

Ray Smith

My name is Ray Smith from Victoria, Texas, District 30. I am a licensed Board Certified Prosthetist-Orthotist with 24 years experience and was appointed to the Texas Board of Orthotics and Prosthetics (TBOP) in 2013. I was elected Secretary of the Board and am acting Presiding Officer. My testimony and comments do not represent the Texas Board of Orthotics and Prosthetics.

Approximately 20 years ago a small group of concerned prosthetic-orthotic clinicians including myself, developed and implemented a plan to seek licensure of this profession. Prosthetics and orthotics were totally unregulated with little avenue for the beneficiaries of our services to pursue recourse for substandard services or harm.

In 1999 the Prosthetics and Orthotics Act went into effect. It was expected the creation of this Board would protect the public and the legitimate licensees.

For approximately the last 10 years I have regularly attended the quarterly TBOP meetings and was witness to actions of the Board and Department of State Health Services. For the last several years my profession has become increasingly frustrated due to the lack of efficient responsiveness of the Board, especially regarding enforcement. Now serving on the Enforcement, Rules, and Licensing Committee, I am witness to the level of dysfunction of the Texas Department of State Health Services. I would like to outline these experiences:

The previous Board attorney publicly stated “no harm no foul” with regard to enforcement cases. That statement exemplifies the attitude of PLCU Management and OGC with regard to Board operations.

Exhibit “A” is a letter dated November 22, 2013 which I received from Governor Perry. This instrument states, “appointees are duty-bound to ask the hard questions.” I have asked those questions and have received little more than excuses and deception from entrenched PLCU Management that appear to operate with impunity, as they are accountable to no one.

Exhibit “B” REACH is an acronym for the Texas Department of State Health Services Regulatory Philosophy. This document is a joke and not worth the paper it is printed on.

The Texas Board of Orthotics and Prosthetics consists of dedicated appointees capable and willing to fulfill their oath of office. It is PLCU Management and the OGC that at every step of the way sets up road blocks, manipulates the Board, and lacks the commitment to assist the Board in adhering to statute and rules to protect the public.

- 1) PLCU management has attempted to establish a “single point of contact” protocol. With this action Board business must be directed through the Presiding

- 2) Officer. No other board members' calls will be received or returned from PLCU staff. When questioned about this, the response is that we have 23 programs and simply cannot have all Board members calling us. When questioned if this is a written policy or procedure, the response is no.

The blatant attempt to control an independent Board with unwritten policy is in opposition to Title 22 TAC, 821.3(b)(1)B and TOC 605.102.

605.102 DIVISION OF RESPONSIBILITIES.

“The Board shall develop and implement policies that clearly define the respective responsibilities of the governing body of the Board and staff of the Board.”

Clearly the Board makes policy, not the Executive director, PLCU staff or OGC.

- 3) 821.15(e)(4) “An accredited facility is subject to random inspections to verify compliance to the ACT and this Chapter at any time by authorized personnel of the Board. The Board may also conduct inspections if a complaint is received regarding a facility.”

The Board has asked for inspections to facilitate gathering of evidence in Enforcement cases.

- A) PLCU Management denies these requests stating they do not have the resources.
- B) This would be expanding an investigation according to PLCU.
- C) PLCU Management simply refuses to perform inspections. When a site visit is deemed necessary by the Enforcement Committee or Full Board, it should be performed.

Despite assurances from the deputy General Counsel of OCG at the February 2014 meeting that the Board requests site visits will happen; nothing has changed.

- 4) Title 22 TAC 821.21(c)1-15
The Board has authority to pursue Enforcement cases involving fraud. This is denied by PLCU Management despite the opinion of Deputy General Counsel to the contrary.
- 5) TOC 605.2021 SUBPEONAS(a)
“In an investigation filed with the board, the Board may request that the Commissioner or the Commissioner’s designee approve issuance of a subpoena. If the request is approved, the Board may issue a subpoena to compel the attendance of relative witness or for the production for inspection or copying of

relative evidence in this State.”

- A) Despite request from members of the Enforcement Committee to obtain witnesses and evidence, PLCU Management has deemed obtaining the requested information not germane to the case. This information and witness was of paramount importance as to cooperate earlier testimony and not having this evidence was a point of argument from the respondent’s attorney.
- 6) TAC 821.20(a)(5)
PLCU Management instructed the former Executive Director to close non-jurisdictional cases. One such case included violations discovered when an investigator entered a licensed facility and found an unlicensed individual providing services.

This particular case was closed by the ED. Full Board was assured by The Deputy General Counsel a new case could be opened. At the May Full board meeting all 3 members of the Enforcement Committee instructed PLCU Management to open new complaints. They were advised to practice due diligence in collecting the schedule for the unlicensed activity, obtain copies of patient files (preferably 12) and if necessary subpoena the unlicensed individual who was providing the services. Despite these instructions, PLCU Management, with the help of both Board attorneys, did not agree to open new complaints. This is a jurisdictional case.

Enforcement Committee members have made numerous requests for additional information to facilitate proper enforcement proceedings.

The emphasis has been to obtain said information to make an informed decision that can prevail should the case go to SOAH. We are told we are expanding the investigation, constitute a fishing expedition, and the State lacks the resources to comply.

In one case with egregious abuse of a WWII veteran the Respondent’s license was revoked. He filed an appeal with SOAH.

At the May Full Board meeting, both Board attorneys lobbied hard and advised the Board to retract the NOV. Their reasoning is as follows:

- A) We don’t know if the complainant is alive.
- B) We cannot prove the chain of custody of the prosthesis. The device was in the former Board Executive Director Office.
- C) The evidence is weak.
- D) We cannot win this case at SOAH.

This NOV and others were withdrawn at the May meeting. Board members later

discovered the PLCU investigators photographed the prosthesis prior to the State obtaining it. The Complainants daughter personally identified the device at the hearing as the one her father was provided with by the Respondent. The Full Board was misled into making a decision on erroneous information provided by PLCU and OGC.

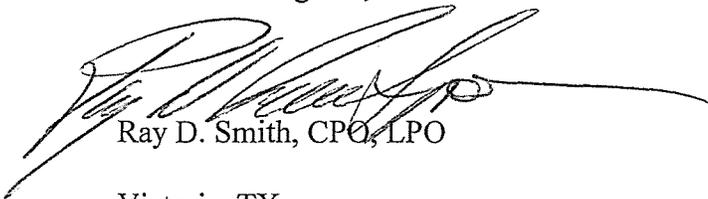
Professional members of the board submitted specific items for the May 2014 meeting. These agenda items pertained to specific Board rules and statute addressing subpoenas, site visits, and other enforcement activities. PLCU Management and the OGC failed to place the items on the agenda.

Prosthetics and orthotics is a complicated profession that can only be regulated by an independent Board made up of public and professional members to lend their expertise.

I request the Sunset Advisory Commission recommend leaving the TBOP under DSHS and not move the Board to the Texas Department of Licensing and Regulation.

Thank you for your consideration.

With warm regards,



Ray D. Smith, CPO, LPO

Victoria, TX