

FLORIDA | Board of Orthotists & Prosthetists

DRAFT MINUTES
October 17, 2014

Orlando, Florida



Tommy Chmielewski, LPO
Chair

Addam C. Griner, CPO
Vice-Chair

Adrienne Rodgers, BSN, JD
Executive Director

1 **General Board Business started: 9:03 a.m.**

2
3 The meeting was called to order by Mr. Chmielewski, Chair. Those present for all or part of the meeting included the following:

4
5 **MEMBERS PRESENT:**

6 Tommy Chmielewski, LPO, Chair
7 Addam C. Giner, CPO, Vice Chair
8 Brett Saunders, CPO, FAAOP
9 Ruphlal R. Gooljar, CPO, MA
10 George H. Meyer, Jr.

11
12 **STAFF PRESENT:**

Adrienne Rodgers, BSN, JD, Executive Director
Jose Montalvan, Regulatory Supervisor/Consultant

13 **BOARD COUNSEL:**

14 Lawrence Harris, Assistant Attorney General
15 Office of Attorney General

16
17 **PROSECUTION COUNSEL:**

18 Bridget McDonnell, Assistant General Counsel
19 Department of Health, Office of the General Counsel

20
21 **COURT REPORTER:**

22 American Court Reporting
23 Tel: (407) 896-1813
24 Contact: Cindy Green

25
26
27 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from*
28 *this meeting can be found online: <http://floridasorthotistsprosthetists.gov/meeting-information/>*

29
30 **Section I started at 9:03 a.m.**

31 **I. APPROVAL OF PREVIOUS MEETING'S MINUTES OF THE BOARD OF ORTHOTISTS & PROSTHETISTS**

32
33 Minutes of the July 30, 2014 General Business Meeting were reviewed.

34
35
36 Page 3 line 33 typo on amounts 205-755 should be 200

37
38
39 Motion to accept the minutes as amended if verified by board staff, otherwise approve as written if not verifiable, was made by Mr.
40 Meyer and seconded by Mr. Gooljar

41
42 Vote: unanimous; motion carried

43
44 **Section I concluded at 9:07 a.m.**

45 **Section II started at 9:07 a.m.**

46
47 **II. Final Order Action:**

48
49 1. Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact:

- 50
51 a. Brad Gallo, Prosthetist-Orthotist – Case# 2012-13000
52 Mr. Meyer was recused due to participation on the probable cause panel.
53 Respondent was present and was not represented by counsel.

54
55 An administrative complaint was filed on June 16, 2014, alleging violation of sections 468.811(1)(h) and 468.811(1)(f), Fla. Stat., by
56 failure to deliver orthotic, prosthetic or pedorthic services with the level of care and skill recognized by a reasonably prudent licensed
57 practitioner, and failing to respond to a lawful subpoena of the Department. Respondent was served on June 20, 2014 by certified

1 mail, making his election of rights due at the Department on July 11, 2014. Respondent mailed his response on July 11, 2014, failed
2 to respond until July 14, 2014.

3
4 Motion that the Respondent was properly served made by Mr. Chmielewski second by Mr. Saunders.

5
6 Vote: 4 yeas; motion carried

7
8 Mr. Gallo stated he did not find an attorney, needed to research the law, and stated he believed that a postmark was the date of filing.

9
10 Motion that Respondent failed to timely respond to the Administrative Complaint made by Mr. Chmielewski, second by Mr. Saunders.

11
12 Vote: 4 yeas; motion carried

13
14 Motion that the Board accept into evidence the investigative file for purposes of determining penalty and the opportunity to make a
15 penalty recommendation made by Mr. Chmielewski, second by Mr. Saunders.

16
17 Vote: 4 yeas; motion carried

18
19 Motion to accept the findings of fact as stated in the Administrative Complaint was made by Mr. Chmielewski, second by Mr. Griner.

20
21 Vote: 4 yeas; motion carried

22
23 Motion that findings of fact support the violation of the Practice Act as charged in the administrative complaint made by Mr.
24 Chmielewski, second by Mr. Saunders.

25
26 Vote: 4 yeas; motion carried

27
28 Motion to find the Respondent in violation of Florida Statutes as charged in the administrative complaint made by Mr. Chmielewski,
29 second by Mr. Saunders.

30
31 Vote: 4 yeas; motion carried

32
33 Mr. Harris reviewed the minimum and maximum penalties for each violation, what would be required to go above or below the
34 guidelines.

35
36 Respondent testified regarding closure of the business and where the patient's prosthesis was held.

37
38 The Board of Orthotists and Prosthetists Probable Cause Panel (PCP) and the Department recommendation for discipline: Revocation
39 of license.

40
41 Motion to impose discipline as recommended by the Department for revocation, considering aggravating factor and the minimum
42 allowed by the violation under Count II made by Mr. Chmielewski, second by Mr. Saunders.

43
44 Vote: 4 yeas; motion carried

45
46 Department withdrew its recommendation for costs.

47
48 **Section II concluded at 9:42 a.m.**

49 **Section III and IV started at 9:42 a.m.**

50
51 **III. PETITION FOR VARIANCE/WAIVER and**
52 **IV. APPLICANTS PRESENTED FOR BOARD REVIEW:**

- 53
54 1. Robert N. Brown – Rule 64B14-4.001, Florida Administrative Code
55 Petitioner was not present and was not represented by counsel.
56
57
58

1 **Petition for Variance/Waiver:**

2 Petitioner requested a variance or waiver from Rule 64B14-4.001, F.A.C., as he is unable to submit patient logs. Petitioner completed
3 1900 hours, but not through an NCOPE approved program since he completed the program prior to NCOPE accrediting programs. In
4 addition, Petitioner took a two-part ABC examination in 1990 and 1991.

5
6 Motion made by Mr. Saunders to Grant the Petition for Variance/Waiver of Rule 64B14-4.001, F.A.C., based upon ABC confirmation
7 of 1900 hours training and ABC verification letter confirming successful examination completion, and finding Petitioner demonstrated
8 that the purpose of the underlying statute has been achieved by other means and application of a rule would create a substantial
9 hardship and to approve the application, seconded by Mr. Griner.

10
11 Vote: 5 yeas; motion carried

12
13 **Application for Board Review:**

14
15 Motion made by Mr. Saunders to approve Mr. Brown's application for licensure with second by Mr. Griner.

16
17 Vote: 5 yeas; motion carried

- 18
19
20 2. Steven R. Hall – Rule 64B14-4.100, Florida Administrative Code.
21 Petitioner was present and was not represented by counsel.

22
23 **Petition for Variance/Waiver:**

24 Petitioner requested an emergency variance or waiver from Rule 64B14-4.001, F.A.C., as he is unable to submit patient logs.
25 Petitioner completed 1900 hours over 20 years ago, not through an NCOPE approved program since he completed the program prior to
26 NCOPE accrediting programs. In addition, Petitioner did not complete the three part examination.

27
28 Motion made by Mr. Chmielewski to grant the Petition for Variance/Waiver of Rule 64B14-4.001, F.A.C., not as an emergency, based
29 upon ABC confirmation of 1900 hours training and ABC verification letter confirming successful examination completion, and
30 finding Petitioner demonstrated that the purpose of the underlying statute has been achieved by other means and application of a rule
31 would create a substantial hardship or would violate principles of fairness, and to approve the application, seconded by Mr. Saunders.

32
33 Vote: 5 yeas; motion carried

34
35 **Application for Board Review:**

36
37 Motion made by Mr. Chmielewski to approve Mr. Brown's application for licensure with second by Mr. Saunders.

38
39 Vote: 5 yeas; motion carried

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41 **Section III/IV concluded at 9:53 a.m.**
42 **Section IV started at 9:53 a.m.**

43
44
45 **IV. APPLICANTS PRESENTED FOR BOARD REVIEW:**

- 46
47 3. Tyler W. Weldon – Pedorthist
48 Petitioner was present and was not represented by counsel.

49
50 Mr. Harris stated that the application for a pedorthist was before the Board due to Applicant being denied an Orthotic Fitter license in
51 2012.

52
53 Mr. Weldon testified that pedorthist training was completed more quickly and that he anticipated pursuing the Orthotic Fitter license.
54 Completed sufficient hours and the course work. Stated he complied with the Board's original recommendations.

55
56 Motion to approve the application for licensure as a Pedorthist made by Mr. Gooljar and seconded by Mr. Griner.

57
58 Vote: 5 yeas; Motion carried

1
2 **Section IV concluded at 10:00 a.m.**

3 **Section V started at 10:00 a.m.**

4
5 **V. RESIDENCY EXTENSION REQUEST:**

6
7 1. Luis Alphonso Capestany

8 Applicant was present and was not represented by counsel.

9 Mr. Chmielewski stated that although he had prior knowledge of the applicant, he would be able to be impartial in reviewing
10 this matter.

11
12 Applicant submitted a request to extend his Prosthetics and Orthotics internship/ residency through January in order to complete his
13 examinations.

14 Mr. Capestany stated that he needed additional time to prepare for the examinations.

15 Motion to approve the extension of residency as requested made by Mr. Griner and seconded by Mr. Saunders.

16
17
18
19 Vote: 5 yeas; motion carried

20
21
22 2. Michelle Tamm

23 Applicant was present and was not represented by counsel.

24 Mr. Griner was recused as he is her monitor.

25 Mr. Chmielewski stated that although he had prior knowledge of the applicant, he would be able to be impartial in reviewing
26 this matter.

27
28 Applicant submitted a request to extend her Prosthetics and Orthotics internship/ residency in order to complete her examinations.

29
30 Motion to approve the extension of residency as requested made by Mr. Saunders and seconded by Mr. Gooljar.

31
32 Vote: 4 yeas; motion carried

33
34 **Section V concluded at 10:05 a.m.**

35 **Section VI started at 10:05 a.m.**

36
37
38 **VI. RATIFICATION OF LICENSURE**

39 1. Orthotists/Prosthetists

40 2. Prosthetists

41 3. Orthotists

42 4. Orthotic Fitter

43 5. Orthotic Fitter Assistant

44 6. Pedorthists

45 7. Orthotic Resident

46 8. Prosthetic Resident

47
48
49 Motion to ratify issuance of Orthotists/Prosthetists license numbers 280 through 283 made by Mr. Saunders. Second by Mr.
50 Griner.

51
52 Vote: 5 yeas; motion carried

53
54 Motion to ratify issuance of Prosthetists license number 162 made by Mr. Chmielewski. Second by Mr. Saunders.

55
56 Vote: 5 yeas; motion carried

57
58 Motion to ratify issuance of Orthotists license number 254 through 255 made by Mr. Chmielewski. Second by

1 Mr. Meyer.

2
3 Vote: 5 yeas; motion carried

4
5 Motion to ratify issuance of Orthotic Fitter license number 249 through 250 made by Mr. Chmielewski. Second by
6 Mr. Giner.

7
8 Vote: 5 yeas; motion carried

9
10 Motion to ratify issuance of Orthotic Fitter Assistant license number 323 made by Mr. Chmielewski. Second by Mr. Griner.

11
12 Vote: 5 yeas; motion carried

13
14 Motion to ratify issuance of Pedorthists license number 224 through 227 made by Mr. Chmielewski. Second by
15 Mr. Saunders.

16
17 Vote: 5 yeas; motion carried

18
19 Motion to ratify issuance of Orthotic Resident license number 137 through 139 made by Mr. Chmielewski. Second by
20 Mr. Saunders.

21
22 Vote: 5 yeas; motion carried

23
24 Mr. Saunders was recused from voting on license number 83.

25 Motion to ratify issuance of Prosthetic Resident license number 78 through 82 made by Mr. Chmielewski. Second by
26 Mr. Saunders.

27
28 Vote: 5 yeas; motion carried

29
30 Motion to ratify issuance of Prosthetic Resident license number 83 made by Mr. Chmielewski. Second by
31 Mr. Meyers.

32
33 Vote: 4 yeas; motion carried

34
35
36 **Section VI concluded at 10:09 a.m.**

37 **Board took a 15 minute break**

38 **Section VII started at 10:31 a.m.**

39
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41 **VII. CHAIR/VICE CHAIR REPORT**

42
43 Acceptance of prosecution report – 6 total cases; 1 case older than one year.

44 Mr. Chmielewski moved to allow Department prosecution of the case older than one year. Second by Mr. Saunders.

45 Vote: 5 yeas; motion carried

46
47 Future Agenda Items – Mr. Chmielewski asked for report in follow-up on last meeting's requests to Board staff. Ms. Rodgers
48 responded in the Executive Director's Report.

49
50 Ms. Rodgers stated that the Florida Association of Orthotists and Prosthetists (FAOP) would be meeting between July 30 and
51 August 1, 2015 in Fort Myers, Florida. Motion by Mr. Chmielewski to set the Florida Board of Orthotists and Prosthetists to
52 meet on July 29, 2015 in Fort Myers, Florida. Second by Mr. Griner.

53
54 Vote: 5 yeas; motion carried

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VIII. EXECUTIVE DIRECTOR'S REPORT

1. Ms. Rodgers presented a suggestion of language and materials to be sent to NCOPE Residents and the O&P schools regarding Florida residency and licensure requirements. The Board asked for a list of residency sites to be provided to the Board at its next meeting. The Board suggested adding cautionary language that Residents keep logs for a few years. Board staff to place the information in the website banner with link to the letter and attachments. Board staff to approach FAOP to ask if it would place the same information on its website and can they add a banner re: residents.
2. Ms. Rodgers gave information on new statutory language regarding the 18 month dual residency and stated that the Department could not include the change in its package. The Board agreed that Board staff should present the information to the FAOP as a suggestion for it to pursue the statutory change.
3. Ms. Rodgers presented information regarding background screening requirements when a licensed individual applies for additional licenses. This information is to be added to the Board's website on the application page, and board staff will review the applications to determine if a more specific change is needed.
4. Ms. Rodgers requested that the Board consider granting a delegation to Board staff for Residency extension requests. The Board discussed limitations on the Board staff approval of an extension of time for residency.

Motion to grant a delegation to Board staff for Residency extension requests up to one-year, with justification, to be ratified by the Board at its next meeting; however, applications for a second extension to come before the full Board made by Mr. Chmielewski. Second by Mr. Saunders.

Vote: 5 yeas; motion carried

IX. BOARD COUNSEL'S REPORT

1. Rules Status: no current status update
2. Amendments to:

Rule 64B14-4.003 Documentation of Eligibility for Licensure

Mr. Harris presented draft language for addition to subsection and after discussion, the Board suggested language to be added as (4)(d): 2. The Board shall accept written documentation from ABC establishing the completion of an internship. Such documentation must be submitted to the Board office directly from ABC and must demonstrate the applicant's internship was in compliance with Rule 64B14-4.100, F.A.C. Board staff to keep data on the number of applications that include the patient log.

Motion to open rule for discussion and amend Rule 64B14-4.003, F.A.C. as stated by Board Counsel made by Mr. Chmielewski and seconded by Mr. Griner.

Vote: 5 yeas; motion carried

Discussion of economic impact and impact on regulatory cost.

Motion that there is no economic impact on small business or impact on regulatory cost made by Mr. Griner and seconded by Mr. Saunders.

Vote: 5 yeas; motion carried

Motion that there will be no negative impact of \$1,000,000 over 5 years made by Mr. Griner, second Mr. Chmielewski.

Vote: 5 yeas; motion carried

Rule 64B14-14.001 Approved Examinations

Mr. Harris presented draft language for addition to subsection (1): (1) Orthotist, prosthetist, prosthetist/orthotist – the ABC examination in place at the time of application or, if currently ABC certified, the ABC examination in place at the time of certification.

1 Motion to amend Rule 64B14.001, F.A.C. as shown in the agenda materials made by Mr. Chmielewski _____ and
2 seconded by Mr. saunders.

3
4 Vote: 5 yeas; motion carried

5 Discussion of economic impact and impact on regulatory cost.

6 Motion that there is no economic impact on small business or impact on regulatory cost made by Mr. Griner and
7 seconded by Mr. Saunders.

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10 Vote: 5 yeas; motion carried

11 Motion that there will be no negative impact of \$1,000,000 over 5 years made by Mr. Griner, second Mr. Saunders.

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13
14 Vote: 5 yeas; motion carried

15
16 *Rule 64B14-5.005, F.A.C. – Mandatory Courses*

17 Mr. Harris presented draft language for addition to subsection (5)(a): Be submitted for review at least 90 days prior to the initial
18 course offerings. Remaining parts of subsection 5 to be renumbered.

19
20 Motion to open for development and amend Rule 64B14-5.005, F.A.C. as shown in the agenda materials made by Mr.
21 Chmielewski and seconded by Mr. Saunders.

22
23 Vote: 5 yeas; motion carried

24 Discussion of economic impact and impact on regulatory cost.

25 Motion that there is no economic impact on small business or impact on regulatory cost made by Mr. Chimielewski and
26 seconded by Mr.Griner.

27
28
29 Vote: 5 yeas; motion carried

30 Motion that there will be no negative impact of \$1,000,000 over 5 years made by Mr. Griner, second Mr. Chmielewski.

31
32
33 Vote: 5 yeas; motion carried

34
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36 **X. COMMITTEE REPORTS**

37
38 1. Budget – Mr. Meyer presented FY 2013-2014 revenues and first quarter 2014-2015 revenues.

39
40 2. Continuing Education – Mr. Chmielewski

41
42 a. No new courses reviewed

43 b. Follow-up from CEBroker regarding acceptance of ¼ hour increments has been resolved

44
45 3. Credentials – Mr. Saunders reported that a problem still exists when a school no longer is in existence and therefore
46 attendance verification cannot be obtained. Mr. Saunders suggested accepting what the candidate provides. Mr. Harris addressed
47 section 64B14-4.003(1)(a), FAC and whether there would be a concern over falsification of information . Mr. Saunders stated that
48 pedorthist would be the only profession where might be such a concern. The Board discussed that these individuals would have to file
49 for variance/waiver.

50
51 4. Disciplinary Compliance –Mr. Chmielewski had one new report out of 4 cases being followed. The board asked
52 Compliance Officer, Ms. Towanda Burnett, to provide an update of cases before each meeting.

53
54 5. Healthy Weight –Mr. Gooljar stated he could not open the program sent to him. Ms. Rodgers advised she would contact
55 the Department liason.

56
57 6. Legislation –Mr. Griner stated that a “blast” came out from FAOP regarding access through Medicaid/HMO. FAOP will
58 be keeping an eye on the FMA’s telemed legislation, which was tabled to the next session.

1
2 7. Probable Cause –Mr. Meyer stated that the last PCP meeting resulted in all cases being referred for probable cause.
3

4 a. Stats
5

6 8. Rules –Mr. Saunders
7

8 a. Rule 64B14-4.001, F.A.C. – Requirements for Prosthetic or Orthotic Residency or Internship has been resolved at
9 this meeting.
10

11 9. Unlicensed Activity – Mr. Gooljar reported there were 6 complaints in FY 2013-2014 resulting in 2 citations issued for
12 unlicensed activity in FY 2013-2014.
13

14 **XI. NEXT MEETING DATE: January 30, 2015 – Tallahassee, FL**
15

16 **XII. ADJOURNMENT**
17

18 **General Board Business concluded at 12:08 p.m.**

19 The meeting was adjourned at 12:08 p.m.
20