Minutes

The Advisory Committee on Orthotics and Prosthetics of the Board of Medical Licensure and Supervision met on July 12, 2019, in accordance with the Open Meeting Act. The meeting was held at the office of the Board, 101 NE 51st Street, Oklahoma City, Oklahoma. Advance notice of this regularly scheduled meeting was transmitted to the Oklahoma Secretary of State on October 10, 2018. The notice and agenda were posted on the Board’s website on July 8, 2019 at 10:27 a.m. pursuant to Title 25 O.S. §311.9.

Members present were:
Jonathan Day, LPO, Chairman
Dee McKasson, LO, Vice-Chairman
Jeffrey M. Arnette, LPO
Michael Huggins, CP, LPO
Mr. Bill Dunham

Members absent were:
Mr. Ron King
Susan Chambers, MD, Medical Board Representative

Also present were:
Barbara Smith, Executive Secretary
Lisa Cullen, Director of Licensing
Thomas Schneider, AAG, Committee Advisor

Having noted a quorum, the meeting was called to order by Mr. Day at 11:04 a.m.

Following Committee review, Mr. Arnette moved to approve the minutes of February 22, 2019, as written. Mr. Huggins seconded the motion and the vote was unanimous in the affirmative.

There were no personal appearances.

Next, the Committee reviewed applications for licensure. Mr. McKasson moved to recommend approval of the complete application of JOSEPH NIETO for Licensed Orthotic licensure. Mr. Arnette seconded the motion and the vote was unanimous in the affirmative.

Mr. McKasson moved to recommend approval of the complete application of ANGELA JEANNETTE HUCKABY for reinstatement of Registered Prosthetic Orthotic Assistant licensure. Mr. Huggins seconded the motion and the vote was unanimous in the affirmative.

Mr. Schneider presented information concerning the Oklahoma Open Meeting Act and Scope of Committee Duties/Business. Barbara Smith provided a copy of House Bill 1441 (the "Sunset Bill") for the Committee's information and review. The Committee appreciated the information. (See Attachment #1)
There being no new business, Mr. Arnette moved to adjourn the meeting. Mr. Dunham seconded the motion and the vote was unanimous in the affirmative. The time was 11:38 a.m.
Understanding Oklahoma's Open Meeting Act

Presented by
THOMAS R. SCHNEIDER, LL.M.
Assistant Attorney General, State of Oklahoma
July 12, 2019

Overview

I. When the Act is Triggered
II. What Actions Must Be Taken Before Meetings
III. What Procedures Must Be Followed During Meetings
IV. What Consequences May Ensue From Violations of the Act
I. When is the OMA triggered?

- When a "public body" has a "meeting," the OMA applies.

- "Public body" and "meeting" are both defined by statute.

---

**"Public Body" Defined**

25 O.S. § 304(1)

- Counties, municipalities, school districts
- Boards of county commissioners
- Other boards, agencies, commissions
- Boards of public and higher education
- Higher education public funds
- Athletic sales of institutional public funds
- Administrative public activities

---

**"Public Body" DOES NOT include**

25 O.S. § 304(1)

- Judiciary
- Legislature
- Administrative staff of public bodies (including faculty meetings and athletic staff meetings of institutions of higher ed when not meeting with public body)
- Other specific exceptions per statute, i.e. racing stewards, Council on Judicial Complaints, etc.
**“Public Body” DOES NOT Include**

25 O.S. § 304(1)

- Committees that are purely fact finding, information, recommendatory, or advisory with no decision-making authority. Andrews v. Ind. School District No. 28 of Cleveland Cty., 1987 Ok. 40, 737 P.2d 920.

- Private organizations which contract to provide goods or services to the public on behalf of a governmental agency and receive payment from public funds merely as reimbursement for goods or services provided. 2002 OK AG 37.

**“Meeting” Defined**

25 O.S. § 304(2)

- When conducting business of public body
- By a majority of its members
- Being personally together, OR, by teleconference, as authorized by § 307.1

**NOTE:** a “meeting” does not include informal gatherings of a majority of members when no business of the public body is being discussed. 25 O.S. § 304(2).

**Electronic and Telephonic Communications**

25 O.S. § 306

- Prohibits participating in a meeting by phone or e-mail
- Also prohibits taking votes or discussing any matter at an "informal gathering"

**CAUTION:** Discussions in a group e-mail can create a virtual meeting subject to the OMA.
Hypothetical: Post-Board Meeting Lunch

• Does the OMA apply?
  - Public Body
  - Meeting
• Best Practice: majority of Board members should not attend lunch together

NOTE: If member insists on the group lunch, announce it at the end of a meeting and state that anyone is welcome to join them.

Four Types of Meetings

II. Required Pre-Meeting Actions

• Provide Notice

• Post Agenda
Provide Initial Notice of Regular Meetings

25 O.S. § 311

- When?
  - Annually by December 15 of regular meetings for next calendar year
  - Include date, time, and place of meetings
  - Regular meetings can be changed with 10 days notice to appropriate office, and limited new business is permitted.

- To whom?
  - State public bodies and governing boards of state institutions of higher education Secretary of State
  - County public bodies County Clerk of the county where the body is principally located
  - Municipal public bodies: Municipal Clerk

Provide Notice of Special Meeting

- 48 hours notice of date, time, and place
- Notice in writing, in person, or by telephonic means to the proper record-keeping official and to those who have filed written requests to receive notice of a meeting, 25 O.S. § 311(A)(11).
- Public body "may elect" to follow procedures under 25 O.S. § 311(A)(9)(b) and publish the date, time, location, and agenda for special meetings.

Provide Notice of Continued or Reconvened Meetings

- Date, time, and place of meeting must be announced at original meeting, 25 O.S. § 311(A)(10).
Agendas
25 OS § 311(8)

Must contain sufficient information for the public to identify the items of business and the purpose.

- List all proposed actions that may be taken
- Cannot be vague
- Cannot take action if the action is not on the agenda
- Must be in plain language
- Executive Director's Report: Needs more detail on what the report will cover.

New Business
25 OS § 311(A)(9)

- "any matter not known about or which could not have been reasonably foreseen prior to the time of posting [the agenda]."
- To consider new business at a regular meeting, timely post an agenda containing an item called "new business."
- New Business is NOT what someone forgot needed to be on the agenda
- NO NEW BUSINESS IN A SPECIAL OR EMERGENCY MEETING

Caution! Use sparingly, only when not reasonably foreseeable prior to posting the agenda.
Failed Agenda Example

Agenda said purpose of the meeting was to:
1. Appoint new board member.
2. Interview a new administrator.
3. Hire principals.

The court found the agenda was deceptively vague and a willful violation where the school board hired a superintendent.

*Best Practice: Be specific and clear. Do not vaguely refer to the action planned to be taken or discussed.

III. During the Meeting

- Where to hold meetings
- Voting
- When executive sessions may be used
- Taking Minutes
- How to discuss new business
- How to continue or reconvene a meeting
- Public Comment

When and Where to Hold Meetings

25 O.S. § 203
- Meetings "shall be held at specified times and places which are convenient to the public"
- Use good judgment
Voting
25 O.S. § 305
The vote of each member must be:

Publicly cast | Recorded

Section 305's prohibition on informal gatherings ensures actions are taken publicly and recorded.

CAUTION: Failure to meet both requirements results in the action being invalid. Outhwaite v. Drummond Bd. of Ed., 1975 OK 147, 542 P.2d 1309.

Recording Votes
25 O.S. § 305
Must record the vote of each individual member at a meeting
- If vote is unanimous, it is sufficient to record "5-0 in favor of..." Graybill v. Oklahoma State Bd. of Educ., 1978 OK 124, 585 P.2d 1358.
- However, best practice is to record how each individual voted, including yes and no votes, and whether there were any abstentions.

Minutes
25 O.S. § 312
Minutes must be written and include:
- Official summary of the proceeding
- Identification of all members present and absent (2012 OK AG 24)
- Identification of all matters considered
- Identification of all actions taken
- Should reflect manner and time notice was given
- Any person may record the meeting, provided it does not interfere with the meeting

Note: Minutes of public meetings are open to the public.
**Minutes**

25 O.S. § 312

- Minutes must be taken in Executive Session
  - However, minutes taken in Executive Session may be kept confidential under the Open Records Act. 51 O.S. § 21 A.5(1)(b).
- Minutes for Emergency Meetings: § 312B
  - Must state nature of emergency
  - Must include reasons for declaring emergency meeting

---

**Public Comments**

- A public body is not required to provide opportunity for citizens to speak (2002 OK AG 26; 1998 OK AG 45).
  - If public body chooses to allow public comments, it is advisable to set policy.
  - Could limit comments to agenda items only and/or set a time limit.
  - Public body should be careful not to discuss topics on the agenda during public comment portion of meeting.

---

**How to Continue or Reconvene a Meeting**

25 O.S. § 311(4X3)10

- Purpose: to finish business appearing on an agenda of a previous meeting
- At original meeting, announce date, time, and place of continued/reconvened meeting.
- At the continued/reconvened meeting, only matters on the agenda of the previous meeting may be discussed.
- No New Business
How to Hold a Special Meeting
25 O.S. § 311(A)(1)
• "any meeting of a public body other than a regular scheduled meeting or emergency meeting" § 304(4)
• Give proper public notice at least 48 hours in advance
• No New Business

IV. Willful Violations of the Act

Civil Implications
• Actions taken in willful violation are invalid. 25 O.S. § 313.
• Minutes of an Executive Session will be made public where the CMA is willfully violated. 25 O.S. § 307(F)(2).
• Any person can bring a civil action. 25 O.S. § 314(B).

Criminal Penalty
• Misdemeanor offense
• Punishable by fine up to $500 and/or up to one (1) year in the county jail. 25 O.S. § 304.

Willful Violation
Rogers v. Evertte Bd. of Creek County, 1981 OK 95, 701 P2d 794.

"The Act provides that any action taken in willful violation shall be invalid. Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses conscious, purposeful violations of law or blatant or deliberate disregard of the law by those who know, or should know... Notice of meetings of public bodies which are deceptively vague or likely to mislead constitute a willful violation."
How to Correct an OMA Mistake

- If not in compliance with OMA when an action is taken, it will be invalid.
- However, to validate the action, a public body can later ratify the decision.
- How? Depends on the type of mistake:
  - Give proper public notice and put item on next meeting’s agenda
  - Re-vote and record the decision in the public meeting
KeyCite Red Flag - Severe Negative Treatment
Enacted Legislation Amended by 2019 Okla. Sess. Law Serv. Ch. 465 (H.B. 1441) (WEST),

Oklahoma Statutes Annotated
Title 59. Professions and Occupations (Refs & Annos)
Chapter 56. Orthotics and Prosthetics Practice Act

59 Okl.St.Ann. § 3005

§ 3005. Advisory Committee on Orthotics and Prosthetics--Assistance and advice to the board

Currentness

A. There is hereby re-created, to continue until July 1, 2019, in accordance with the provisions of the Oklahoma Sunset Law, an Advisory Committee on Orthotics and Prosthetics, which shall consist of seven (7) voting members to be appointed by the State Board of Medical Licensure and Supervision to three-year terms ending December 31; provided, initial appointments shall be staggered such that two members are appointed for one (1) year, two members are appointed for two (2) years, and three members are appointed for three (3) years.

B. One member shall be a licensed physician who is a member of the State Board of Medical Licensure and Supervision. Two members shall be lay persons who are consumers of orthotic or prosthetic services. Two members shall be licensed orthotists, not more than one of whom may also be a licensed prosthetist. Two members shall be licensed prosthetists, not more than one of whom may also be a licensed orthotist; provided, licensure under the Orthotics and Prosthetics Practice Act not being possible until the act is implemented, two of the initial appointees to positions requiring licensure as an orthotist or prosthetist shall, in lieu of licensure, be certified by the American Board for Certification in Orthotics and Prosthetics and two shall be certified by the Board for Orthotist/Prosthetist Certification.

C. Members shall serve until their successors are appointed and qualified; provided, no member shall serve more than eight (8) consecutive years or two full terms, whichever is greater.

D. The Committee shall annually elect a chair and vice-chair from among the members required to be licensed. The chair or vice-chair and three other members shall constitute a quorum. Members shall be reimbursed from funds available to the State Board of Medical Licensure and Supervision pursuant to the State Travel Reimbursement Act.

E. 1. The Committee shall advise the Board on matters pertaining to orthotics and prosthetics, including but not limited to:

   a. scope and standards of practice,
3005. Advisory Committee on Orthotics and... OK ST T. 59 § 3005

b. licensure and registration requirements, examination requirements, exceptions thereto, renewal requirements, temporary licensure or registration, and endorsement or reciprocity requirements,

c. methods and requirements for ensuring the continued competence of licensed and registered persons,

d. grounds for probation, revocation, or suspension of license or registration, reinstatement provisions,

e. fees, and

f. all other matters which may pertain to the practice of orthotics or prosthetics.

2. The Committee shall review and make recommendations to the Board on all applications for licensure and registration.

3. The Committee shall assist and advise the Board in all hearings related to the enforcement of the Orthotics and Prosthetics Practice Act.

Credits

Footnotes
1 Title 74, § 3901 et seq.
2 Title 74, § 500.1 et seq.
59 Okl. St. Ann. § 3005, OK ST T. 59 § 3005
Current with legislation effective through July 1, 2019 of the First Regular Session of the 57th Legislature (2019)
A. The State Board of Medical Licensure and Supervision, with the assistance of the Advisory Committee on Orthotics and Prosthetics, shall establish qualifications for licensure and registration under the Orthotics and Prosthetics Practice Act. Until November 1, 2004, the Board shall provide, as set forth herein, an alternative qualification licensure opportunity for current practitioners in this state who are unable to meet standard qualifications. Persons meeting the qualifications of more than one discipline may be licensed in more than one discipline.

B. To be licensed to practice orthotics or prosthetics according to standard qualifications, a person shall:

1. Demonstrate certification by the Board for Orthotist/Prosthetist Certification (BOC), or the American Board for Certification in Orthotics, Prosthetics & Pedorthics (ABC); or

2. a. Possess a baccalaureate degree from an institution of higher education accredited by a general accrediting agency recognized by the Oklahoma State Regents for Higher Education;

   b. Have completed an orthotic or prosthetic education program that meets or exceeds the requirements, including clinical practice, of the Commission on Accreditation of Allied Health Education Programs;

   c. Have completed a clinical residency in the professional area for which the license is sought that meets or exceeds the standards, guidelines, and procedures for residencies of the National Commission on Orthotic and Prosthetic Education or of any other such group that is recognized by the State Board of Medical Licensure and Supervision; and

   d. Demonstrate attainment of internationally accepted standards of orthotic and prosthetic care as outlined by the International Society of Prosthetics and Orthotics professional profile for Category I orthotic and prosthetic personnel.

C. To be licensed to practice orthotics or prosthetics under alternative qualification requirements, a person shall:
I. Pass an examination in the area of licensure, which may be an available examination designated by the State Board of Medical Licensure and Supervision or an examination developed by the Board; and

2. Execute an alternative qualification contract with the State Board of Medical Licensure and Supervision the conditions of which shall be based on the Board's evaluation of the applicant's experience and the Board's determination of further experience needed or other requirements to be met, which contract shall specify a period of time not to exceed ten (10) years for completion of the further experience or requirements.

D. Upon execution of the alternative qualification contract, the Board shall issue a license and shall renew the license subject to the licensee's making satisfactory progress as required by the contract. Persons who satisfactorily complete the alternative qualification contract shall be thereafter considered as having met the qualifications necessary for license renewal.

E. No person shall be permitted to enter into an alternative qualification contract after October 31, 2004. A person who has not done so by October 31, 2004, shall not be issued a license to practice orthotics or prosthetics without meeting standard qualifications.

F. Notwithstanding any other provision of this section, a person who has practiced full time during the three-year period preceding the effective date of this act in a prosthetic or orthotic facility as a prosthetist or orthotist and has a high school diploma or equivalent, or who has practiced as an assistant or technician, may file an application with the Board within ninety (90) days from the effective date of this act \(^1\) for permission to continue to practice at his or her identified level of practice. The Board, after verifying the applicant's work history and receiving payment of the application fee as established pursuant to this act, shall, without examination of the applicant, issue the applicant a license or certificate of registration. To make the investigations necessary to verify the applicant's work history, the Board may require that the applicant complete a questionnaire regarding the work history and scope of practice. The Board shall take no more than six (6) months to verify the work history. Applicants applying after the ninety-day application period of this subsection has expired shall meet the qualifications elsewhere set forth for standard or alternative qualification for licensure or for registration as determined by the Board.

G. The Board may authorize the Board Secretary to issue a temporary license for up to two (2) years to individuals who have graduated from a program and completed their residency as outlined in subsection B of this section, but not yet passed the licensure exam. A temporary license authorizing practice under supervision shall be granted only when the Board Secretary is satisfied as to the qualifications of the applicant to be licensed under the Orthotics and Prosthetics Practice Act except for examination. A temporary license shall be granted only to an applicant demonstrably qualified for a full and unrestricted license under the requirements set by the Orthotics and Prosthetics Practice Act and the rules of the Board.

Credits
Footnotes
2  59 Okl. St. Ann. § 3006, OK ST T. 59 § 3006
Current with legislation effective through July 1, 2019 of the First Regular Session of the 57th Legislature (2019)

End of Document

An Act

ENROLLED HOUSE
BILL NO. 1441

By: Gann and Crosswhite Hader of the House

and

Smalley of the Senate

An Act relating to sunset; amending 59 O.S. 2011, Section 3005, as amended by Section 1, Chapter 347, O.S.L. 2013 (59 O.S. Supp. 2018, Section 3005), which relates to the Advisory Committee on Orthotics and Prosthetics; re-creating the Committee; and modifying termination date.

SUBJECT: Advisory Committee on Orthotics and Prosthetics

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 3005, as amended by Section 1, Chapter 347, O.S.L. 2013 (59 O.S. Supp. 2018, Section 3005), is amended to read as follows:

Section 3005. A. There is hereby re-created, to continue until July 1, 2021, in accordance with the provisions of the Oklahoma Sunset Law, an Advisory Committee on Orthotics and Prosthetics, which shall consist of seven (7) voting members to be appointed by the State Board of Medical Licensure and Supervision to three-year terms ending December 31; provided, initial appointments shall be staggered such that two members are appointed for one (1) year, two members are appointed for two (2) years, and three members are appointed for three (3) years.

B. One member shall be a licensed physician who is a member of the State Board of Medical Licensure and Supervision. Two members shall be lay persons who are consumers of orthotic or prosthetic services. Two members shall be licensed orthotists, not more than one of whom may also be a licensed prosthetist. Two members shall be licensed prosthetists, not more than one of whom may also be a licensed orthotist; provided, licensure under the Orthotics and Prosthetics Practice Act not being possible until the act is
implemented, two of the initial appointees to positions requiring licensure as an orthotist or prosthetist shall, in lieu of licensure, be certified by the American Board for Certification in Orthotics and Prosthetics and two shall be certified by the Board for Orthotist/Prosthetist Certification.

C. Members shall serve until their successors are appointed and qualified; provided, no member shall serve more than eight (8) consecutive years or two full terms, whichever is greater.

D. The Committee shall annually elect a chair and vice-chair from among the members required to be licensed. The chair or vice-chair and three other members shall constitute a quorum. Members shall be reimbursed from funds available to the State Board of Medical Licensure and Supervision pursuant to the State Travel Reimbursement Act.

E. 1. The Committee shall advise the Board on matters pertaining to orthotics and prosthetics, including but not limited to:
   a. scope and standards of practice,
   b. licensure and registration requirements, examination requirements, exceptions thereto, renewal requirements, temporary licensure or registration, and endorsement or reciprocity requirements,
   c. methods and requirements for ensuring the continued competence of licensed and registered persons,
   d. grounds for probation, revocation, or suspension of license or registration, reinstatement provisions,
   e. fees, and
   f. all other matters which may pertain to the practice of orthotics or prosthetics.

2. The Committee shall review and make recommendations to the Board on all applications for licensure and registration.

3. The Committee shall assist and advise the Board in all hearings related to the enforcement of the Orthotics and Prosthetics Practice Act.
Passed the House of Representatives the 14th day of May, 2019.

Passed the Senate the 22nd day of May, 2019.

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of May, 2019, at 5:54 o'clock p.m.

By: [Signature]

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 28th day of May, 2019, at 4:15 o'clock p.m.

By: [Signature]