

MINUTES
STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS

June 13, 2012

This Regular Meeting of the State Board of Orthotics, Prosthetics and Pedorthics (OPP) was held on the above date at 77 South High Street in the North B & C Rooms, 31st floor of the Riffe Center, 77 South High Street, Columbus, Ohio. Signage on site advised regarding move from Board Room next door.

I. Call to Order: The meeting scheduled for 3:00 p.m. was called to order at 3:00 p.m. It was noted that the members had attended a webinar on Professional Discipline in licensing presented by the Council for Licensure, Enforcement and Regulation immediately preceding.

Roll Call:

<u>Members present:</u>	Rosalind Batley, M.D.; David DeLuccia, LPO; Elsa Fritts, LPED; Jason Macedonia, LPO (first meeting); Bill Neu, LPO; Robert Reed, consumer
<u>Members absent:</u>	Edwin Niehaus, LP – with advance notice
<u>Staff present:</u>	Mark B. Levy, Board Director Katherine Bockbrader, Assistant Attorney General; Sally Ann Steuk, Assistant Attorney General (AAGs left 4:30 p.m.)

II. Agenda – Amend/Approve: The agenda as distributed was briefly reviewed; Mr. Levy requested removal of Agenda Item VIII-B and the inclusion of Agenda Item X-B to discuss “Temporary Privileging.” Motion to approve agenda with these amendments by Fritts/Reed, no discussion, approved by unanimous consent.

III. Review/Approve Minutes of February 22, 2012, meeting: Minutes having previously been circulated, moved/seconded by Niehaus/Reed without amendment or correction. No further discussion, vote was unanimous.

IV. Executive Session – Roll call vote was taken to enter Executive Session pursuant to ORC Section 121.22 (G), to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official; to consider the investigation of charges or complaints against licensees; and to consider matters required to be kept confidential by federal law or regulations or state statutes at 3:10 p.m. Batley, DeLuccia, Fritts, Macedonia, Neu and Reed so voted, requesting staff and AG representatives to remain. Roll call vote out of Executive Session occurred at 4:30 p.m.

A short break was called.

V. Settlements / Charges / Dispositions / Complaints -- None reported

VI. Consent Agenda: Director’s Report (4:40 p.m.)

A. Fiscal – Revenue and Expense

1. FY12 Performance YTD – Revenue and Expense (preliminary attached)

2. Auditor of State Biennial Audit – preliminary review – Mr. Levy gave a brief oral report. Although the Board experienced its last biennial only one year prior, and although the current fiscal biennium is not yet complete, the AOS determined our new audit is due and entrance procedures began in May.

B. Financial Policies and Procedures – report deferred

C. Legislative Report

(4:45 p.m.)

1. Legislative Docket / Tracking -- Reported on two measures progressing through the statehouse:

- HB 259 – regarding the provision of complementary or alternative health services

The legislation is the most recent version of a bill that has been introduced in several sessions in succession. The bill has passed the Ohio House and is up for consideration in the Ohio Senate. The bill seeks to provide allowance for persons who self-identify as “Complementary or alternative health care service providers” to engage in a wide range of consumer-focused activities with no licensure or registration requirements and with no educational or scope of practice parameters defined. The bill defines the field as “the broad domain of health care and healing practices that may or may not be provided in addition to or in place of prevailing or conventional treatment options.” Prohibitions seem to focus on medical and especially invasive procedures. Board discussion indicated concern generally for legislation that seems to undercut Ohio public policy focused on assuring minimum education, training and competence in allied healthcare licensing. Discussion noted in particular language that seeks to allow what the legislation refers to as “Noninvasive instrumentalities,” a phrase that is undefined in the bill but would seem to include, based on common understanding of the words, orthotic bracing devices. It was moved and seconded (Macedonia/Batley) that the Director on behalf of the Board state the Board’s general opposition to the bill and to seek language that specifically excludes regulated orthotic devices from what may be considered allowed “noninvasive instrumentalities” and to seek other language protective of the scope of practice of Chapter 4779 licensees. Vote in favor was unanimous.

- SB 337 – regarding limiting the collateral consequences of a criminal conviction

One of a pair of companion bills that have been introduced and progressed quickly through the legislature over the course of only 2-3 months. On a limited basis (only 6 licensing agencies’ practice acts are included), would require the agency to develop rules identifying those criminal offenses that may be considered “disqualifying offenses for licensure.” Establishes definitions of “disqualifying offense” and “crime of moral turpitude”, and would restrict the agency’s discretion in not granting or refusing to renew a license on those bases if the criminal offense in question occurred more than a certain number of years previously. Mr. Levy reported that we should expect to address similar issues if the Practice Act revision proposal moves forward.

2. Agent and Employer legislative ethics reports filed – reports are filed every four months. Distributed in advance and available for review.

3. Practice Act review – status and open issues. Mr. Levy advised that we have initiated a detailed review of proposed language with identified stakeholders, and invited Board member review and advice concerning the discussion document presently circulating. Focus at this time is language delineating scope of practice and definition issues. Supervision requirements were noted

as a particularly sensitive area of concern when comparing state standards/requirements with national credentialers' scope of practice statements. Concerns were raised about Orthotic Fitter scope of practice, whether the exclusions language is stated with sufficient clarity and whether the education/training required for a fitter provides a sufficient knowledge base. Would an order for a cervical orthosis necessarily include diagnostic information to indicate whether use is to treat an unstable cervical condition? Would an order for a prefabricated spinal orthosis necessarily include Dx information to indicate whether use is to treat scoliosis or an unstable spinal condition? And if scoliosis is a "disqualifying" diagnosed condition, shouldn't kyphosis-indicated use also be disqualified?

President DeLuccia suggested because of the wide range of language and information to review and understand, it might be helpful to craft a "question of the week" to be circulated by email to engender further feedback and discussion. General agreement with this idea was expressed, and Director Levy was tasked with proceeding in this manner.

D. Correspondence review – report deferred

E. Office Assistant – new hire began April 2012

F. Reports filed – as noted or attached

VIII. A. Report on Pending License Applications and Licenses Issued: Neu / Levy
(5:00 p.m.)

Updated report was circulated for consideration. It was noted that two applications are presented for approval pending completion of requirements and/or documentation. Five (5) applications for Orthotics, three (3) of which as Temporary; one (1) Temporary in Prosthetics; three (3) Temporary in Pedorthics. Report as approved is attached.

IX. Old Business (5:15 p.m.)

A. Board Continuity – three seats open December 2012 DeLuccia / Levy
There was a brief discussion regarding upcoming vacancies, recruitment efforts to date, and members were requested to consider discussing with known professionals who may be good candidates.

B. Application content and review -- report deferred Neu / Levy

C. 2012 Meeting Dates: September 12, December 12 – no changes were requested, no discussion.

X. New Business (5:30 p.m.)

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

Mr. Levy explained that the Board had received a notice that a number of rules in our administrative code series were due for their five-year review; initial review of the targeted list resulted in a two-package compilation: No Change, and Language Updates. Notice was provided to licensees and stakeholders, and the packages are available for Board and public review. We are proceeding in a manner consistent with the Common Sense Initiative, which requires a preliminary

stakeholder-focused process to be engaged and documented prior to initiation of the prior standard rule review and promulgation process, which is still required as well.

Mr. Levy reported that one rule in the proposed "No Change" set has been identified as a "candidate" for moving to the Language Updates package. It has been suggested that [OAC Rule 4779-5-01 The Examinations](#) be revised to recognize the BOC Pedorthist exam as equivalent to the ABC C.Ped. exam, as the educational pathway course content is based on the same NCOPE curriculum standards. Discussion indicated general agreement that if educational and testing standards are equivalent, a change in language may be in order. Mr. Levy stated the question is being researched and he will proceed in a manner guided by objective data in consultation with the Board president and subject to further public review and comment.

B. Temporary Privileging

(6:00 p.m.)

Director Levy requested Board review and discussion of a question that had come in from a licensed prosthetist employed by a high-end prosthetic design and fabrication company with a principal location in Ohio and a system of satellites in other states. Their SOP includes hosting a primary prosthetic practitioner, sometimes from out of state, along with the practitioner's patient for definitive design, fitting and training in device utilization. Clinical services in Ohio are provided and/or supervised by a Licensed Prosthetist-Orthotist. Forward-looking speculative concern was raised by the Ohio LPO about a scenario in which an out of state patient may be "booked in," travel costs expended, but an interruption in Licensed staffing in Ohio may occur for any of a number of reasons, and a non-Ohio licensed provider representing the Ohio business might need to sub in. Board discussion noted that it appeared there was always a partner prosthetic provider for the out of state clients. In such cases, it appeared to the Board that the Ohio facility could be viewed as being the manufacturing or "central fab" facility; the patient's initial evaluation and regular care is performed by the client's personal prosthetic provider, and final fit and dispensation would occur at the home, out-of-state facility. Under these circumstances, the Board discussion did not indicate that a violation of Ohio law and rule would be evident, noting the important distinction between an in-state client with an in-state licensed provider and the out-of-state scenario described, and noting as well the importance of file documentation that would "agree" with the service delivery sequence described.

XI. Adjournment

(6:30 p.m.)

Respectfully submitted,

Mark B. Levy

Mark B. Levy
Board Director

David M. DeLuccia

David M. DeLuccia
President

09/12/2012

Date