing certificate holders to enter their own CE accrual information directly into the BOC tracking database. The question was raised as to whether that allowance impacts the validity of the transcript as a document verifying coursework completion. The Board in December requested Mr. Levy contact BOC directly to obtain additional information.

Levy reported his correspondence exchange with BOC officials which was provided to the Board in its entirety. The following points were highlighted:

1. BOC’s reporting of a 100% verification rate of CE reporting/recording (*“To date, all audits have been positive. We have had no issue to date with documentation deficiencies”*) is based on only one year of experience. *“Prior to my arrival two years ago, audits were conducted but not consistently.”*
2. Certificate holders are not required to upload documentation supporting their entries at the time of entry, and have the ability to edit information previously entered.
3. Although BOC states it conducts audits yearly, pulling a 10% sample each year, for four of those five years certificate holders are effectively “free” from any reporting requirements, thus virtually any account pulled for audit would be cleared during those four years.

Question: Given that BOC only requires CE records to be maintained for 12 months following the end of a 5-year accrual period, if a certificate holder is pulled for audit in the 2nd, 3rd, 4th or even perhaps the 5th year of a cycle, since CE is not required to be accrued annually and is only required to be reported/confirmed for the 5-year re-certification, no CE accrual is required or subject to documentation during the 2nd, 3rd, or 4th (and maybe 5th) year of certification, so a certificate holder would be "cleared" in the audit even if reporting no CE at that time. Is that correct?

*Answer: Yes.
(email confirmation 03/04/2013)*

In consideration of the above information and the entirety of the correspondence exchanged, it was **moved/seconded** (Bhatia/Macedonia) that **OPPCE audit policy require original documentation of attendance to support any BOC CE transcript submitted, and that staff draft written policy consistent with this motion and the Board's audit responsibilities.** No further discussion. Passed unanimously.

X. New Business (5:20 p.m.)

A. Mission Statement review, Goals and Objectives Review

The Board's Mission Statement as has appeared recently in various reports were circulated along with legislative testimony regarding the Board's mission. Members were asked to review in preparation for future discussion and strategic planning.

XI. Adjournment (5:30 p.m.)

Motion to adjourn (Bhatia/Macedonia) passed unanimously.

Respectfully submitted,

Mark B. Levy

Mark B. Levy
Board Director

William C. Neu, III

William C. Neu
President

6/12/13

Date