

STATE OF NEW YORK

3848

2007-2008 Regular Sessions

IN SENATE

March 16, 2007

Introduced by Sens. FLANAGAN, LARKIN -- read twice and ordered printed,
and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to creating the profes-
sion of orthotics, prosthetic and pedorthic practice

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The education law is amended by adding a new article 167 to
2 read as follows:

ARTICLE 167

ORTHOTIC, PROSTHETIC AND PEDORTHIC PRACTICE

Section 8800. Introduction.

8801. Definitions.

8802. Practice of orthotics, prosthetics and pedorthics; and the use of the titles "orthotist", "prosthetist" and "pedorthist".

8803. State board for orthotics, prosthetics and pedorthics.

8804. Requirements and procedures for professional licensure.

8805. Exemptions.

8806. Licensure without examination.

§ 8800. Introduction. This article applies to the profession of
orthotics, prosthetics and pedorthics, and provides for the licensing of
orthotists and prosthetists and pedorthists. The general provisions for
all professions contained in article one hundred thirty of this title
apply to this article.

§ 8801. Definitions. As used in this article:

1. "Orthosis" means a medical device used to provide support,
correction, or alleviation of neuromuscular or musculoskeletal dysfunc-
tion, disease, injury or deformity, but does not include the following

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 assistive technology devices: upper extremity adaptive equipment used to
2 facilitate the activities of daily living, including specialized uten-
3 sils, combs, and brushes; finger splints; wheelchair seating and equip-
4 ment that is an integral part of the wheelchair and not worn by the
5 patient; elastic abdominal supports that do not have metal or plastic
6 reinforcing stays; arch supports; nontherapeutic accommodative inlays
7 and nontherapeutic accommodative footwear, regardless of method of manu-
8 facture; unmodified, over-the-counter shoes; prefabricated foot care
9 products; durable medical equipment such as canes, crutches, or walkers;
10 dental appliances; or devices implanted into the body by a physician.

11 For purposes of this subdivision, "accommodative" means designed with
12 the primary goal of conforming to the individual's anatomy and "inlay"
13 means any removable material upon which the foot directly rests inside
14 the shoe and which may be an integral design component of the shoe.

15 2. "Orthotics" means the practice, pursuant to a licensed physician's
16 written prescription, of evaluating, treatment formulating, measuring,
17 designing, fabricating, assembling, fitting, adjusting, servicing, or
18 providing the initial training necessary to accomplish the fitting of an
19 orthosis or pedorthic device.

20 3. "Orthotist" means a person licensed to practice orthotics pursuant
21 to this chapter.

22 4. "Pedorthic device" means therapeutic shoes, shoe modifications made
23 for therapeutic purposes, prosthetic fillers of the forefoot, and foot
24 orthoses for use from the ankle and below, but does not include arch
25 supports; nontherapeutic accommodative inlays and nontherapeutic accom-
26 modative footwear, regardless of method of manufacture; unmodified,
27 over-the-counter shoes; or prefabricated foot care products. For
28 purposes of this subdivision, "accommodative" means designed with the
29 primary goal of conforming to the individual's anatomy and "inlay" means
30 any removable material upon which the foot directly rests inside the
31 shoe and which may be an integral design component of the shoe.

32 5. "Pedorthics" means the practice, pursuant to a licensed physician's
33 written prescription, of evaluating, treatment formulating, measuring,
34 designing, fabricating, assembling, fitting, adjusting, servicing, or
35 providing the initial training necessary to accomplish the fitting of a
36 pedorthic device.

37 6. "Pedorthist" means a person licensed to practice pedorthics pursu-
38 ant to this chapter.

39 7. "Prosthesis" means a medical device used to replace a missing
40 appendage or other external body part, including an artificial limb,
41 hand, or foot. It does not include surgically implanted devices or arti-
42 ficial eyes; dental appliances; ostomy products; cosmetic devices such
43 as breast prostheses, eyelashes, or wigs; or other devices that do not
44 have a significant impact on the musculoskeletal functions of the body.

45 8. "Prosthetics" means the practice, pursuant to a licensed physi-
46 cian's written prescription, of evaluating, treatment formulating, meas-
47 uring, designing, fabricating, assembling, fitting, adjusting, servic-
48 ing, or providing the initial training necessary to accomplish the
49 fitting of a prosthesis.

50 9. "Prosthetist" means a person licensed to practice prosthetics
51 pursuant to this chapter.

52 10. "Prosthetist-orthotist" means a person licensed to practice as a
53 prosthetist and as an orthotist.

54 § 8802. Practice of orthotics, prosthetics and pedorthics; and the use
55 of the titles "orthotist", "prosthetist" and "pedorthist". Only a
56 person licensed or otherwise authorized under this article shall prac-

1 tice the profession of orthotics and/or prosthetics or pedorthics, or
2 use the title "orthotist", "prosthetist", "pedorthist" or
3 "prosthetist/orthotist" in connection with his or her name or with any
4 trade name in the conduct of his or her profession.

5 § 8803. State board for orthotics, prosthetics and pedorthics. 1. A
6 state board for orthotics, prosthetics and pedorthics shall be appointed
7 by the board of regents upon the recommendation of the commissioner for
8 the purpose of assisting the board of regents and the department on
9 matters of licensure and professional conduct in accordance with section
10 sixty-five hundred eight of this title.

11 2. The board shall consist of nine individuals, to be composed of the
12 following:

13 (a) six members shall be licensed or exempt pursuant to this article;

14 (b) one member who shall be an educator of orthotics and/or prosthet-
15 ics;

16 (c) one member who shall be a licensed physician;

17 (d) one member who shall be an individual not possessing either licen-
18 sure or training in medicine, orthotics, prosthetics or pedorthics and
19 shall represent the public at large;

20 3. Members of the board shall serve two year terms, provided, however,
21 that no member shall serve more than two terms.

22 4. An executive secretary to the board shall be appointed by the board
23 of regents on recommendation of the commissioner.

24 § 8804. Requirements and procedures for professional licensure. To
25 qualify for a license for the practice of orthotics, prosthetics and
26 pedorthics, an applicant shall fulfill the following requirements:

27 1. Application. File an application with the department;

28 2. Education.

29 (a)(i) for a license to practice orthotics and/or prosthetics complete
30 educational preparation of a four-year baccalaureate or higher degree in
31 orthotics and/or prosthetics from an accredited college program approved
32 by the state board; or

33 (ii) submit evidence of license or certification, the educational
34 preparation for which is determined by the department to be equivalent
35 to a college program required by subparagraph (i) of this paragraph,
36 from any state or country, satisfactory to the department and in accord-
37 ance with the commissioner's regulations;

38 (b) for a license to practice pedorthics have received a high school
39 diploma or its equivalent, have a minimum of one hundred twenty hours of
40 training as approved by the board and have completed an internship of
41 eighty hours qualified working experience as approved by the board.

42 3. Experience. Have experience satisfactory to the state board for
43 orthotics, prosthetics and pedorthics in accordance with the commission-
44 er's regulations;

45 4. Examination. Pass an oral, written and practical examination satis-
46 factory to the state board for orthotics, prosthetics and pedorthics and
47 in accordance with the commissioner's regulations;

48 5. Age. Be at least twenty-one years of age;

49 6. Character. Be of good moral character as determined by the depart-
50 ment;

51 7. Citizenship or immigration status. Be a United States citizen or an
52 alien lawfully admitted for permanent residence in the United States;
53 and

54 8. Fees. Pay a fee of three hundred fifty dollars to the department
55 for admission to a department conducted examination and for an initial
56 license; a fee of one hundred fifty dollars for each reexamination; a

1 fee of two hundred dollars for an initial license for persons not
2 requiring admission to a department conducted examination; and a fee of
3 five hundred dollars for each triennial registration period.

4 § 8805. Exemptions. Nothing in this article shall be construed to
5 affect, prevent or in any manner expand or limit:

6 1. the authority of any person otherwise authorized by law or regu-
7 lation to practice or perform any function of an orthotist, prosthetist
8 or pedorthist; or

9 2. the activities and services of any person who is licensed to prac-
10 tice medicine and surgery, dentistry or podiatry by the state; or

11 3. an orthotist, prosthetist or pedorthist licensed in another state
12 or country from conducting a teaching clinical demonstration in
13 connection with a program of basic clinical education, graduate educa-
14 tion, or postgraduate education in an approved school of orthotics,
15 prosthetics or pedorthics or in its affiliated clinical facility or
16 health care agency, or before a group of licensed orthotists, prosthe-
17 tists or pedorthists who are members of a professional society; or

18 4. an orthotic or prosthetic specialist who is serving in the armed
19 forces or the public health service of the United States or is employed
20 by the veterans administration from practicing the profession of orthot-
21 ics or prosthetics, provided such practice is limited to such service or
22 employment; or

23 5. an orthotic or prosthetic student from engaging in clinical prac-
24 tice under the supervision of a licensed orthotist or prosthetist as
25 part of a program conducted in an approved school of orthotics or pros-
26 thetics, or in a clinical facility or health care agency affiliated with
27 the school of orthotics or prosthetics and the supervision of an orthot-
28 ic or prosthetic student by a licensed orthotist or prosthetist shall be
29 on-site supervision and not necessarily direct personal supervision; or

30 6. an orthotic or prosthetic graduate of an approved program from
31 engaging in clinical practice under the on-site, but not necessarily
32 direct personal supervision of a licensed orthotist or prosthetist
33 provided the graduate has applied and paid a fee for the licensing and
34 examination.

35 § 8806. Licensure without examination. 1. Within eighteen months after
36 the effective date of regulations implementing the provisions of this
37 article, the department may issue a license to practice the profession
38 of orthotics, prosthetics or pedorthics without an examination to a
39 person who meets the requirements of subdivisions one, five, six and
40 seven of section eighty-eight hundred four of this article and who in
41 addition has practiced full-time for the past five years in an estab-
42 lished prosthetic, orthotic or pedorthic facility as an orthotist,
43 prosthetist or pedorthist. The applicant may obtain a license to prac-
44 tice orthotics, prosthetics or pedorthics under the provisions of this
45 article after the board has completed an investigation into the appli-
46 cant's work history. Such investigation may include, but is not limited
47 to, submission by the applicant of a sworn statement detailing the
48 applicant's work history and scope of practice. The board shall complete
49 its investigation for the purposes of this subdivision within six months
50 after the date of the application.

51 2. The provisions of this article shall not be deemed to affect the
52 validity of any license or permit relating to the practice of orthotics,
53 prosthetics or pedorthics in effect prior to the effective date of this
54 article, or the continuation or any administrative action or proceeding
55 commenced prior to such effective date.

1 § 2. This act shall take effect January 1, 2008; provided, however,
2 that any actions necessary for the implementation of the provisions of
3 this act on its effective date are authorized and directed to be
4 completed on or before such effective date.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S3848

SPONSOR: FLANAGAN

TITLE OF BILL:

An act to amend the education law, in relation to creating the profession of orthotics, prosthetic and pedorthic practice

PURPOSE OR GENERAL IDEA OF BILL:

To establish a State Board of Orthotists, Prosthetists and Pedorthists within the Department of Education; to provide for the licensing of Orthotists, Prosthetists and Pedorthists by the State. Board of Orthotists, Prosthetists and Pedorthists, and to add a new Article 167 to the Education Law.

SUMMARY OF SPECIFIC PROVISIONS:

The Education Law is amended by adding a new Article 167 entitled: Orthotic and Prosthetic Practice.

JUSTIFICATION:

For a number of significant reasons, there is a growing and perhaps even desparate need for professionalized orthotic and prosthetic (O&P) care in New York and the United States. Since 1973, the U.S. Department of Education has identified O&P training as a national priority with both a training and practitioner deficit. Several factors now combine to exacerbate that stated need exponentially.

Some of these factors are health related. The Department of Health and Human Services recently reported on the twin epidemics of diabetes. and obesity. Diabetes is the leading cause of limb loss, and the recent explosion in cases of obesity and diabetes are expected to result in the escalation of diabetic amputations. The number of Americans with diagnosed diabetes is, projected to increase 165 percent by 2050. Cardiovascular disease, the nation's leading killer, is the second leading cause of amputations. Millions of Americans living today with cardiovascular disease are at an increased risk for amputation. Obesity further complicates the risk of Americans developing a chronic disease like heart disease or diabetes and increases the risk of amputations to those living with these conditions.

The National Health Interview Survey indicates that 35 million Americans (one in eight) have disabling conditions that interfere with life activities and 16 percent of those individuals reported an orthopedic impairment. In 1990, more than 3;5 million persons in the U.S. were using some kind of orthosis, more than a 100 percent increase since 1980. Approximately 20.3 percent of the 2 million Americans with complete or partial paralysis of extremities use orthoses (Nielsen, May 2002).

The demand for provider services is expected to increase by 25 percent for orthotic care and 47 percent for prosthetic care by 2020. This

practitioner shortage means more demand than ever for graduates of the nation's O&P education programs. Without an increase in the number of O&P students, by the year 2020, only 61 percent or less of the population using orthoses will be served. Similarly, only 66 percent or less of prosthetic consumers' needs will be met by 2020—a population expected to increase by 47 percent by that year.

In addition to these medical causes, our nation's military contributes to the need for this legislation. Since the war on terror began in 2001, more than 14,000 troops have been wounded in Iraq and Afghanistan. Of those, nearly half still require long-term care. The most severely injured soldiers suffer from double and triple amputations, severe head and body trauma, blindness, deafness, and partial and full paralysis. The use of improvised explosive devices in Iraq has resulted in many cases of severe burns. To meet the growing need for the care and rehabilitation of the men and women who have sacrificed so much, the professionalization of O&P care is essential.

Furthermore, this legislation, by providing an enhanced level of professional care and education, will protect consumers of orthotic-prosthetic-pedorthic treatment in New York State against inadequate or substandard practitioners. Our consumers are presently exposed to actual and potential harm in the following ways:

1. **PHYSICAL HARM;** Orthoses, prostheses and pedorthic devices fit intimately on the human body. Improper fit due to inadequate education and training of the practitioner can result in the device, rather than improving the patient's life, actually complicating it and increasing the risk of physical injury to the patient. A well designed and carefully fitted orthosis or prosthesis can significantly improve a physically challenged individual's life, allowing him or her to be a productive member of our State to the fullest of his or her potential. However, a poorly designed and/ or poorly fitted one can cause further medical complications and/or result in serious physical injury to the patient.

2. **PSYCHOLOGICAL HARM;** The physically challenged individual or his loved ones, when presented with an inadequate device or incompetent service, can and do experience emotional harm. Decreased self-confidence, diminished self-worth, distress from chronic discomfort, and increased self-consciousness are but a few of the problems which cumulatively add to the grief already experienced due to the sense of loss or diminished body image.

3. **FINANCIAL HARM;** Because orthotics, prosthetic and pedorthic practice is unregulated, consumers, their loved ones and the taxpayers of this state suffer from numerous economic hardships.

The proposed legislation is the most effective means of addressing these harms. It will insure the public of the initial and continuing professional ability of orthotic-prosthetic-pedorthic practitioners by mandating their competency to provide custom-made orthoses, prostheses and pedorthic devices. Licensure will also insure that the public has a mechanism for lodging complaints to a disciplining authority when they are subjected to unprofessional conduct.

Licensure is also warranted by the recognition by other medical professionals of the emergence of the field of orthotics-prosthetics-pedorthics as a separate and distinct health care profession. The American Medical Association recognizes the field of orthotics-prosthetics and Pedorthics as distinct specialties. It has a unique and expanding

body of knowledge, its own research and training facilities and institutions, and the expertise of its practitioners and educators is increasingly relied upon by the rest of the medical Community.

Moreover the increasing technological sophistication of the field makes mandated levels of training and education essential in assuring competent care by practitioners. Medicare, recognizing the special expertise of the prosthetist, requiring a prosthetist's evaluation of the functional potential and appropriate components for new amputees. This program's view that the referring physician is not the sole repository of information for identifying a patient's functional potential - is common. As a result, collaboration between prosthetist and physician is also a common practice in the development of the correct prescription for a patient.

Although there are a number of federal laws regulating prosthetic, orthotic and pedorthic devices, none protect the consumer from incompetent or unscrupulous practitioners. Under Title 21, Chapter 9 of the Code of Federal Regulations, the Federal Food, Drug, and Cosmetic Act addresses prosthetic and orthotic devices within the provisions of Subchapter V (Drugs and Devices). As a result of this statutory framework, the consumer is left to seek redress for any wrongs committed by an unscrupulous or incompetent practitioner in the courts.

The need to provide the public with a means of identifying qualified practitioners is more compelling today than ever before. This critical need continues to grow dramatically with each passing year, as the field grows ever more sophisticated and broadly utilized, resulting in ever greater public exposure to the potential for serious physical, emotional, and financial harm.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None to the State or local governments.

EFFECTIVE DATE:

January 1st next succeeding the date on which it shall have become a law.
