From the Director's Desk

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Spotlight on Changes

Much of the "news" from the Board this year has had to do with new rules and rule amendments. "Rule promulgation" – amending current rules and enacting new ones -- is a detailed and cumbersome process, so when we get into Rules Mode, we tend to go large. In that way, we hope we are maximizing the effectiveness and efficiency of our efforts so as not to engage repetitively or continuously in the administrative processes necessary to the exercise.

The concern that accompanies that approach, however, is that some of the important details of the changes being made may get lost in the clutter. We are all bombarded with information from online, print and electronic media, and when the data gets too dense, the normal response is to just tune out. You're trying to make sense of and conform your paperwork protocols to the new CMS documentation requirements for dispensation of diabetic therapeutic footwear – do you really want to wade through Ohio regulatory language updating Practice Act language concerning Residency and Certificate Programs, or the dull details regarding the Board's policies for maintaining personal ID information? I'll answer that for you: probably not !

However, there are some devils in these details, and some important points about which well-rounded, thoughtful and ethical practitioners should be aware. Please allow me to lighten the load a bit and shine a spotlight on some of the changes just made that are worthy of some special attention.

❶ About one year ago, this agency started to catch up to many other licensing entities by offering an online payment process for annual license renewal. Board members appreciated the operational efficiencies, but at the same time heard some of the feedback questioning the proposal to make it mandatory. Let's just say a number of you took good advantage of your rights to freedom of speech! Thus, to nudge the process toward the cost-and-time-savings of electronic renewal, the Board asked staff to amend the rule language on fees to **disallow the use of personal checks for renewal-by-paper**, and directed further that paper renewal forms not be offered in the initial renewal mailing. Looking to the future, licensees and administrative support staff may wish to note that a number of boards are eliminating "hard copy" renewal cards (saving staff time, printing and postage), enacting language to make the online license look-up the primary license verification mechanism.

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❷ Sometimes, complaint processing and enforcement experiences drive changes in regulatory language. Although the Board believes that **certain record-keeping requirements such as those required by CMS and other third-party payers represent a well-recognized minimum standard**, experience has indicated these principles are not consistently applied across practice platforms and settings. In response, the Board determined to establish as an aspect of the Rule on Professional and Ethical Conduct (OAC Rule 4779-10-01) a set of minimum standards for consumer file maintenance. To be in compliance with Ohio standards, **an OPP practitioner's record must now reflect content in accordance with the following bullet-points:**

- ✓ *Medical presentation/history data appropriate to the service provided.*
- ✓ *Evaluation and measurement data supporting device choice and recommendation.*
- ✓ *All dates of service with narrative progress notes describing presenting problem and service/procedure performed.*
- ✓ *Medical orders and therapist notes supporting services provided.*
- ✓ *Documentation required by third party payers including assignment of benefits, privacy notices, delivery receipts, financial arrangements, and records reflecting contacts for and provision of follow-up care.*

- ✓ *Records shall be maintained with privacy and security safeguards appropriate to the data in file.*
- ✓ *The licensee responsible for provision of care should take steps to assure the consumer file data is maintained a minimum of five years from last date of service.*

❸ One tool available to the Board in rule-writing is clarification-by-definition, and the legacy of the administrative rule on Definitions reflects that reality. The longest and most-detailed of Board-authored language, the Definitions rule had become disjointed and somewhat confusing. In the recent re-write, we took the opportunity to both reorganize the language into more logical groupings, providing new language to more clearly differentiate between the assistive devices that come within the scope of the Practice Act's regulatory intent from those that are commonly available in the mass marketplace and/or which do not require certified, licensed practitioner dispensation and fitting to assure consumer safety and preserve reimbursement resources.

➔ The authority to clarify-by-definition is highlighted importantly by the new definition in OAC Rule 4779-3-02 of the term "accommodative." In the statute, the word is defined as "designed with the primary goal of conforming to the anatomy of a particular individual." That definition meshes with how the term is generally understood in the practice environment. However, in the context of the statute, it could easily be confused with the characteristics of a customized device. In addition, its use in the statute is to differentiate a non-regulated manufactured device from one that is custom fitted or fabricated. Thus, the new rule language adds as further definition:

- ➢ *the item is designed to conform to the anatomy of the particular individual who purchases and wears the item, but does not have the added value of the capacity to be custom fitted or custom fabricated for use by a particular individual, and is sold off-the-shelf on a retail basis.*

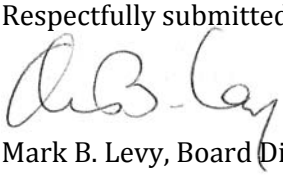
➔ You will find those differentiating characteristics repeated throughout the rule to draw the line between regulated and non-regulated dispensation.

- ➢ *Regulated devices are characterized as requiring a prescription for dispensation, requiring custom fitting or custom fabrication, and being dispensed/sold for a medically necessary or therapeutic purpose.*
- ➢ *Non-regulated devices are characterized as being sold off-the-shelf on a retail basis, not custom-fitted or fabricated, and not delivered or provided to fill a doctor's order or healthcare prescription.*

➔ In addition, we sought to address the somewhat vague phrase "requiring minimal fitting," since that language is used in the statute to carve out an exception to certain regulated devices. Thus, that simple phrase is now explained as a prefabricated device which is …

- √ *fit for size by use of not more than two simple body size measurements;*
- √ *sized as small, medium, large, extra large, 2XL, 3XL*
- √ *fastened or fit to the body or body part by use of elastic or self-fastening straps, buttons or strips;*
- √ *not molded by the consumer-care provider to fit the consumer;*
- √ *not provided by the manufacturer with items or component parts which are intended or designed to be custom molded, heat moldable or custom fitted.*

Respectfully submitted,



Mark B. Levy, Board Director
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UP-TO-DATE REGULATORY LANGUAGE IS ALWAYS AVAILABLE ON-LINE:

OHIO REVISED CODE CHAPTER 4779: HTTP://CODES.OHIO.GOV/ORC/4779
OHIO ADMINISTRATIVE CODE AGENCY RULES: HTTP://CODES.OHIO.GOV/OAC/4779