

IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.*
OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE
AND SUPERVISION,

Plaintiff,

v.

GARY LOVELESS, L.P.E.D., L.P.O.,
LICENSE NOS. LPED 31, LPO 23,

Defendant.

FILED

AUG 03 2018

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 17-01-5418

**ORDER OF REVOCATION OF LPED LICENSE
AND PROBATION OF LPO LICENSE**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 10, 2018, at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and the rules of the Board, the Administrative Procedures Act, 75 O.S. §§ 250-323 and the Oklahoma Open Meetings Act, 25 O.S. §§ 301-314.

Joseph L. Ashbaker, Assistant Attorney General, appeared on behalf of Plaintiff, Rachel A. Rogers, Assistant Attorney General, appeared as second chair for Plaintiff, and Gary Loveless, LPED, LPO ("Defendant"), appeared in person and through counsel Stephen L. McCaleb, of Derryberry & Naifeh, LLP (collectively, the "Parties").

The following exhibits were admitted into evidence, without objection:

- | | |
|------------------------|--|
| Plaintiff's Exhibit 1: | Applications for Renewal of Oklahoma License,
Licensed Pedorthist, and,
L.P.E.D. submitted CEI Certificates |
| Plaintiff's Exhibit 2: | Applications for Renewal of Oklahoma License,
Licensed Prosthetist/Orthotist, and,
L.P.O. submitted CEI Certificates |
| Plaintiff's Exhibit 3: | ABC-OPP Continuing Education Unit List
American Board for Certification in Orthotics,
Prosthetics & Pedorthics, Inc. |
| Plaintiff's Exhibit 4: | ABC-OPP Continuing Education Unit List
submitted by Gary Loveless, March 2, 2017 |

Plaintiff's Exhibit 5: Statement by Gary Loveless to the Board
Received March 2, 2017

Plaintiff's Exhibit 6: Spreadsheets by Board Investigator Jana Lane

The following witnesses were sworn and testified: Jana Lane, Board Investigator, and Gary Loveless, Defendant.

The Board *en banc*, after hearing the parties' arguments, hearing sworn testimony of witnesses, reviewing exhibits admitted and being fully advised of the premises, makes the following Findings of Fact, Conclusions of Law and Orders:

Findings of Fact

1. In Oklahoma, Defendant holds Licensed Podiatrist license no. LPED 31, issued March 7, 2002, and a combined Licensed Prosthetist/Orthotist license no. LPO 23, issued September 3, 2002.
2. On September 11, 2017, a Verified Complaint and Citation were each filed, setting hearing on May 10, 2018.
3. Stephen L. McCaleb, of Derryberry & Naifeh, LLP, filed an Entry of Appearance on October 30, 2017, with a request for extension of time to answer. Defendant's answer due date was extended to November 20, 2017.
4. Defendant's Answer to Verified Complaint was received by the Board on November 20, 2017, and filed on November 28, 2017.
5. At the May 10, 2018 Board Investigator Jana Lane was called as a witness for the Plaintiff, and explained that she has been an investigator for the Board since 2006. Investigator Lane testified that Board licensing staff raised concerns to investigators that Defendant submitted falsified continuing education unit certificates to the Board.
6. Investigator Lane reviewed the LPED continuing education certificates submitted to the Board by Defendant from 2003 – 2016. Thirty-eight (38) certificates totaling seventy-six (76) hours were fraudulent.
7. Investigator Lane reviewed the LPO continuing education certificates submitted to the Board by Defendant in 2011, 2013, and 2015. Twenty-one (21) certificates totaling forty-two (42) hours were fraudulent.
8. Investigator Lane testified that Defendant submitted falsified continuing medical education certificates to the Board. Investigator Lane testified that Defendant wrote a signed statement admitting to altering dates on continuing education courses prior to submission to the Board.

9. The Board ruled that Defendant's Pedorthist license be revoked, and his Prosthetist and Orthotist licenses be placed on probation for one year with terms to be worked out by the Board Secretary.
10. The Board fined Defendant \$5,000.
11. Any conclusion of law below which is more properly characterized as a finding of fact is hereby incorporated as a finding of fact.

Conclusions of Law

12. The Board has jurisdiction over the subject matter and is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of Licensed Pedorthists and Prosthetists/Orthotists in the State of Oklahoma. 59 O.S. §§ 2304, 2305; 56 O.S. §§ 3004, 3005(E) *et seq.*; Okla. Admin. Code §§ 435:50-7-1 *et seq.*, 435:55-7-2 *et seq.*, 435:55-7-3 *et seq.*
13. Notice was provided as required by law and the rules of the Board. 75 O.S. § 309; 59 O.S. § 504; Okla. Admin. Code §§ 435:3-3-5, 435:3-3-6.
14. The Board is authorized to suspend, revoke or order any other appropriate sanctions against the license of any allied health professional holding a license to practice medicine in the State of Oklahoma for unprofessional conduct. The Board's action is authorized by 59 O.S. §§ 509.1(A)(3), (4), (8), (9), (F); 59 O.S. § 725.3(B); Okla. Admin. Code § 435:5-1-3; Okla. Admin. Code § 435:5-1-4.1.
15. Based upon the evidence, exhibits and testimony, the Board finds that Defendant is guilty of unprofessional conduct as follows:
 - A. To be licensed to practice pedorthics according to standard qualifications, a person shall have passed all examinations required for certification by an entity approved by the Board as a certification organization for licensure purposes. Once licensed, a pedorthist shall meet continuing education and annual renewal requirements to maintain pedorthic licensure. The licensed pedorthist shall also adhere to a code of ethics adopted by the Board upon recommendation of the Committee, in violation of 59 O.S. 2011, § 2306(B).
 - B. Every year pedorthists seeking to renew licensure must show proof of current certification by the American Board for Certification in Orthotics, Prosthetics and Pedorthics or obtain 11 continuing education points as set out in 435:50-5-4 and 435:50-5-5 of this subsection. No continuing education hours may be carried over from one compliance period to another, in violation of Okla. Admin. Code § 435:50-5-5(a).
 - C. It is unethical for the pedorthist to falsify his/her continuing education units, in violation of Okla. Admin. Code § 435:50-7-2(b)(3)(E)(iii).

- D. Every two years individuals seeking to renew licensure/registration must show proof of current certification by the American Board for Certification in Orthotics, Prosthetics and Pedorthics (ABC) or the Board for Orthotist/Prosthetist Certification (BOC), or obtain continuing education hours as follows: (1) Orthotists and/or prosthetists must obtain thirty (30) continuing education hours. Dual disciplined licensees must obtain at least fifteen (15) hours in each discipline, in violation of Okla. Admin. Code § 435:55-5-3(a)(1).
- E. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct, in violation of 59 O.S. 2011, § 509(9).
- F. It is unethical for the orthotist and/or prosthetist to falsify his/her continuing education units and may lead to permanent license revocation, in violation of Okla. Admin. Code § 435:55-7-3(b)(3)(E)(iii).

Orders

IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The Licensed Pedorthist (LPED) license no. 31 of **GARY L. LOVELESS, LPED**, is **REVOKED**, effective on the date of an approved Attorney General Opinion.
2. The Licensed Prothetist/Orthotist (LPO) license no. 23, of **GARY L. LOVELESS, LPO**, is ordered **ONE (1) YEAR PROBATION ("LPO Probation")**, under terms and conditions determined by the Board Secretary, effective on the date of an approved Attorney General Opinion.
3. The **LPO PROBATION** terms and conditions set forth by the Board Secretary are as follows:
 - a. **GARY L. LOVELESS** shall obtain thirty (30) continuing education hours, with at least fifteen (15) hours in each discipline, Prothetist and Orthotist. Education hours must be approved in advance by the Board Secretary and completed results submitted to the Board Secretary prior to termination of the LPO Probation.
 - b. **GARY L. LOVELESS** shall enroll in an ethics course approved of in advance by the Board Secretary and completed results submitted to the Board Secretary prior to termination of the LPO Probation.
4. **GARY L. LOVELESS, LPED, LPO**, is **FINED** five thousand (\$5000) dollars, due instant.

5. Failure to meet any of the terms of this order will be grounds for the Board to initiate proceedings to revoke the Licensed Prosthetist/Orthothist (LPO) license of **GARY L. LOVELESS**, after additional notice and hearing as required by law.
6. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.
7. A copy of this Order shall be provided to Defendant as soon as it is processed.

This Order is subject to review and approval by the Oklahoma Attorney General, and this Order shall become final upon completion of the review by the Oklahoma Attorney General unless disapproved, in which case this Order shall be null and void.

Dated this 3rd day of AUGUST, 2018.



Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Certificate of Service

This is to certify that on the 6th day of August, 2018, a true and correct copy of this Order was transmitted as specified, postage prepaid, to the following:

U.S. Certified Mail

Gary Lee Loveless, LPED, LPO
4400 S.W. 21st
Oklahoma City, Oklahoma 73108

Defendant

U.S. First Class Mail

Stephen L. McCaleb
DERRYBERRY & NAIFEH, LLP
4800 North Lincoln Boulevard
Oklahoma City, OK 73105
Telephone: (405) 528-6569
Facsimile: (405) 528-6562
smccaleb@derryberryllaw.com

Attorney for Defendant



Nancy Thiemann, Legal Assistant



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2018-293A

Billy H. Stout, M.D., Board Secretary
State Board of Medical Licensure and Supervision
101 NE 51st Street
Oklahoma City, OK 73105

July 31, 2018

Dear Dr. Billy H. Stout, M.D., Board Secretary:

This office has received your request for a written Attorney General Opinion regarding action that the State Board of Medical Licensure and Supervision intends to take in case 17-01-5418. The licensee, a Licensed Pedorthist (LPED) and Prosthetist/Orthotist (LPO), submitted falsified continuing education unit certificates to the Board. The Board proposes to revoke the LPED license, place the LPO license on probation for 1 year, impose a \$5,000 fine, and require the licensee to complete continuing education hours and an ethics course and to pay the costs of the action.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act authorizes the Board to suspend or revoke a license and order other appropriate sanctions against a licensee for unprofessional conduct. 59 O.S.Supp.2017, §§ 503, 509(9), 509.1(A). Pedorthists, orthotists and prosthetists are subject to continuing education requirements. *See* OAC 435:50-5-3, 50-5-4, 50-5-5, 55-5-3(a)(1); 59 O.S.2011, § 2306(B). Board rules specifically provide that it is unethical for a pedorthist, orthotist and/or prosthetist "to falsify his/her continuing education units." OAC 435:50-7-2(b)(3)(E)(iii), 55-7-3(b)(3)(E)(iii). The Board may reasonably believe that the proposed action is necessary to protect public health and safety.

It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State's policy of protecting the health, safety, and well-being of the citizens of Oklahoma.

A handwritten signature in black ink, appearing to read "Mike Hunter".

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

A handwritten signature in black ink, appearing to read "Ryan Chaffin".

RYAN CHAFFIN
DEPUTY CHIEF ASSISTANT ATTORNEY GENERAL

RECEIVED

AUG 02 2018

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE
AND SUPERVISION

