

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

SEPTEMBER 21, 2005

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

I. Call to Order: President Manuel Garcia called the meeting to order at 6:27 p.m.

Roll Call:

Present Board Members: Manuel Garcia; Steve LaForge; Mark Horwitz; James Powers, MD; Kathleen Simmons; Doug Van Atta

Members Absent: Jack Reser

Staff: Mark Levy, Board Director

II. Amendments to agenda: No Motion; Approved by consensus

III. Executive Session was convened by unanimous roll call vote at 6:33 p.m., to consider matters regarding licensee discipline/complaints, and issues requiring privileged attorney-client communications on the Motion of Simmons/Van Atta, and to request Director Levy remain in attendance. The Board emerged from Executive Session at 7:20 p.m. by the same method.

IV. Approval of minutes: **Approval of June 2005 minutes** -- Mr. Garcia called for any changes or questions. Hearing none, called for a Motion to approve. Simmons/LaForge so moved, passed unanimously.

V. Director's Report: **A. Legislative Update:**

HB 117: "Alternative/Complementary Health Services" -- This bill pending with a long list of co-sponsors, led by Linda Reidelbach (R-Central Ohio) would create an allowance for individuals to provide healthcare-related services with no licensing process -- and few restrictions or prohibitions -- in a vaguely-defined scope of practice. Pending in the House Commerce and Labor Committee which is actively holding hearings on the bill, now in its 3rd revision. Proponents assert that the state should affirmatively endorse "freedom of choice" in health care and recognize alternative services as valuable and beneficial to the public; opponents argue that unlicensed, unregulated health care practitioners create an un-level "playing field" and pose untrackable risks to a vulnerable population subject to exploitation. A broad array of healthcare-related associations and regulatory boards have been in the opposition camp.

B. Budget -- FY06 status. Revenue year-to-date is running in accordance with expectations, on the low end, with just under \$2000 banked since July 1st. Expenses are below/within budget parameters.

-- **Board Consolidation.** Work of the Transition Team has been proceeding, with two meetings held and another scheduled for later this month. The Board directors' representatives are preparing data and narrative information regarding the functions of the Boards, and some interest has been expressed in reviewing further proposals regarding keeping the agencies together under a common administrative hub, rather than dispersing them to various cabinet agencies. Meetings are public in nature and have been reported on in various statehouse news services.

- C. **Complaints/Enforcement** -- Deferred until November meeting.
- D. **Third party credentialing** -- Deferred until November meeting
- E. **Pharmacist credentialing** -- The Director offered proposed language to respond to an inquiry from the Medicine Shoppe regarding credentialing requirements for pharmacists and/or pharmacies to offer fitting/dispensing of prefabricated orthotics and pedorthic footwear. Board discussion focused on the importance of highlighting the lack of an exemption in the statute for pharmacists, and to emphasize statutory definitions that detail scope of practice and licensing requirements. Per consensus, letter to issue after further review/revision under direction of attorney member Steve LaForge.

VI. Old Business

- A. **Consider C. Ped. stratification plan / impact on licensing issues/standards:** No report; defer until next meeting.

VII. Report on Pending License Applications:

- A. **Recommendations to Approve for Licensure:** The following candidates for licensure were approved by unanimous vote (M/S: Van Atta/LaForge):

<u>License Type</u>	<u>Candidate</u>	<u>Conditions, if any</u>	<u>Abstained</u>
Pedorthist - TEMP	ALLAN, Christopher HIGGINS, Mary A. STARK, Shannon L.	Complete documentation incl: supervision statement & pre- certification education	
Pedorthist - (upgrade)	MILLER, Charles W.		
Pedorthist	BERMAN, Jeremy N. JANKAS, Robt A., Jr. LANDERS, Terrance N. WHITE, Daniel	Supervision Statement	
Orthotics - TEMP	BERMAN, Jeremy N.	ALSO APPROVED FOR EXAM	
Orthotics	NIEHAUS, Edwin D.	APPROVED FOR EXAM ONLY	
Prosthetics/LPO	HEIFETZ, Jonathan	Passed license exam May 2005 Previously held LO.52 Migrated to LPO.220 as of 09/15/2005	

B. Proposals to formally deny licensure -- Notices of Opportunity for Hearing: Director distributed proposed NOH documents for four applicants for licensure who apparently do not meet current statutory requirements for licensure. On Motion of LaForge/Simmons, the Board unanimously approved issuance of Notices of Opportunity for hearing as follows (ID information revealed after vote):

<u>Prosthetics:</u>	06-OPP-L-01	Robert M. Leach
	06-OPP-L-03	Thomas N. Teklinsky
	06-OPP-L-04	Duane W. Popham
<u>Pedorthics:</u>	06-OPP-L-02	Carlos Owens

VIII. New Business

A. Election of Officers: Mr. Garcia called for nominations for the office of President. After brief discussion, Mark Horwitz' name was put forward for consideration. No other nominations were made. Mr. Horwitz was elected by unanimous vote. Mr. Garcia called for nominations for the office of Secretary. After discussion, Ms. Simmons' name was put forward for consideration. No other nominations were made. Ms. Simmons was elected by unanimous vote.

B. Billing codes -- custom fit or minimal fit? The Board considered a request by a licensee to determine whether a number of different types of prefabricated orthotic devices, categorized by HCPCS code numbers and long descriptions, are or are not within the realm of devices subject to the regulatory authority granted by ORC Chapter 4779. In its review, the Board members were asked to determine whether based on description and/or actual practice considerations each coded device clearly required custom fitting (bringing it within regulatory authority), and/or whether each might meet one or more of the exceptions listed in ORC §4779.01 (D) -- [ref: "*It does not include upper extremity adaptive equipment used to facilitate the activities of daily living, finger splints, wrist splints, prefabricated elastic or fabric abdominal supports with or without metal or plastic reinforcing stays and other prefabricated soft goods requiring minimal fitting ...*"]. By Motion of Horwitz/Simmons, the Board voted unanimously to offer this review as guidance to the profession. The results of the Board's review are appended to these minutes.

C. Authorize Director to Contract for QA Review in Investigations: Mr. Levy requested authority to expend up to \$1000 in the current fiscal year to seek expert opinion review of case/complaint files/documents in the process of determining whether formal action may be indicated by the facts and circumstances evident in select files. *OAC Agency Rule 4779-2-02 Personnel* provides, in part: *The board may: ... (B) Authorize the director to employ office staff and contract for services as necessary to carry out its responsibilities under Chapter 4779. of the Revised Code.* The request was moved (Van Atta/Powers) and passed unanimously.

D. Authorize Director Travel to O&P Professional Practice conference: Mr. Levy reported having conferred with President Garcia and Member Simmons regarding the utility of an upcoming conference for O&P professionals, focused on regulatory requirements. The conference takes place in Las Vegas on October 28-29, 2005. The two-day agenda addresses fraud, abuse and compliance issues, false claims and overpayments, and reimbursement guidelines, among other topics. Requested authorization for reimbursement of registration (\$295), travel (\$300-\$400 est.), meal (state of Ohio guidelines) and lodging (\$115/night) expenses not to exceed \$1000. So moved by Simmons/Garcia, approved by unanimous vote.

E. Next Meeting Dates: Members were reminded that the next meeting date of MONDAY, NOVEMBER 7, 2005, has two full Chapter 119 hearings scheduled in association with it. Hearings are scheduled for 4:00 p.m. and 5:30 p.m., with the Board scheduled to convene in regular session at 7:00 p.m. No subsequent meeting dates were set.

IX. Adjournment: There was consensus that the meeting adjourn at 8:45 p.m.

Respectfully Submitted,

Approved:

/s/ Mark B. Levy

Mark B. Levy
Board Director

/s/ Mark E. Horwitz

Mark E. Horwitz
President

11/21/2005

Date

The State Board of Orthotics, Prosthetics and Pedorthics, at its meeting of 21 September 2005, reviewed the following HCPCS Coded items to determine whether they fall into the "protected" class of prefabricated orthotics that might appropriately be considered to require custom fitting, in accordance with statutory language/definitions. **ORC 4779.01 - Definitions** contains the following relevant language that guided the Board's review:

(D) "Orthotics" means the evaluation, measurement ... fitting, adjusting, servicing, or training in the use of an orthotic or pedorthic device, or the repair, replacement, adjustment, or service of an existing orthotic or pedorthic device. It does not include upper extremity adaptive equipment used to facilitate the activities of daily living, finger splints, wrist splints, prefabricated elastic or fabric abdominal supports with or without metal or plastic reinforcing stays and other prefabricated soft goods requiring minimal fitting ...

(E) "Orthotic device" means a custom fabricated or fitted medical device used to support, correct, or alleviate neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

HCPCS CODE	LONG DESCRIPTION	CUSTOM FIT ?	EXCEPTION?	ORTHOTIC DEVICE?	COMMENTS
<u>L1902</u>	Ankle Foot Orthosis, ankle gauntlet, prefabricated, includes fitting and adjustment	<u>No</u>	<u>YES</u>	<u>No</u>	Prefab soft good - minimal fitting
<u>L4396</u>	Static Ankle Foot Orthosis, including soft interface material, adjustable for fit, for positioning, pressure reduction, may be used for minimal ambulation, prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	Metal components; more than minimal fitting
<u>L1832</u>	Knee Orthosis, adjustable knee joints, positional orthosis, rigid support, prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	
<u>L1847</u>	Knee Orthosis, double upright with adjustable joint, with inflatable air support chamber(s), prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	
<u>K0640</u>	Lumbar-Sacral Orthosis, sagittal-coronal control, with rigid anterior and posterior panels, posterior extends from sacrococcygeal junction to t-9 vertebra, produces intracavitary pressure to reduce load on the intervertebral discs, includes straps, pendulous abdomen design, prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	

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HCPCS Code	Long Description	Custom Fit ?	Exception?	Orthotic Device?	COMMENTS
<u>K0648</u>	Lumbar-Sacral Orthosis, sagittal-coronal control, rigid shell(s)/panel(s) posterior extends from sacrocoyceal junction to t-9 vertebra, anterior extends from symphysis pubis to xyphoid, produces intracavitary pressure to reduce load on the intervertebral discs, overall strength is provided by overlapping rigid material and stabilizing closures, includes straps, closures, may include soft interface, pendulous abdomen design, prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	Rigid components; more than minimal fitting
<u>K0636</u>	Lumbar Orthosis, sagittal control, with rigid anterior and posterior panels, posterior extends from l-1 to below l-5 vertebra, produces intracavitary pressure to reduce load on the intervertebral discs, includes straps, closures, may include padding, shoulder straps, pendulous abdomen design, prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	Not prefab elastic/fabric abdominal support; more than minimal fitting
<u>L3964</u>	Shoulder Elbow Orthosis, mobile arm support attached to wheelchair, balanced, adjustable, prefabricated, includes fitting and adjustment	<u>YES</u>	<u>No</u>	<u>YES</u>	
<u>L3760</u>	Elbow Orthosis, with adjustable position locking joint(s), prefabricated, includes fitting and adjustments, any type	<u>YES</u>	<u>No</u>	<u>YES</u>	
<u>L3807</u>	Wrist Hand Finger Orthosis, without joint(s), prefabricated, includes fitting and adjustments, any type	<u>YES</u>	<u>No</u>	<u>YES</u>	"Wrist-hand-finger" -- more than simple wrist or finger splint -- more than minimal fitting
<u>L3908</u>	Wrist Hand Orthosis, wrist extension control cock-up, non molded, prefabricated, includes fitting and adjustment	<u>No</u>	<u>Yes</u>	<u>No</u>	Wrist splint

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