

## BOARD BRIEFS -- Highlights of Actions and Items of Interest 2008 year-to-date

In an effort to keep the public and the professional community informed of Board events and activities, we are providing this summary of Board actions and related items. Please be aware that some of this information is based on meeting minutes not yet approved by the Board. [Approved Board meeting minutes](#) constitute the formal record of Board actions. Please [contact the Board office](#) (Board Director) for further information regarding any item of particular interest to you. This summary is based on actions taken at the March, May, July, September, and December 2008 meetings.

→ **NEW MEMBERS APPOINTED** -- In 2008, [Gov. Strickland](#) appointed two new members to the Board:

- **Rosalind J. Batley**, MD, FAAP, FAAPMR, FAANEM, is a member of the Section of Physical Medicine and Rehabilitation at Nationwide Children's Hospital and an Associate Professor of Clinical Pediatrics and Clinical Physical Medicine and Rehabilitation at The Ohio State University College of Medicine. Dr. Batley's clinical interests include managing a comprehensive inpatient pediatric family-centered rehabilitation unit; inpatient consultation; outpatient evaluation and management of children/adolescents with physically disabling conditions; bracing, prosthetic, wheelchair and seating evaluation and prescription; electrodiagnosis; and Baclofen pump management.
- **Edwin D. Niehaus**, LP.165, of Uniontown, is an ABC-certified prosthetist-orthotist (2004). He holds a B.A. from Hiram College (1977), an M.Ed. from Miami (Ohio) University (1978), and an M.Div. from the Gordon Conwell Theological Seminary (Massachusetts-1991). He has worked for Hanger Prosthetics and Orthotics, and is now a practitioner at Manuel Garcia Prosthetics and Orthotics in Strongsville. He has been certified in prosthetics since 2000, licensed since 2001.

→ **OFFICERS ELECTED** – The presidential gavel was passed this year from Douglas B. Van Atta, LPO.158, to David M. DeLuccia, LPO.153. Elsa Fritts, LPED.119, was elected Secretary.

→ **THREE BOW OUT** -- December's Board meeting was likely the last for Doug Van Atta, LPO.158, and Manny Garcia, LPO.37, who both served two terms and both of whom had been active with the efforts of the Ohio Orthotic and Prosthetic Association to establish licensure for these professions in Ohio. Howard H. Harcha, Jr., a retired trial attorney from Portsmouth has served the board honorably as its consumer member since early 2006 and also served as Secretary for most of his term.

- **Mr. Van Atta** has sought to emphasize the consumer protection role of the Board as it addresses complaints and enforcement matters and in the regulatory rule-writing process. He led the Board's effort to review and re-state Ohio standards regarding Pedorthic Scope of Practice, emphasizing knowledge, education and training over the pressure of market competition.
- **Mr. Garcia** brought a long history of experience and a deep knowledge base in prosthetics to the board, as well as familiarity with the administrative and reimbursement complexities of professional practice.
- **Mr. Harcha's** legal skills and experience kept the board on firm footing in addressing technical procedural questions and formulating appropriate language to document board action and discussions.

Their unique contributions and skill-sets will be missed.

→ **BOARD SEATS OPEN** -- As of this writing, **three seats are available for appointment** on the State Board of Orthotics, Prosthetics, and Pedorthics: (1) **two** Orthotics and/or Prosthetics Practitioner seats, and (2) the “consumer” seat, which is reserved for “a representative of the public who is a consumer of orthotic or prosthetic goods and services.” [ref: ORC §4799.05]. Persons interested in applying need to [download an application](#) from the [Governor’s website](#), and follow those instructions for submission. Courtesy copies to the Board office are appreciated.

→ **LICENSING** -- [for online real-time license status verification, click to: [opp.ohio.gov](http://opp.ohio.gov)]

The following **new license actions were approved** and/or reported in 2008:

Name	Orthotics	Prosthetics	Pedorthics
ADAMS, Michael J.		LP-TEMP	
ALBURY, Alexander W.		LP-TEMP	
ANDERSON, Jennifer L.	LO-TEMP		
BATY, David J.	LPO.275	LPO.275	
BEST, Aaron R.	LO.280		
BINEGAR, Kimberly L.			LPED.169
BISHOP, Pamela S.			LPED-TEMP
CHOUDHARY, Vikram	LO-TEMP		
CHOUDHARY, Vikram		LP.245	
CUNNINGHAM, Jennifer L			LPED.163
DESHPANDE, Aarti A.		LP-TEMP	
DESHPANDE, Aarti A.		LP.235	
DIXON, Jr., Paul T		LP.244	
DUTTON, Benjamin L.			LPED-TEMP
HAGMAN, Jeffrey A.		LP-TEMP	
HAGMAN, Jeffrey A.		LP.238	
HANSEN, Michael E.		LP-TEMP	
MACEDONIA, Jason P.		LP-TEMP	
MALINOWSKI, Janet M.			LPED.159
MARTIN, Nancy A.		LP-TEMP	
MILLER, Megan L.	LO.276		
POEPELTMAN, Michelle A.		LP-TEMP	
POEPELTMAN, Michelle A.	LPO.237	LPO.237	
PRIVETT, Jason L.			LPED-TEMP
RIORDAN, Timothy S.	LPO.236	LPO.236	
SCHEIBMEIR, Robert W			LPED.172
SEAVER, Tyler J.		LP-TEMP	
SORCI, Elena M.	LO-TEMP		
SORCI, Elena M.	LO.278		
STOUDINGER, Megan M		LP-TEMP	
STRAUB, Tiffany	LO.277	LP-TEMP	
TARANTINO, Damon Aron	LO-TEMP		
THIELE, Lance R.	LO-TEMP		
WATT, Eric M.		Approve for exam only	
WILKINS, Patricia A.			LPED.170
ZILLICH, Evan P.	LO.271		

## → OTHER LICENSING ACTIONS

Pursuant to Goldman (record only) hearing, the Board issued the following order in a July action taken based on a formal Notice of Opportunity for Hearing issued in May:

**Matthew DeLay**, LPED.145, regarding his application for a license in Orthotics. Issued an **Order denying the license** based on failure to meet statutory requirements, especially a Bachelors degree, post-graduate Certificate Program, and a Residency.

Pursuant to full adjudication hearing, the Board issued the following order in an action taken based on a formal Notice of Opportunity for Hearing, hearing held in August:

**Carlos Owens, C.Ped.** -- Issued an **Order denying a license in Pedorthics**, adopting the Report and Recommendation of the hearing officer who found misstatements of qualifications in multiple applications. Order issued December 4, 2008 states "Reapplication is not encouraged."

Board Accepts Agreement for "surrender ... with no right of restoration" of License in Pedorthics. Akron/Canton area pedorthist **Richard Mittica, C.Ped.**, agreed to give up his license to practice pedorthics in the state of Ohio less than a year after it was first issued. The Board received credible allegations and documentation indicating he had engaged in unlicensed practice while his application was pending, and engaged in questionable billing practices and substandard service delivery.

Pathway to Orthotic Licensure settled by agreement with licensed prosthetist **Farah G. Ghazala**. Mr. Ghazala's application, submitted after January 2006, did not reflect attainment of a Bachelors degree, a current licensing requirement. The agreement allows the applicant to obtain an appropriate degree by June 2013 in order to qualify for licensure in Orthotics.

## COMPLAINTS / ENFORCEMENT

### Prosthetic Care/Multiple Practitioners – fitting problems, material choices:

This file presented a challenging scenario for review due to the involvement of two corporate O&P provider entities and three different lead prosthetic practitioners at three different offices over a two-year period of time.

Regarding Practitioner A, investigation found a failure to maintain minimum standards regarding proper record keeping and file documentation. The review also addressed a concern regarding materials choice in device design based on patient presentation and functional activity level rating when viewed through expert professional opinion. *The Board did not find that material choice as related here was below a recognized minimum standard of care*, and thus made no finding in that regard. Determined to close the file with no formal action indicated based on licensee's representations of remedial action to address the record-keeping standards.

Determined to close the file regarding Practitioner B who provided "interim" service to the consumer upon direct referral from the consumer's physician, with no fault found.

### Referral from the Athletic Trainers Board: Orthotist M.

Complaint originally filed with OT-PT-AT Board suggested licensed orthotist exceeded appropriate role and represented self or allowed self to be represented as a "trainer" or "athletic trainer" in a public school sports setting. Investigation did not substantiate the allegation. Determined to close the file with no fault found.

### Access to Healthcare Records: Satellite office; Unlicensed Practice

Complainant stated an inability to obtain a full set of records that reflected the full scope of services received. Investigation determined services initially provided by unlicensed orthotist whose application for license in Ohio had been formally denied in 2005 (*In Re: Robert M. Old, Application for License in Orthotics*). The unlicensed practitioner was separated from the

practice early in the service-delivery process, and records maintained by licensed personnel subsequently involved with the consumer appeared appropriate and complete. No violation of law/rule was found regarding activity of any licensed personnel. Cease & Desist notice sent to unlicensed practitioner, now out-of-state. Management responded appropriately to concerns regarding hiring protocols and record-keeping requirements. Determined to close the file with no formal action indicated.

## OTHER BUSINESS

**Criminal Record Checks** -- In late 2007, the Ohio legislature passed [Am. Sub. H.B. 104](#), requiring any new applicant for licensure to obtain a state and federal criminal records check to be reported to the Board for consideration during the license application and review process. The Board supported this legislation, and staff worked cooperatively with other licensing board directors and legislative liaisons to craft and move the bill. The Board incorporated the criminal record check requirement into its license application and review process in early 2008, and included new regulatory language in the rules package reported on below.

**ODJFS/Medicaid** – The Board continues to foster an effective partnership with Ohio Medicaid officials in addressing regulatory requirements of mutual interest and concern. We are building on our cooperative input into the revision of [OAC rule 5101:3-10-20 - Covered orthotic and prosthetic services and associated limitations](#) to limit reimbursement for O&P services to those licensed or exempt from licensure under the OP&P Practice Act. The Board has been asked to confer closely on issues regarding appropriate device coding and categorization, and to assist in addressing reimbursement issues with a focus on prevention of overutilization, streamlining reimbursements to licensed practitioners, and enhancement of consumer care.

- **Service opportunity:** David DeLuccia, Board President, is spearheading the **formation of an advisory group** to review device and reimbursement schedules. As conceptualized, participants will review questions regarding device characteristics and qualities, regulatory requirements, assess whether items are appropriately grouped and defined under current schedules, and offer opinions as to opportunities to improve and enhance regulatory definitions, goals and objectives. Most of the work will be conducted by email, mail and document exchange. If you are interested in serving or for further information or discussion, please send [an email to the Board office](#) with the subject line: *ODJFS advisory group*.

## **Board Issues Statement on Scope of Practice for Pedorthists in Ohio**

The Board approved a letter issued to American Board for Certification (ABC) in Orthotics, Prosthetics, and Pedorthics CEO Cathy Carter, addressing the national discussion regarding pedorthic scope of practice with a review of the technical, anatomical and consumer-focused concerns. The letter points out that pedorthic scope of practice in Ohio is defined under Chapter 4799 of the Revised Code as restricted to “ankle and below.”

OPP Board President Douglas B. Van Atta, LPO/CPO, wrote:

*“The fitting of an orthotic device that extends proximal to the apex of the medial malleolus (i.e., rises above the ankle) requires both the educational prerequisites and the training required to be an Ohio-licensed orthotist. The use of increased leverage and anatomic area as is inherent in the application of any orthotic device extending proximal to the apex of the medial malleolus is, in accordance with the plain language of the Ohio Practice Act, restricted to an Ohio-licensed orthotist, prosthetist-orthotist, or other appropriately licensed professional ... and is beyond the permissible scope of an Ohio-licensed pedorthist.”*

[Click here](#) for the full text of the letter in PDF format.

## **Rules Package Proposed, Adopted – effective November 1, 2008**

**In May**, the Board held a lengthy discussion regarding the proposed addition to the Definitions section of the Administrative Code to clarify the Pedorthic Scope of Practice in Ohio, and

engaged in a detailed review of a larger set of proposed revisions and amendments to the Board's rule series. [Click here to review the minutes of the May 2008 meeting.](#) The Board approved a package to move forward.

**In July**, the Board held a hearing on the [rules package](#), available on the [Register of Ohio](#) and posted to the Board's website. No testimony from the public was submitted ahead of time or presented at the hearing. In addition to the pedorthic scope of practice language and general housecleaning fixes, proposals include:

- language to implement the new **Criminal Record Check** requirements for new license applicants;
- elimination of outdated language regarding licensing pathways that have expired, and adoption of **a more efficient license application review process**;
- codification of the Board's "diversion" program for licensees who for the first time fail to meet **OPPCE requirements** on a timely basis; and
- an **addition to the Ethical and Professional Conduct** section to address circumstances where more than one provider may have been called to perform the same service for the same consumer, based on the same or similar medical orders. The language suggests that the second provider, upon determining services have already been initiated, has a professional duty of care to contact the first provider and have that provider be notified of the additional request for services to allow where appropriate the first provider to have an opportunity to complete those services.

**At the September** meeting, the Board by unanimous vote [approved the package](#) to be "final filed" with an effective date of November 1, 2008.

### **Facility Accreditation – Surveying the Surveyors**

Board staff has been "double-checking" the work of Deemed Status Facility Accreditation surveyors. A number of organizations are providing this service to Ohio licensees of this Board, and staff has been seeking to assure that Ohio regulatory standards are adhered to in this process. The Board approved the Director's request for authority to take the following actions, as indicated by individual circumstances:

1. Formally notify the accreditors 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 accredited where there is any question as to whether they employ appropriate licensed staff and issue cease and desist notices where appropriate.
3. To follow up directly with the office at CMS overseeing the facility accreditation program, to determine the best way to partner toward furtherance of the goals of the facility accreditation process and protection of the public health.

### **For further information, contact the Board office:**

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