

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

**JULY 16, 2008**

This regular meeting of the State Board of Orthotics, Prosthetics and Pedorthics (BOPP) was held on the above date at 77 South High Street in the Board Room on the 31<sup>st</sup> floor of the Riffe Center, Columbus, Ohio.

2:00 pm **I. Call to Order:** The meeting scheduled for 2:00 pm was called to order on time.

**Roll Call:**

Present Board Members: Rosalind Batley, M.D.; David DeLuccia, LPO; Manuel Garcia, LPO; Howard H. Harcha, Esq.; Douglas VanAtta, LPO

Members Absent: Elsa J.Fritts, LPED, by advance notice  
(1 seat currently vacant)

A quorum was present with one absent and one vacant.

Staff: Mark Levy, Board Director  
Jesse Cantrell, Assistant Attorney General  
Harvey Sukienik, Assistant Attorney General

Guests: Donna Mahan and Rosemary Brown, LPED.127, with  
Trinity Orthotics from the Cincinnati area

**II. Amend/adopt agenda:** The agenda was presented for amendment or approval and no changes were noted to the agenda. **Harcha/Garcia, moved approval. The vote was unanimous.**

**III. Approval of minutes:** Approval of May 14 minutes, as provided to the Board for approval in advance of the meeting for review. The President called for any discussion and, hearing none, called for a motion for approval. **Mr. Harcha so moved; Dr.Batley seconded. There was no further discussion. Vote was unanimous.**

2:20pm The Chair noted that Mr. Cantrell was still en route to the meeting. There was a suggestion to deal with a few matters under old business in the interim. **Board by consensus moved to proceed to Item IX, Old Business: A.**

**IX. Old Business**

A. Board Member Search; Succession Planning: Mr. Levy briefly reported that there are two known candidates with applications on file for the currently vacant Board seat. **Two more seats will be coming open at the end of the year for practitioners** and Mr. Harcha, as consumer member, has indicated he will not be seeking re-appointment, so **the Consumer seat will be open as well.** We are actively engaged in Board recruitment activities.

B. Testing Contract with ABC

**Deferred** pending ABC's completion of its review of the documents and making any pertinent changes.

C. Time and Attendance & Office Policies; Leave Policy; Elections Poll-work

Mr. Levy reported that this matter had been scheduled for consideration previously, but withdrawn, partly due to Governor's Directive regarding time and attendance issues in agencies and request that agencies review their policies and procedures in this regard. State of Ohio policy does allow agencies to grant administrative leave for election poll-work for workers to work the polls on Election Day. There was a brief discussion regarding office coverage issues. It was noted that the office assistant is usually scheduled in on Tuesdays, which is Election Day.

**Mr. DeLuccia moved and Mr. Garcia seconded to approve an Election Leave Policy for the office to be administered on a per occasion basis, with the approval of the Board President**, assuming that appropriate arrangements can be made for coverage in the office or for alternate contact information to be provided to the public. No further discussion. **Motion passed unanimously.**

D. Director Compensation

The Board, at a meeting late last year, had approved a 3% pay increase for the Director position, however, the Governor's Office had at that time recently issued a directive restricting pay increases, and that directive stayed in effect until the end of fiscal year 08.. Fiscal 09 began with an allowance for agencies in the Director's pay classification to submit requests for pay adjustments of up to 3.5%. Based on the prior action, the President approved a 3.5% increase and the Board is requested to review that action. **Dr. Batley moved and Mr. Harcha seconded approval of the President's action, granting a 3.5% pay increase to the Director**, based on the prior history and there was no further discussion. **The vote was unanimous.**

2:20 pm

Assistant Attorney General Jesse Cantrell was in attendance, accompanied by new-to-this-Board Assistant Attorney General Harvey Sukienik. Mr. Sukienik will be representing the Board during the upcoming period. Mr. Cantrell is taking a position with the Federal Court in northeast Ohio.

IV. **Goldman Hearing**

Following those introductions, the Goldman Hearing was called with Mr. Harcha presiding over the Hearing and Mr. Cantrell appearing for the State. Mr. Harcha presided over the evidentiary hearing of the matter referenced as **File No. 08-OPP-L-04 – Whether to Issue or Refuse to Issue to Matthew W. DeLay A License in Orthotics in the State of Ohio.** Mr. Cantrell presented the evidence, consisting of Mr. Delay's license application file, compiled with a descriptive affidavit affirmed by Mark Levy, Board Director, custodian of the Board's records. Mr. Cantrell asked the Board to deny the license based on lack of compliance with statutory requirements.

During the discussion, Mr. VanAtta had a question regarding statement No.7 on the Affidavit, where the practice or the study of Prosthetics was mentioned. Mr. Levy, having that matter called to his attention, noted that was a typographical error and noted the information is correct on the documents attached, which referred to an application for licensure in Orthotics and coursework and other matters related to the

study or practice of Orthotics. **Noting that correction, Mr. Garcia moved approval of the affidavit to be entered into evidence. Mr. DeLuccia seconded and Mr. Harcha asked the roll to be called. Roll was called. All members present voted in the affirmative to accept the affidavit as corrected and the hearing was concluded.**

2:30 pm **Mr. DeLuccia noted that he might need to leave the meeting early, so asked for the Report on Pending License Applications and Licenses Issued to be moved up. With no objection, the Board by consensus agreed.**

2:30 pm **VIII. Report on Pending License applications and Licenses Issued**

**Mr. DeLuccia moved approval.** There was a brief discussion regarding the process engaged in to come to recommendations for licensure. It was noted that the process includes review by the Director for basic sufficiency to meet the statute; if it appears all conditions are met, the application is presented for Mr. DeLuccia's review. It only comes to the Board after both Mr. Levy and Mr. Deluccia are satisfied that the applications meet criteria or, in the alternative, are brought to the Board as a Notice of Opportunity for Hearing as a proposal to deny. Compliance with Criminal Record Check requirements is a new checklist item. With that explanation, **the motion was seconded by Dr. Batley and all Board members voted unanimously to approve the licenses issued** and noted the licenses that were approved since last meeting based on prior approval to sit for the exam and positive exam results being reported by the American Board for Certification in Orthotics, Prosthetics, and Pedorthics.

The following candidates for licensure were approved by unanimous vote:

<u>License Type</u>	<u>Candidate</u>	<u>Conditions, if any</u>
Prosthetics, TEMP	SEAVER, Tyler J. STOUDINGER, Megan M.	plus Approved for Exam plus Approved for Exam
Prosthetics & Orthotics	BATY, David J.	Approved upon receipt of Criminal Records Check Confirmation
Pedorthics	BINEGAR, Kimberly L. WILKINS, Patricia A. MALINOWSKI, Janet M.	Upgrade from Temp
Pedorthics TEMP	BISHOP, Pamela S.	plus Approved for Exam

The following candidates were issued licenses upon receipt of ABC exam results:

<u>Name</u>	<u>Lic.#</u>	<u>Written Date</u>	<u>Written Sim Date</u>
BEST, Aaron R.	LO.280	May, 2008	May, 2008
DESHPANDE, Aarti A.	LP.235	May, 2008	May, 2008
HAGMAN, Jeffrey A.	LP.238	May, 2008	May, 2008
POEPELMAN, Michelle A.	LPO.237	May, 2008	May, 2008
SORCI, Elena M.	LO.278	May, 2008	May, 2008
ZILLICH, Evan P.	LO.271	May, 2008	May, 2008

2:40 pm.

V. Executive Session

Motion to enter Executive Session. Mr. VanAtta asked that the roll be called: Mr. Harcha, Mr. DeLuccia, Dr. Batley, Mr. VanAtta and Mr. Garcia all voting approval to enter Executive Session at 2:40 p.m. The Board exited Executive Session by the same method at 3:25 p.m.

3:25pm

Mr. Cantrell asked to address the Board on **House Bill 285**, which has recently passed the Legislature and signed into law by the Governor, which seeks to have state agencies “forgive” **first time paperwork violations** by regulated businesses in the event that such a violation might incur an administrative fine or civil penalty. Mr. Cantrell indicated that this piece of legislation is still under review by the Attorney General’s Office. It appears it could be complex and difficult to determine its exact compliance requirements. Mr. Levy questioned whether the legislation applies to this Board at all, since its terms seem to address a regulated small business, as small business is defined in the code of federal regulations. Mr. Cantrell indicated that determination has not yet been made. Further advice will be forthcoming.

3:30pm

Mr. Cantrell and Mr. Sukienik left the Board meeting at 3:30 p.m., but not before **Mr. Harcha noted that Mr. Cantrell will be leaving this position with the State for a position with the Federal Court shortly, and thanked him for his service to the Board.**

3:35-3:45p.m

The Board took a break and then took up the Director’s Report.

3:45pm VI.

Director’s Report

A. Rules Review/Promulgation

Mr. Levy reported on the Rules Hearing that was held immediately prior to the Board meeting today, scheduled at 1:00. Public was noticed through the Register of Ohio, through the Board’s website and by e-mail announcements to the Board constituency and those who have requested to be notified of such actions. The Hearing convened at 1:00 p.m., as scheduled with Board Members David DeLuccia, Douglas VanAtta, and Howard Harcha present. No other members of the public appeared and no comments had been submitted to the Board regarding the proposed Rules package, once the Rules were formally filed, although the Board’s Public Comment File does contain a

number of comments received when the proposal was in the Board's clearance area posted to the website in its Rules, Policies and Discussions tab.

There were no further comments or discussion from the Board regarding the substance of the proposals in the rules package.

The next matter to consider regarding this process would be whether the Board should take an action regarding the package now or wait until after JCARR, the Joint Committee on Agency Rule Review, has held its Hearing, which is scheduled for August 4. The Board could either take an action approving the package to go forward and setting an effective date conditioned upon the Joint Committee on Agency Rule Review taking no action on the package, or the Board could wait until the September meeting after JCARR has had its Hearing and take its final action at that time. After brief discussion, **Mr. Garcia moved and Dr. Batley seconded to hold final consideration of the matter until the September meeting. Motion passed unanimously.**

B. Fiscal Matters

1. Reported that the Biennial Audit is near completion.

2. We are now in fiscal year 2009. Our budget appropriation for this fiscal year is \$116,260. We've completed our allocations and have begun work on the budget package that needs to be submitted in September for fiscal years 2010 through 2011.

C. Other Activities It was noted that the Director has continued to participate in Board and Commission Management meetings and meetings of the Ohio Investigator's Association.

D. IT Security The agency is in compliance with the primary directives that have been issued over the past year and a half. The agency's laptop has been secured with Safeboot Encryption Proprietary software program, which protects sensitive data from being misappropriated from portable devices; and has signed on with The Division of IT Services for shared-disk networking services to provide for securing data under the Board's control and providing for automatic backup in disaster recovery of data, in the event such a situation should occur.

4:15 pm Mr. Deluccia left the meeting at this time

4:15pm X. **New Business**

A. Facility Accreditation survey

Mr. Levy referred to items he had distributed at the meeting today for a report on the Facility Accreditation Survey being conducted by the office. Mr. Levy presented preliminary data, consisting of four spreadsheets of information showing facilities that had been accredited to date by four of the accrediting agencies given deemed status by CMS to provide facility accreditation services to DMEPOS providers in the Federal Medicare program. Mr. Levy noted that he has had some difficulty obtaining data and responses from some of the accreditation entities. However, with the data acquired to date, preliminary conclusions can be drawn and, based on that data and a sampling telephone survey of some of the facilities that are listed as accredited to

provide either diabetic therapeutic footwear and/or custom fabricated or fitted orthotics, it appears that not all of the accrediting organizations are requiring close compliance with the licensure requirements of the State of Ohio in these particular fields. Preliminary data appears to indicate, in at least some of these circumstances, facilities have been accredited for these services even though they may not employ licensed personnel on staff and may not be contracting with licensed personnel to provide the full scope of measuring, fitting, adjusting and final fit, delivery, and dispensation of the device.

Mr. Harcha questioned why it's important to the Ohio Board and the State of Ohio to be checking up on Federal Medicare requirements, since Federal Medicare program is not in this Board's jurisdiction. Mr. Levy responded that since the Federal Medicare guidelines require a minimum of appropriate certification for providing services in these fields, but when a state provides for licensing, registration or certification requirements beyond the Federal requirements, the Federal language defers to the state requirement and provides that the state requirements shall provide the baseline for the reimbursement standards in those jurisdictions. Thus, it's incumbent upon the Board to assure that the entities that have been provided the authority by the Federal government to make these judgments are making them based on the best and most accurate information available. It was also noted that this is ultimately for the protection of public health and to preserve rights of the consumers in these health care transactions.

There was some discussion regarding credentialing in the healthcare sector. Dr. Batley indicated that a credentialing body in her practice, of which she needs to be aware, requires that doctors keep current copies of the current credentials of providers to whom they refer consumers for services. Mr. Levy also noted that this was an issue of concern to the Board's two guests today: Ms. Brown and Ms. Mahan, who in informal discussions with individual members of the Board prior to the Board convening, had indicated some of the difficulties they encounter locally in the Cincinnati area when providing services and may get a call from a staff member in a nursing home, who would like a resident's shoes to be modified or adjusted because of poor fit, but upon inquiry determined that they were provided by another provider, perhaps from out of state, who simply mailed the shoes to the facility after getting some sizing information from the residents and did not provide the full services required. The result would be that the person's Medicare benefit has already been exhausted and there would be no reimbursement left for another provider to come in and work on those devices and the additional concern of the legal liability that would be attendant to working on an item that did not come from the provider who is working on the item.

Some further discussion ensued. Mr. Levy requested authorization to take 3 general actions as regards this matter:

1. Formally notify the accreditors who had been given deemed status by CMS of this Board's regulatory interest as regards Orthotic, Prosthetic and Pedorthic services in Ohio and the licensure requirements attendant thereto.
2. To follow up with the individual facilities who have been accredited where there is any question as to whether they employ appropriate licensed staff or not and issue cease and desist correspondence where appropriate.

3. To follow up directly with the office at CMS, which is overseeing the facility accreditation program to determine the best way to partner with them toward furtherance of the goals of the facility accreditation process and protection of the public health.

That motion was offered by Mr. Garcia and seconded by Dr. Batley. There was no further discussion. It was passed unanimously.

B. The Board took up the matter referenced as **File No. OPP-L-04 – Whether to Issue of Refuse to Issue to Matthew W. DeLay A License in Orthotics in the State of Ohio.** Based on the evidence introduced, and especially the lack of Bachelors degree, Orthotics residency program or certificate program in Orthotics, Mr. Harcha asked for a Motion to Deny Licensure in Orthotics, finding that the application, documentation and testimony submitted do not demonstrate compliance with the requirements of ORC § 4779.10: so moved by Mr. Harcha, second by Dr. Batley. Called for discussion; hearing none, called for vote. Aye: Batley, Garcia, Harcha, VanAtta. Mr. DeLuccia had left the meeting previously but four members remained to constitute a quorum. Motion carried by unanimous vote. Mr. Levy was directed to draft and issue an Order so noting.

5:00pm X. **Adjournment** -- The Board adjourned by unanimous consent at 5:00 p.m.

Respectfully Submitted,

Approved:

/s/ Mark B. Levy

Mark B. Levy  
Board Director

/s/ Douglas B. Van Atta

Douglas B. Van Atta  
President

09/17/2008

Date