

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

**MARCH 27, 2007**

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 31<sup>st</sup> floor in the Riffe Center, Columbus, Ohio. It was re-scheduled from 21 February 2007 due to unforeseen administrative conflicts.

**I. Call to Order:** President Mark Horwitz called the meeting to order at 2:10 p.m. Jesse Cantrell, an Assistant Attorney General transitioning to represent the Board, was introduced, as was Ms. Elsa Fritts, a licensed pedorthist from the Cleveland-Akron area.

**Roll Call:**

Present Board Members: Manuel Garcia, LPO; Howard H. Harcha, Esq.; Mark Horwitz, LPO; Doug Van Atta, LPO

Members Absent: None (3 seats currently vacant)

Staff: Mark Levy, Board Director  
Dominic Chieffo, Assistant Attorney General  
Jesse Cantrell, Assistant Attorney General

Guests: Elsa Fritts, LPED.119; Elizabeth Collis, Attorney at Law

**II. Amend/adopt agenda:** Garcia/Harcha moved approval; no discussion; vote was unanimous.

**III. Approval of minutes:** **Approval of December 2006 minutes** -- Mr. Levy reviewed the highlights of the December meeting, including the Board's authorization to move forward with certain proposed changes to the rules, on today's agenda as well; licensing actions taken and notices issued. No amendments offered. Van Atta /Harcha moved approval, vote was unanimous.

**IV. Executive Session:** Session was convened by unanimous roll call vote at 2:15 p.m., to consider matters regarding applicant/licensee discipline/complaints, personnel, and issues requiring privileged attorney-client communications on the Motion of ~~Simmons~~Harcha/Garcia, and to request Director Levy and AAGs Chieffo and Cantrell remain in attendance. At about 3:15 p.m., Mr. Levy was excused from Executive Session. The Board emerged from Executive Session at 3:30 p.m. by unanimous roll call vote.

Noting the arrival of Ms. Collis at the time on the agenda reserved for discussion of Rules Review and Promulgation, the Board proceeded with that agenda item out of order after a short break.

VI. **Director's Report:**

Mark Levy

**A. Rules Review/Promulgation** (item numbering as per agenda)

2. At about 3:40 p.m., Mr. Levy introduced Elizabeth (Beth) Collis to the Board. Ms. Collis has been retained by personal service contract to assist in reviewing the Board's regulatory language, and to suggest wording and changes to achieve appropriate conformity to statutory requirements. She explained that she will work to implement the Board's policy choices where they do not conflict with statutory mandates, and can advise the Board regarding the limitations imposed by statutory language. Ms. Collis previously served in the Office of the Attorney General, Health and Human Services Section (the same section that represents the Board), and has assisted other regulatory boards with rule writing. Mr. Levy pointed out that she is familiar with the DMEPOS field through her work with the Respiratory Care Board to draft rules for Home Medical Equipment licensing.

Ms. Collis explained her understanding that she had been asked to provide comment and direction regarding supervision requirements and practices generally, as well as current regulatory language found in the following rules presently in force:

OAC rule 4779-3-01	Definitions of Terms
OAC rule 4779-5-01	The Examinations
OAC rule 4779-5-02	Admission to the Examination
OAC rule 4779-5-03	License Application Procedure
OAC rule 4779-7-01	Original License Certificate and Wallet ID Card
OAC rule 4779-8-01	Renewal of License
OAC rule 4779-12-01	Fees
OAC rule 4779-12-02	Replacement of License or Certificate

Mr. Levy noted that some of these items have already received the Board's attention and some changes are in fact pending final approval at today's meeting, for example 4779-5-02 Admission to the Examination, which was largely re-written; and 4779-3-01 Definitions of Terms, which was modified to address both stylistic and typographical problems, but also contains a change in the definition of "physically present" as that term is used to govern practitioner supervision of unlicensed persons, as well as adding definitions of "custom fabricated" and "custom fitted" to conform to current CMS Quality Standards guidelines. Board approval of the pending package today does not restrict the board's ability to make other or further changes to the same rules subsequently.

Mr. Van Atta noted some concerns regarding the currently-proposed changes, focused on the amendment of the definition of "physically present" from "in the same room," to "at the same building, location, or facility." He recalled this provision as an important aspect of consumer protection figuring into the legislative package. Discussion focused on the goal to provide a more detailed treatment of supervision requirements and file documentation in the regulatory language.

Ms. Collis reported that although the Board has not exceeded its authority in the pending change in definition just noted, it would not be permissible to develop a broad set of regulations that allow for different supervision standards based on the profession being practiced (orthotics, prosthetics, pedorthics) or the device being fitted/dispensed (highly customized prosthesis or custom fabricated orthoses vs. prefabricated orthotic, for example).

In response to her request for direction in drafting supervision requirements, the Board requested Ms. Collis' attention to private/national scope of practice standards to the greatest extent possible. Discussion emphasized that the Ohio Practice Act does not set forth a system of licensure that mirrors private certification and registration tiers established by national certification bodies (i.e., no "fitter" or "assistant" licensing or credentialing). Thus, a certified fitter or a registered assistant is an unlicensed individual under Ohio law, subject to the same requirements and prohibitions as any other unlicensed individual. In this regard, it was noted that some Ohio language already reflects a recognized standard for indirect supervision within a 60-mile, one-hour travel time geographic area, for supervision of an individual holding a Temporary license, or for supervision of an unlicensed individual performing services other than "initial evaluation" or "fitting and delivery." However, concerns were expressed regarding the national standard of a 15-day allowance for supervisory sign-off on file documentation. Consensus indicated that if Ohio language requires practitioner presence "at the same building, location or facility" where an unlicensed person is providing custom fabricated or fitted services/devices, file documentation should appropriately reflect those standards, and a not-more-than 3-day allowance for supervisory sign-off on documentation should be considered.

In further discussion, the Board expressed caution regarding a requirement for supervisee registration. Ms. Collis may be asked to advise whether supervision registration appears to be required, or can be avoided while still respecting legislative directives.

Finally, the Board expressed interest in a recommendation whether "Active" or "Lapsed" are the only license statuses allowed by the statute, or whether the Board can create by rule an "inactive" classification for someone who goes on hiatus or moves out of state but doesn't want to abandon the license. Standards for documentation of CE accrual for an individual to seek license reinstatement after a significant period of inactive or lapsed status, and how to better define requirements to re-exam, were also of interest. And, it has recently come to the Board's attention that the rules should reflect that Temporary licenses need to be issued with anniversary/expiration dates based on the date of issuance, and not tied to the general annual renewal of other licenses.

The discussion regarding rules revisions with Ms. Collis ended at 5:00 p.m., and Ms. Collis left the meeting at that time.

1. Mr. Levy asked the Board to **consider for final approval and adoption the currently-pending rules package** which originated with a public hearing notice filed on January 2, 2007, and a public hearing held on February 2, 2007. The package passed consideration of JCARR (Joint Committee on Agency Rule Review) on March 5, 2007. It was noted that the Board's action needs to establish an effective date not sooner than 10 days from the date of this meeting, if the rules are approved. Garcia/Harcha moved approval with an effective date of April 9, 2007. **Passed unanimously.**

#### **V. Settlements / Charges / Dispositions:**

A. At 5:10 p.m., the Board took up for consideration three matters that were subject of *Goldman* hearings held 3/20/2007. Members had been provided Mr. Levy's affidavits and evidence packets prior to the meeting by mail, and reviewed the report and recommendation from hearing officer Sharon Murphy, RN, JD, on each.

Mr. Horwitz called for consideration of the Matter of Timothy J. Shafer, application for Orthotics, File No. 07-OPP-L-04; based on the evidence introduced which demonstrates non-compliance with statutory requirements and consistent with the Report and Recommendation of the hearing officer, asked for a Motion to Deny Licensure in Orthotics. It was so moved by Mr. Harcha, second by Mr. Van Atta. Called for discussion; hearing none, called for vote. Aye: Garcia, Harcha, Van Atta, with Horwitz voting "aye" as well to constitute a full quorum. Motion carried.

Mr. Horwitz called for consideration of the Matter of Ronald G. Elliot, application for Orthotics, File No. 07-OPP-L-05; based on the evidence introduced which demonstrates non-compliance with statutory requirements and consistent with the Report and Recommendation of the hearing officer, asked for a Motion to Deny Licensure in Orthotics. It was so moved by Mr. Harcha, second by Mr. Van Atta. Called for discussion; hearing none, called for vote. Aye: Garcia, Harcha, Van Atta, with Horwitz voting "aye" as well to constitute a full quorum. Motion carried.

Mr. Horwitz called for consideration of the Matter of Carlos, application for Pedorthics, File No. 06-OPP-L-02-R; based on the evidence introduced which demonstrates non-compliance with statutory requirements and consistent with the Report and Recommendation of the hearing officer, asked for a Motion to Deny Licensure in Pedorthics. It was so moved by Mr. Harcha, second by Mr. Van Atta. Called for discussion; hearing none, called for vote. Aye: Garcia, Harcha, Van Atta, with Horwitz voting "aye" as well to constitute a full quorum. Motion carried.

B. New formal actions:

At 5:15 p.m., the Board took up the matter regarding a proposed Notice of Immediate Suspension and Opportunity for Hearing citing Michael P. Marmer, Licensed Orthotist # 81 and Licensed Pedorthist #26. The proposed order sets forth certain facts of record pending in the Court of Common Pleas of Warren County Ohio, beginning with an arrest on or about October 18, 2006, for Driving Under the Influence and 3 felony charges of drug possession, through a February 20, 2007, plea of guilty to those charges in furtherance of a Motion for Intervention in Lieu of Conviction.

After having given preliminary consideration in Executive Session and engaging in a further discussion noting the seriousness of the situation facing Mr. Marmer and his family, associates and clientele, Mr. Harcha moved that, based on the information set forth in the Notice as regards Michael P. Marmer, file number 07-OPP-SS-01, and obtained by the Board as matters of record in the Warren County court system, the Board find by clear and convincing evidence that Mr. Marmer is engaging or has engaged in conduct described in division (A) of Section 4779.28 of the Revised Code, to wit: a plea of guilty to a misdemeanor or felony involving moral turpitude, and habitual use of drugs or intoxicants to the extent that it renders the person unfit to practice, and that his continued practice presents a danger of immediate and serious harm to the public, and thus that his licenses to practice should be suspended immediately, subject to the protections and provisions of Ohio law. Mr. Van Atta seconded. Mr. Harcha asked for a roll call vote. The roll was called and the vote recorded as follows:

Mr. Garcia	aye
Mr. Harcha	aye
Mr. Horwitz	aye
Mr. Van Atta	aye

Mr. Levy was directed to prepare an appropriate Order and file the Order and Notice of Opportunity for Hearing in accordance with legal requirements.

**VI. Director's Report:** (continued) 5:25 p.m.

B. Legislative update: Mr. Levy reported on and distributed copies or summaries of three bills that have been introduced and are or may be of interest to the Board:

1. HB 119 – Biennial Budget. Governor Strickland’s budget recommendation for OPP Board operations comes within a few dollars of the Board’s request that had been approved previously by the Office of Budget and Management under the prior administration. We are testifying in support this evening before the Primary and Secondary Education Subcommittee of the House Finance and Appropriations Committee.

FY08 (July 2007 – June 2008):	\$111,300	(\$300 over request)
FY09 (July 2008 – June 2009):	\$116,260	(\$240 under request)

2. HB 104 – Criminal Record Check for Licensing. A committee formed by the ad hoc Boards and Commissions Management Group has been working toward this introduction of legislation to provide uniform language and a process for applicants for licensure in most regulated professions to submit, at their own expense, to a criminal record check process. This Board has been on record favoring such an initiative. The bill is the result of a careful, comprehensive and detailed process of drafting, review and revision. Primary sponsor is Rep. Anthony Core (R-Rushsylvania-Union County).

3. HB 98, SB 99 – Benefits for Diabetes Care. Introduced earlier this month, these companion bills would mandate coverage of diabetes education and care by health insurance companies offering benefit plans in Ohio. Reported for the Board’s consideration.

C. Fiscal: Revenue and expenses are running within budgetary parameters. Basic data was distributed.

D. Complaints/enforcement: Noting the major action taken earlier in the meeting, the discussion and report were deferred

E. Renewal: 1. Renewal numbers:

Booked \$102,900 in fees from December 2006 through February 2007, mostly attributable to renewal.

Orthotics	87
Pedorthics	66
Prosthetics	63
Prosthetics-Orthotics	111
TOTAL (not temp)	<b><u>327</u></b>

2. Designate non-renewing licenses as lapsed.

Pursuant to the language of ORC §4779.19 – Term and Expiration of License – and OAC Rule 4779-8-01, the following non-renewed licenses were placed on lapsed status by unanimous vote of the Board, motion of Van Atta/Harcha:

**Non-renewing licensees – no contact with Board**

<u>Credential ▲</u>	<u>SubCategory</u>	<u>Name</u>	<u>Expire Date</u>	<u>City</u>
LO.4		Ashbaucher, Steve	1/31/2007	Avilla
LP.15		Chidester, Michael S	1/31/2007	Fort Wayne, IN
LO.22		Daniels, Jeff	1/31/2007	Canton
LO.254		Domb, Andrew D.	1/31/2007	Hilliard
LP.27		Fessenden, Gary O.	1/31/2007	Centerville
LPED.17		Gregory, John L	1/31/2007	Chardon
LPED.73		Laurie, Greg S	1/31/2007	Madison
LO.258		Lecursi, Nicholas A.	1/31/2007	Niles
LO.246		Muratore, Michael	1/31/2007	Akron
LPED.122		Solomon, Judy L.	1/31/2007	Marion
LPED.115		Woodall, Martin Anthony	1/31/2007	Sherman, TX

**Non-renewing licensees – informed Board intentional non-renewal**

LPED.135	TEMP	TEMP	Allan, Christopher S.	1/31/2007	Fairfield
LPED.63			Blonski, Paul J.	1/31/2007	Brecksville
LPED.86			DeLaTorre, Paul	1/31/2007	Glenshaw
LPO.174			DeLaTorre, Paul	1/31/2007	Glenshaw
LP.55			Hunter, Steven L	1/31/2007	Brooklyn
LPO.221			Kuipers, Donald Clark	1/31/2007	Holland, MI
LPED.27			Marshall, Michael	1/31/2007	Perrysburg
LPED.35			Melton, Carrie	1/31/2007	Piqua
LPO.109			Shamp, Daniel L.	1/31/2007	Ft. Myers Beach, FL
LP.219			Swiggum, Heather	1/31/2007	Maple Grove
LPED.53			Thomas, Mark H.	1/31/2007	Alliance
LPED.142	TEMP	TEMP	Weinschneider, Raphael	1/31/2007	Cincinnati
LO.152			Williams, David C.	1/31/2007	Grand Blanc, MI

**VII. Report on Pending License Applications:**

**A. Recommendations to Approve for Licensure:** The following candidates for licensure were approved by unanimous vote. Motion/second by Van Atta/Garcia.

<u>License Type</u>	<u>Candidate</u>	<u>Conditions, if any</u>
Orthotics - TEMP Orthotics	MONTGOMERY, Rosemary	Approved for Exam
	POEPELMA, Michelle A. ALLEN, Kevin R.	Approved for Exam Only
Prosthetics	BIGHAM, Kristin A. KICZEK, Joseph D.	
Pedorthics	OSBORNE, Kate D.	
	WILLIAMS, Jason J.	upgrade from Temp
	ZIOLKOWSKI, Joanne L.	upgrade from Temp
	SMITH, Steven E.	
Pedorthics- TEMP	DeLAY, Matthew W.	upgrade from Temp
	JACOB, Christopher G.	upgrade from Temp
	CUNNINGHAM, Jennifer	
	MALINOWSKI, Mark A.	
	MALINOWSKI, Janet M.	

**VIII. Old Business**

**A.** Website information -- status and actions – deferred

**B.** Board member search – Mr. Levy reported a number of contacts with the Governor’s office, which appears to have increased its staffing to address the Boards and Commissions constituency. However, budgetary matters seem to be absorbing most of the executive’s staff efforts at this time. We are aware of at least two applications pending for the Orthotist &/or Prosthetist seat, and one or two Pedorthists who may be considering submitting an application. An available and interested MD, DO, or DPM is still the subject of search.

**C.** Third Party Credentialing -- report deferred

**IX. New Business**

**A. ODJFS Rule 5101:3-10-20 Covered orthotic and prosthetic services and associated limitations** – request modification of appendix? Mr. Levy reported that subsequent to the Board’s work with ODJFS staff to modify the language of the above-noted rule to require licensure in accordance with ORC Chapter 4779 for a practitioner to seek reimbursement of the covered devices, it was learned that items under Ohio Medicaid’s Procedure and Device schedule headed “General – Elastic Supports – A6530-A6549, S-8420-S8428” were included in the appendix which is a part of the rule. Based on consultation with Board members Horwitz and Simmons, Mr. Levy already advised Medicaid policy staffers that these items, mostly support and compression hose, gradient sleeves and gloves, and a gauntlet, are not “protected” orthotic devices under Chapter 4779 and appear to fall within the “does not include” exception of “other prefabricated soft goods requiring minimal fitting” in ORC § 4779.01(D). Recommendation is to authorize a letter to ODJFS/Medicaid formally noting this exception and requesting these items be removed from this rule/appendix. So moved by Van Atta/Garcia. Passed unanimously.

**B. Schedule meeting dates/hearings:** after brief discussion, members agreed to hold the next meeting **Monday, May 21, 2007 at 2:00 p.m.**

**C. Director pay:** This item was not on the agenda but was reported by Mr. Horwitz having been raised in Executive Session. Mr. Horwitz requested a motion authorizing Mr. Levy's pay be increased by 3%, retroactive to the beginning of the calendar year (third quarter FY07), assuming it can be determined that funds are available within the current allocation. Motion by Garcia/Van Atta, passed unanimously.

**X. Adjournment:** There was consensus that the meeting adjourn at 5:45 p.m.

Respectfully Submitted,

Approved (as corrected):

/s/ *Mark B. Levy*

Mark B. Levy  
Board Director

/s/ *Mark E. Horwitz*

\_\_\_\_\_  
Mark E. Horwitz  
President

*05/21/2007*

\_\_\_\_\_  
Date