



Academy Leader

Executive Brief

Report from the Ohio Board of Orthotics, Prosthetics and Pedorthics

By Mark Levy

Executive Director, Ohio Board of Orthotics, Prosthetics and Pedorthics

As licensees and practice owners, the readers of this newsletter have an interest as stakeholders in the business of the State Board of Orthotics, Prosthetics and Pedorthics. But what is that business? If you check in on the website (<http://opp.ohio.gov>) with any frequency, you can get some idea from reviewing the minutes as they are posted, although that “news” can lag two months or more, given the time required for the review and approval process. While we make some effort to produce the minutes to reflect the substance of the Board’s business, discussions, and actions, please allow me to try to fill in some of the blanks.

Who’s that Goldman guy, and why is he making me have a hearing?

According to the terms of the OPP Practice Act (Ohio Revised Code

Chapter 4779), the licensing actions of the Board are governed by ORC Chapter 119, the state’s Administrative Procedures Act. Filing an application for licensure triggers a fairly formal legal process, providing the applicant with certain procedural rights, and imposing on the Board specific legal responsibilities.

Thus, after an application has been filed, and the applicant given an opportunity to file additional information, if the Director and Board Member serving as examiner cannot determine that that application clearly meets requirements as specified in the statute, the Board is asked to approve a Notice of Opportunity for Hearing, issued to the applicant, stating why the application might not be granted, and informing the applicant how to request a hearing. The applicant then has 30 days to file a simply



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worded written request to be heard.

But then, what if no request for hearing is filed within the 30 days? Is that the end of the story? Can the Board just deny the license? Not according to *Goldman v. State Medical Board*.

Mr. (not Doctor) Goldman was a cosmetic therapist licensed as such—a limited practitioner—by the Medical Board, but became subject of a disciplinary proceeding based on allegation and evidence that he referred to himself as a “doctor”. The Medical Board issued a Notice of Opportunity for Hearing (NOH), by certified mail. The Board did not receive a request for a hearing. The

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Messages Taken Directly to Decision Makers

AOPA's Policy Forum Breaks Attendance Records

Dianne Farabi

Executive Director—Ohio Orthotics and Prosthetics Association

Over 130 O&P professionals from across the country attended the 2005 O&P Policy Forum, which was the largest ever, according to Walt Gorski, AOPA's director of legislative affairs. The Policy Forum is a grassroots initiative organized and led by the American Orthotic and Prosthetic Association to promote the O&P legislative perspective.

Nine Ohio representatives were among in the group who convened in Washington, D.C. (June 20–22, Grand Hyatt) to address key concerns of the O&P profession, including: preventing an extension of the Medicare payment freeze, defeating efforts by physical therapists to prescribe O&P services, and seeking solutions to prevent or lessen crushing Medicare audit tactics.

Participants received "Capitol Hill 101" training and had the unique opportunity to personally voice views supporting the O&P community to their Congressional representatives.

"Qualified Provider Rules" to be Implemented for States with Licensure

"Qualified provider" rules that were to be implemented in all states by the Centers for Medicare & Medic-

aid Services (CMS) starting on July 1 will now only be implemented in states that have O&P licensure, attendees at the O&P Policy Forum learned. AOPA stated that this was contrary to earlier notices from CMS that indicated that the new rules would apply nationwide.

The qualified provider message was given by Herb Kuhn, the new Director for the Center for Medicare Management (CMS), which focuses on the management of the Medicare fee-for-service program. Director. Kuhn expressed his view that state licensure is the one viable safeguard against the types of fraud and abuse currently being investigated by CMS.

Ron Kidd (**American Prosthetics and Orthotics, Columbus**) was among the Ohio attendees. Kidd reported a very positive experience and one that he would recommend to all practitioners.

Walt Gorski reports that AOPA continues to work with the other professional groups in support of "qualified provider language" the competitive bidding issue.

He related that fraud and abuse problems by provider groups in other parts of the country have strengthened the argument for the need to protect access and quality. ■■

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Board took an action at a regular meeting to revoke the license. Goldman then requested a hearing—in court. Although a lower court upheld the Medical Board's action, the Court of Appeals determined that the failure to request a hearing did not relieve the Board of its responsibility to make a decision upon an appropriate evidentiary basis. Thus, the Goldman hearing was born in 1996, and the OPP Board has held thirty (30) Goldman hearings during the recently-concluded fiscal year alone.

Catching Up and Moving On

The vast majority of those hearings were held to formally conclude a backlog of license applications that had been submitted during the “grandfathering” window of the Board's start-up period. Although the grandfathering option—detailed in ORC §4779.16—generally allowed persons who had been engaged in the practice of the profession for a significant period of time to gain licensure without exam and, for orthotics and prosthetics, without having a Bachelors degree among their educational achievements, it still required that the candidate had obtained certification in the relevant field. The Practice Act recognized, for grandfathering purposes, certification from either the American Board for Certification in O&P (ABC), the Board of Certification in O&P (BOC), or the Board for Certification in Pedorthics (BCP). While

many of the applicants who were subjects of Goldman denials during the past year had been granted licensure in one or more of the other professions, virtually all of the grandfathering denials recently concluded reflected a lack of that underlying certification.

Complaints Processed and Pending

The Board is charged not only with taking licensing actions, but also

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with enforcing the Practice Act as regards possible violations. Complaints come in two basic varieties: unlicensed practice, usually filed by licensed practitioners; and standard of care, usually filed by consumers.

For unlicensed practice complaints, our tools can seem somewhat thin—issue a Cease and Desist letter, providing formal notice of the requirements of law and rule—and the start of a paper trail; follow-up with correspondence, site visits, and related information-gathering. Often the heaviest hammer we have to hold is referral to third-party payers (federal, state or private) for possible audit/review/claim for recovery. Most regulatory boards report little success in convincing local prosecutors to assign these issues priority ahead of the street

and organized crime cases that crowd local court dockets.

With standard of care and other consumer complaints, we initiate contact with a licensee usually by correspondence; advise regarding the details of the complaint allegations; request a narrative response and, assuming we have been provided a release, often the client file.

Examples

03 C 01 — The complaint alleged that a Home Healthcare Agency (HHA) had been involved in the unlicensed dispensation of pedorthic footwear (therapeutic diabetic shoes) and a back brace. The complaint provided paperwork indicating that the local agency was coordinating services for the identified client, but that an out-of-state DME provider’s traveling sales rep had apparently been involved in fitting and dispensing the orthotic and pedorthic devices. We sent a Cease and Desist letter to the HHA and received assurances of compliance and appropriate referrals. We then contacted the affected client/patient, who provided releases and consent to proceed on his behalf, and, finally, we requested and received records from the HHA and issued a Cease and Desist to the DME provider and received compliance correspondence from the DME provider; and closed the file with appropriate cross-indexing in case of a future complaint.

04 C 03 — This complaint consisted of a brief letter stating

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that the company “made a brace and charged an astronomical amount of money for it. In this day and age where fraud runs rampant and insurance costs are exorbitant I feel it is my obligation to report this.” Although the letter states a basic claim that can be recognized under §RC 4779.28 (A) (7) “...fraudulent misrepresentation in the course of practice”, no further information or documentation was provided. After notifying the licensee of the complaint and requesting and reviewing records and the narrative response, we wrote to the complainant advising that: (a) the licensee’s charges were well within the L-coding allowances; and (b) as a provider in the insurance company’s network, the licensee accepted an “allowance” of only two-thirds of that amount. It appeared the complaint was filed after the complainant’s bill was sent to collection after failing to respond to requests to honor a commitment to pay down a 20% patient responsibility charge at \$10/month. We closed the file.

03 C 02 — Complaint alleged shoe store and repair shop was providing pedorthic services and advertising that they had a certified pedorthist on staff when they neither had licensed nor certified personnel. We initiated an inquiry-and-investigation process, and began to receive inquiries about licensure from one of the named parties at about the same time. Initial correspondence was ex-

changed, and we engaged in a process to encourage and assist the complained-against business in gaining compliance given the cooperative response. During the course of this process, personnel at the complained-against shop gained supervision by a Licensed Orthotist-Pedorthist; obtained a Temporary License in Pedorthics; and obtained a full License in Pedorthics. File was closed based on achieving compliance.

This is a small sample of complaints processed by the Board during the past few years. Other, somewhat more complex matters

remain open and under active investigation/process, but cannot be reported here at this time because of that status. ■ ■

For more information about the Board’s complaint intake-and-review process, contact the Board office at (614) 466–1157; by fax at (614) 387–7347; or by email at bopp@exchange.state.oh.us. Please remember: a complaint requires a complainant — Board policy disfavors anonymous complaints.

Associates Degree Pathway Ends 1/1/2006

In the post-grandfathering period—the grandfathering “window” having closed by the end of January 2002—several “pathways” still exist for a candidate in Orthotics and/or Prosthetics to qualify for licensure or to sit for exam. Most of those require a Bachelors degree. The one that does not allows for licensure with a minimum of an Associates degree, along with:

- ◆ 3 years experience
- ◆ a Certificate Program meeting the requirements of *ORC* § 4779.26

This pathway has seemed somewhat “illusory” to some, since by the time Chapter 4779 was enacted, the approved Certificate Programs were all requiring a Bachelors degree for admittance. However, some more experienced practitioners in the field who missed grandfathering have gained admission in Ohio because they documented an AA degree, often awarded in conjunction with a Certificate Program, even if they lacked a residency or a Bachelors. If presenting with ABC certification gained through examination, re-examination is waived.

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