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I N   S E N A T E

June 19, 2012

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Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, the public health law, and the civil practice law and rules, in relation to the podiatric scope of practice

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 7001 of the education law, as amended by chapter  
2     677 of the laws of 1996, is amended to read as follows:

3     S 7001. Definition of practice of podiatry. 1. The practice of the  
4     profession of podiatry is defined as diagnosing, treating, operating and  
5     prescribing for any disease, injury, deformity or other condition of the  
6     foot, and may include performing physical evaluations in conjunction  
7     with the provision of podiatric treatment. FOR THE PURPOSES OF WOUND  
8     CARE HOWEVER, THE PRACTICE OF PODIATRY SHALL INCLUDE THE TREATMENT OF  
9     SUCH WOUNDS IF THEY ARE CONTIGUOUS WITH WOUNDS RELATING, ORIGINATING OR  
10    IN THE COURSE OF TREATMENT OF A WOUND ON THE FOOT WITHIN THE PODIATRIC  
11    SCOPE OF PRACTICE. WOUND CARE SHALL NOT, HOWEVER, EXTEND BEYOND TO THE  
12    LEVEL ENDING AT THE DISTAL TIBIAL TUBEROSITY. THE PRACTICE OF PODIATRY  
13    MAY ALSO INCLUDE DIAGNOSING, TREATING, OPERATING AND PRESCRIBING FOR ANY  
14    DISEASE, INJURY, DEFORMITY OR OTHER CONDITION OF THE ANKLE AND SOFT  
15    TISSUE OF THE LEG BELOW THE TIBIAL TUBEROSITY IF THE PODIATRIST HAS  
16    OBTAINED AN ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD ANKLE  
17    SURGERY OR ADVANCED ANKLE SURGERY IN ACCORDANCE WITH SECTION SEVEN THOU-  
18    SAND NINE OF THIS ARTICLE. Podiatrists may treat traumatic open wound  
19    fractures only in hospitals, as defined in article twenty-eight of the  
20    public health law. FOR THE PURPOSES OF THIS ARTICLE, THE TERM "ANKLE"  
21    SHALL BE DEFINED AS THE DISTAL METAPHYSIS AND EPIPHYSIS OF THE TIBIA AND  
22    FIBULA, THE ARTICULAR CARTILAGE OF THE DISTAL TIBIA AND DISTAL FIBULA,  
23    THE LIGAMENTS THAT CONNECT THE DISTAL METAPHYSIS AND EPIPHYSIS OF THE  
24    TIBIA AND FIBULA AND TALUS, AND THE PORTIONS OF SKIN, SUBCUTANEOUS  
25    TISSUE, FACIA, MUSCLES, TENDONS, LIGAMENTS AND NERVES AT OR BELOW THE  
26    LEVEL OF THE MYOTENDINOUS JUNCTION OF THE TRICEPS SURAE.

27    2. The practice of podiatry shall not include treating any part of the  
28    human body other than the foot, nor treating fractures of the malleoli

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

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1 or cutting operations upon the malleoli UNLESS THE PODIATRIST OBTAINS AN  
2 ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD ANKLE SURGERY OR  
3 PODIATRIC ADVANCED ANKLE SURGERY. PODIATRISTS WHO HAVE OBTAINED AN ISSU-  
4 ANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD ANKLE SURGERY MAY  
5 PERFORM SURGERY ON THE ANKLE WHICH MAY INCLUDE SOFT TISSUE AND OSSEOUS  
6 PROCEDURES EXCEPT THOSE PROCEDURES SPECIFICALLY AUTHORIZED FOR PODIA-  
7 TRISTS WHO HAVE OBTAINED AN ISSUANCE OF A PRIVILEGE FOR ADVANCED ANKLE  
8 SURGERY. PODIATRISTS WHO HAVE OBTAINED AN ISSUANCE OF A PRIVILEGE TO  
9 PERFORM PODIATRIC ADVANCED ANKLE SURGERY MAY PERFORM SURGERY ON THE  
10 ANKLE WHICH MAY INCLUDE ANKLE FRACTURE FIXATION, ANKLE FUSION, ANKLE  
11 ARTHROSCOPY, INSERTION OR REMOVAL OF EXTERNAL FIXATION PINS INTO OR FROM  
12 THE TIBIAL DIAPHYSIS AT OR BELOW THE LEVEL OF THE MYOTENDINOUS JUNCTION  
13 OF THE TRICEPS SURAE, AND INSERTION AND REMOVAL OF RETROGRADE TIBIOTALO-  
14 CALCANEAL INTRAMEDULLARY RODS AND LOCKING SCREWS UP TO THE LEVEL OF THE  
15 MYOTENDINOUS JUNCTION OF THE TRICEPS SURAE, BUT DOES NOT INCLUDE THE  
16 SURGICAL TREATMENT OF COMPLICATIONS WITHIN THE TIBIAL DIAPHYSIS RELATED  
17 TO THE USE OF SUCH EXTERNAL FIXATION PINS. Podiatrists licensed to  
18 practice, but not authorized to prescribe or administer narcotics prior  
19 to the effective date of this subdivision, may do so only after certif-  
20 ication by the department in accordance with the qualifications estab-  
21 lished by the commissioner. The practice of podiatry shall include  
22 administering only local anesthetics for therapeutic purposes as well as  
23 for anesthesia and treatment under general anesthesia administered by  
24 authorized persons. THE PRACTICE OF PODIATRY BY ANY LICENSEE SHALL NOT  
25 INCLUDE PARTIAL OR TOTAL ANKLE REPLACEMENTS NOR THE TREATMENT OF PILON  
26 FRACTURES.

27 S 2. The education law is amended by adding two new sections 7009 and  
28 7010 to read as follows:

29 S 7009. PODIATRIC ANKLE SURGERY PRIVILEGES. 1. FOR ISSUANCE OF A PRIV-  
30 ILEGE TO PERFORM PODIATRIC STANDARD ANKLE SURGERY, AS THAT TERM IS USED  
31 IN SUBDIVISION TWO OF SECTION SEVEN THOUSAND ONE OF THIS ARTICLE, THE  
32 APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

33 A. APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

34 B. LICENSE: BE LICENSED AS A PODIATRIST IN THE STATE;

35 C. TRAINING AND CERTIFICATION: EITHER:

36 (I) HAVE GRADUATED ON OR AFTER JUNE FIRST, TWO THOUSAND SIX FROM A  
37 THREE-YEAR RESIDENCY PROGRAM IN PODIATRIC MEDICINE AND SURGERY THAT WAS  
38 ACCREDITED BY AN ACCREDITING AGENCY ACCEPTABLE TO THE DEPARTMENT, AND BE  
39 CERTIFIED IN RECONSTRUCTIVE REARFOOT AND ANKLE SURGERY BY A NATIONAL  
40 CERTIFYING BOARD HAVING CERTIFICATION STANDARDS ACCEPTABLE TO THE  
41 DEPARTMENT; OR

42 (II) HAVE GRADUATED ON OR AFTER JUNE FIRST, TWO THOUSAND SIX FROM A  
43 THREE-YEAR RESIDENCY PROGRAM IN PODIATRIC MEDICINE AND SURGERY THAT WAS  
44 ACCREDITED BY AN ACCREDITING AGENCY ACCEPTABLE TO THE DEPARTMENT, BE  
45 BOARD QUALIFIED BUT NOT YET CERTIFIED IN RECONSTRUCTIVE REARFOOT AND  
46 ANKLE SURGERY BY A NATIONAL CERTIFYING BOARD HAVING CERTIFICATION STAND-  
47 ARDS ACCEPTABLE TO THE DEPARTMENT, AND PROVIDE DOCUMENTATION THAT HE OR  
48 SHE HAS ACCEPTABLE TRAINING AND EXPERIENCE IN STANDARD OR ADVANCE  
49 MIDFOOT, REARFOOT AND ANKLE PROCEDURES THAT HAS BEEN APPROVED BY THE  
50 DEPARTMENT; OR

51 (III) HAVE GRADUATED BEFORE JUNE FIRST, TWO THOUSAND SIX FROM A  
52 TWO-YEAR RESIDENCY PROGRAM IN PODIATRIC MEDICINE AND SURGERY THAT WAS  
53 ACCREDITED BY AN ACCREDITING AGENCY ACCEPTABLE TO THE DEPARTMENT, BE  
54 CERTIFIED IN RECONSTRUCTIVE REARFOOT AND ANKLE SURGERY BY A NATIONAL  
55 CERTIFYING BOARD HAVING CERTIFICATION STANDARDS ACCEPTABLE TO THE  
56 DEPARTMENT, AND PROVIDE DOCUMENTATION THAT HE OR SHE HAS ACCEPTABLE

1 TRAINING AND EXPERIENCE IN STANDARD OR ADVANCED MIDFOOT, REARFOOT AND  
2 ANKLE PROCEDURES THAT HAS BEEN APPROVED BY THE DEPARTMENT;

3 D. FEES: PAY A FEE TO THE DEPARTMENT OF TWO HUNDRED TWENTY DOLLARS FOR  
4 THE ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD ANKLE SURGERY.

5 2. FOR ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC ADVANCED ANKLE  
6 SURGERY, AS THAT TERM IS USED IN SUBDIVISION TWO OF SECTION SEVEN THOU-  
7 SAND ONE OF THIS ARTICLE, THE APPLICANT SHALL FULFILL THE FOLLOWING  
8 REQUIREMENTS:

9 A. APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

10 B. LICENSE: BE LICENSED AS A PODIATRIST IN THE STATE;

11 C. EXPERIENCE AND CERTIFICATION: EITHER:

12 (I) HAVE GRADUATED ON OR AFTER JUNE FIRST, TWO THOUSAND SIX FROM A  
13 THREE-YEAR RESIDENCY PROGRAM IN PODIATRIC MEDICINE AND SURGERY THAT WAS  
14 ACCREDITED BY AN ACCREDITING AGENCY ACCEPTABLE TO THE DEPARTMENT, BE  
15 CERTIFIED IN RECONSTRUCTIVE REARFOOT AND ANKLE SURGERY BY A NATIONAL  
16 CERTIFYING BOARD HAVING CERTIFICATION STANDARDS ACCEPTABLE TO THE  
17 DEPARTMENT, AND PROVIDE DOCUMENTATION THAT HE OR SHE HAS ACCEPTABLE  
18 TRAINING AND EXPERIENCE IN ADVANCED MIDFOOT, REARFOOT AND ANKLE PROCE-  
19 DURES THAT HAS BEEN APPROVED BY THE DEPARTMENT; OR

20 (II) HAVE GRADUATED BEFORE JUNE FIRST, TWO THOUSAND SIX FROM A  
21 TWO-YEAR RESIDENCY PROGRAM IN PODIATRIC MEDICINE AND SURGERY THAT WAS  
22 ACCREDITED BY AN ACCREDITING AGENCY ACCEPTABLE TO THE DEPARTMENT, BE  
23 CERTIFIED IN RECONSTRUCTIVE REARFOOT AND ANKLE SURGERY, BY A NATIONAL  
24 CERTIFYING BOARD HAVING CERTIFICATION STANDARDS ACCEPTABLE TO THE  
25 DEPARTMENT, AND PROVIDE DOCUMENTATION THAT HE OR SHE HAS ACCEPTABLE  
26 TRAINING AND EXPERIENCE IN ADVANCED MIDFOOT, REARFOOT AND ANKLE PROCE-  
27 DURES THAT HAS BEEN APPROVED BY THE DEPARTMENT.

28 D. FEES: PAY A FEE TO THE DEPARTMENT OF TWO HUNDRED TWENTY DOLLARS FOR  
29 THE ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC ADVANCED ANKLE SURGERY.

30 3. DURATION AND REGISTRATION OF PRIVILEGES. A PRIVILEGE ISSUED UNDER  
31 THIS SECTION SHALL BE VALID FOR THE LIFE OF THE HOLDER, UNLESS REVOKED,  
32 ANNULLED, OR SUSPENDED BY THE BOARD OF REGENTS. SUCH A PRIVILEGE SHALL  
33 BE SUBJECT TO THE SAME OVERSIGHT AND DISCIPLINARY PROVISIONS AS LICENSES  
34 ISSUED UNDER THIS TITLE. THE HOLDER OF A PRIVILEGE ISSUED UNDER THIS  
35 SECTION SHALL REGISTER WITH THE DEPARTMENT AS A PRIVILEGE HOLDER IN THE  
36 SAME MANNER AND SUBJECT TO THE SAME PROVISIONS AS REQUIRED OF A LICENSEE  
37 PURSUANT TO SECTION SIX THOUSAND FIVE HUNDRED TWO OF THIS TITLE,  
38 PROVIDED THAT, AT THE TIME OF EACH REGISTRATION, THE PRIVILEGE HOLDER  
39 SHALL CERTIFY THAT HE OR SHE CONTINUES TO MEET THE REQUIREMENTS FOR THE  
40 PRIVILEGE SET FORTH IN THIS SECTION. THE FEE FOR SUCH REGISTRATION SHALL  
41 BE TWO HUNDRED TEN DOLLARS. THE REGISTRATION PERIOD FOR A PRIVILEGE  
42 HOLDER SHALL BE COTERMINOUS WITH HIS OR HER REGISTRATION AS A PODIA-  
43 TRIST.

44 S 7010. ANKLE SURGERY LIMITED PERMITS. A LIMITED PERMIT TO PERFORM  
45 PODIATRIC STANDARD ANKLE SURGERY, AS DESCRIBED IN SUBDIVISION TWO OF  
46 SECTION SEVEN THOUSAND ONE OF THIS ARTICLE, MAY BE ISSUED BY THE DEPART-  
47 MENT TO A PODIATRIST WHO IS LICENSED PURSUANT TO THIS ARTICLE AND WHO  
48 HAS MET THE RESIDENCY AND BOARD QUALIFICATION/CERTIFICATION REQUIREMENTS  
49 SET FORTH IN SUBDIVISION ONE OF SECTION SEVEN THOUSAND NINE OF THIS  
50 ARTICLE IN ORDER TO AUTHORIZE SUCH PODIATRIST TO OBTAIN THE TRAINING AND  
51 EXPERIENCE REQUIRED FOR THE ISSUANCE OF A PODIATRIC STANDARD ANKLE  
52 SURGERY PRIVILEGE PURSUANT TO SUBDIVISION ONE OF SECTION SEVEN THOUSAND  
53 NINE OF THIS ARTICLE. SUCH PERMITS SHALL AUTHORIZE THE PERFORMANCE OF  
54 PODIATRIC STANDARD ANKLE SURGERY ONLY UNDER THE DIRECT PERSONAL SUPER-  
55 VISION OF A LICENSED PODIATRIST HOLDING A PODIATRIC STANDARD ANKLE  
56 SURGERY PRIVILEGE OR A PODIATRIC ADVANCED ANKLE SURGERY PRIVILEGE ISSUED

PURSUANT TO SECTION SEVEN THOUSAND NINE OF THIS ARTICLE OR OF A PHYSICIAN LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE AND CERTIFIED IN ORTHOPEDIC SURGERY BY A NATIONAL CERTIFYING BOARD HAVING CERTIFICATION STANDARDS ACCEPTABLE TO THE DEPARTMENT.

2. A LIMITED PERMIT TO PERFORM PODIATRIC ADVANCED ANKLE SURGERY, AS DESCRIBED IN SUBDIVISION TWO OF SECTION SEVEN THOUSAND ONE OF THIS ARTICLE, MAY BE ISSUED BY THE DEPARTMENT TO A PODIATRIST WHO IS LICENSED PURSUANT TO THIS ARTICLE AND WHO HAS MET THE RESIDENCY AND BOARD CERTIFICATION REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF SECTION SEVEN THOUSAND NINE OF THIS ARTICLE IN ORDER TO AUTHORIZE SUCH PODIATRIST TO OBTAIN THE TRAINING AND EXPERIENCE REQUIRED FOR THE ISSUANCE OF A PODIATRIC ADVANCED ANKLE SURGERY PRIVILEGE PURSUANT TO SUBDIVISION TWO OF SECTION SEVEN THOUSAND NINE OF THIS ARTICLE. SUCH PERMITS SHALL AUTHORIZE THE PERFORMANCE OF PODIATRIC ADVANCED ANKLE SURGERY ONLY UNDER THE DIRECT PERSONAL SUPERVISION OF A LICENSED PODIATRIST HOLDING A PODIATRIC ADVANCED ANKLE SURGERY PRIVILEGE ISSUED PURSUANT TO SUBDIVISION TWO OF SECTION SEVEN THOUSAND NINE OF THIS ARTICLE OR OF A PHYSICIAN LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE AND CERTIFIED IN ORTHOPEDIC SURGERY BY A NATIONAL CERTIFYING BOARD HAVING CERTIFICATION STANDARDS ACCEPTABLE TO THE DEPARTMENT.

3. FOR THE PURPOSES OF THIS SECTION, DIRECT PERSONAL SUPERVISION MEANS SUPERVISION OF PROCEDURES BASED ON INSTRUCTIONS GIVEN DIRECTLY BY THE SUPERVISING PODIATRIST OR PHYSICIAN WHO REMAINS IN THE IMMEDIATE AREA WHERE THE PROCEDURES ARE BEING PERFORMED, AUTHORIZES THE PROCEDURES AND EVALUATES THE PROCEDURES PERFORMED BY THE HOLDER OF THE LIMITED PERMIT.

4. THE HOLDER OF A LIMITED PERMIT ISSUED PURSUANT TO THIS SECTION SHALL PERFORM PODIATRIC ANKLE SURGERY ONLY IN A HOSPITAL OR HEALTH FACILITY LICENSED PURSUANT TO ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW AND APPROPRIATELY AUTHORIZED TO PROVIDE SUCH SURGERY.

5. LIMITED PERMITS SHALL BE ISSUED FOR A PERIOD OF ONE YEAR, AND MAY BE RENEWED FOR ADDITIONAL ONE YEAR PERIODS WHEN NECESSARY TO PERMIT THE COMPLETION OF THE TRAINING AND EXPERIENCE REQUIRED TO OBTAIN A PODIATRIC STANDARD ANKLE SURGERY PRIVILEGE OR PODIATRIC ADVANCED ANKLE SURGERY PRIVILEGE, AS APPLICABLE, PROVIDED THAT NO PERMIT MAY BE RENEWED MORE THAN FOUR TIMES FOR EACH SUCH PRIVILEGE.

6. THE FEE FOR A LIMITED PERMIT SHALL BE ONE HUNDRED FIVE DOLLARS AND THE FEE FOR A RENEWAL SHALL BE FIFTY DOLLARS.

S 3. Paragraph (i) of subdivision 1 of section 230-d of the public health law, as added by chapter 365 of the laws of 2007, is amended to read as follows:

(i) "Licensee" shall mean an individual licensed or otherwise authorized under [articles] ARTICLE one hundred thirty-one [or], one hundred thirty-one-B, INDIVIDUALS WHO HAVE OBTAINED AN ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD OR ADVANCED ANKLE SURGERY PURSUANT TO SUBDIVISIONS ONE AND TWO OF SECTION SEVEN THOUSAND NINE of the education law.

S 4. Section 2995-d of the public health law is amended by adding a new subdivision 4-a to read as follows:

4-A. IN COOPERATION WITH THE EDUCATION DEPARTMENT, ESTABLISH A HEALTH CARE PRACTITIONER DATABASE RELATING TO PODIATRISTS. SUCH DATABASE SHALL INCLUDE INFORMATION SIMILAR TO THE PHYSICIAN PROFILES ESTABLISHED PURSUANT TO SECTION TWENTY-NINE HUNDRED NINETY-FIVE-A OF THIS TITLE. THE DATABASE SHALL BE CAPABLE OF PRESENTING RELEVANT MEDICAL AND TREATMENT INFORMATION IN A FORMAT THAT IS EASILY UNDERSTOOD BY AND MADE AVAILABLE TO THE GENERAL PUBLIC.

1 S 5. Paragraph 1 of subdivision (d) of section 3101 of the civil prac-  
2 tice law and rules is amended by adding a new subparagraph (iv) to read  
3 as follows:  
4 (IV) IN AN ACTION FOR PODIATRIC MEDICAL MALPRACTICE, A PHYSICIAN MAY  
5 BE CALLED AS AN EXPERT WITNESS AT TRIAL.  
6 S 6. This act shall take effect eighteen months after it shall have  
7 become a law. Effective immediately, the addition, amendment and/or  
8 repeal of any rule or regulation necessary for the implementation of the  
9 provisions of this act on its effective date is authorized to be made on  
10 or before such effective date.