S T A T E O F N E W Y O R K

3586

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. BRADLEY, CYMBROWITZ, MILLMAN, JAFFEE, FIELDS -- Multi-Sponsored by -- M. of A. BOYLAND, CAHILL, DelMONTE, MARKEY, WEISENBERG -- read once and referred to the Committee on Higher Education

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

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

Section 1. The education law is amended by adding a new article 167 to 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.

S 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.

S 8801. DEFINITIONS. AS USED IN THIS ARTICLE:

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

LBD03356-01-9

1. "ORTHOSIS" MEANS A MEDICAL DEVICE USED TO PROVIDE SUPPORT, CORRECTION, OR ALLEVIATION OF NEUROMUSCULAR OR MUSCULOSKELETAL DYSFUNCTION, DISEASE, INJURY OR DEFORMITY, BUT DOES NOT INCLUDE THE FOLLOWING ASSISTIVE TECHNOLOGY DEVICES: UPPER EXTREMITY ADAPTIVE EQUIPMENT USED TO FACILITATE THE ACTIVITIES OF DAILY LIVING, INCLUDING SPECIALIZED UTENSILS, COMBS, AND BRUSHES; FINGER SPLINTS; WHEELCHAIR SEATING AND EQUIPMENT THAT IS AN INTEGRAL PART OF THE WHEELCHAIR AND NOT WORN BY THE PATIENT; ELASTIC ABDOMINAL SUPPORTS THAT DO NOT HAVE METAL OR PLASTIC REINFORCING STAYS; ARCH SUPPORTS; NONTHERAPEUTIC ACCOMMODATIVE INLAYS AND NONTHERAPEUTIC ACCOMMODATIVE FOOTWEAR, REGARDLESS OF METHOD OF MANUFACTURE; UNMODIFIED, OVER-THE-COUNTER SHOES; PREFABRICATED FOOT CARE PRODUCTS; DURABLE MEDICAL EQUIPMENT SUCH AS CANES, CRUTCHES, OR WALKERS; DENTAL APPLIANCES; OR DEVICES IMPLANTED INTO THE BODY BY A PHYSICIAN.

FOR PURPOSES OF THIS SUBDIVISION, "ACCOMMODATIVE" MEANS DESIGNED WITH THE PRIMARY GOAL OF CONFORMING TO THE INDIVIDUAL'S ANATOMY AND "INLAY" MEANS ANY REMOVABLE MATERIAL UPON WHICH THE FOOT DIRECTLY RESTS INSIDE THE SHOE AND WHICH MAY BE AN INTEGRAL DESIGN COMPONENT OF THE SHOE.

2. "ORTHOTICS" MEANS THE PRACTICE, PURSUANT TO A LICENSED PHYSICIAN'S WRITTEN PRESCRIPTION, OF EVALUATING, TREATMENT FORMULATING, MEASURING, DESIGNING, FABRICATING, ASSEMBLING, FITTING, ADJUSTING, SERVICING, OR PROVIDING THE INITIAL TRAINING NECESSARY TO ACCOMPLISH THE FITTING OF AN ORTHOSIS OR PEDORTHIC DEVICE.

3. "ORTHOTIST" MEANS A PERSON LICENSED TO PRACTICE ORTHOTICS PURSUANT TO THIS CHAPTER.

4. "PEDORTHIC DEVICE" MEANS THERAPEUTIC SHOES, SHOE MODIFICATIONS MADE FOR THERAPEUTIC PURPOSES, PROSTHETIC FILLERS OF THE FOREFOOT, AND FOOT ORTHOSES FOR USE FROM THE ANKLE AND BELOW, BUT DOES NOT INCLUDE ARCH SUPPORTS; NONTHERAPEUTIC ACCOMMODATIVE INLAYS AND NONTHERAPEUTIC ACCOMMODATIVE FOOTWEAR, REGARDLESS OF METHOD OF MANUFACTURE; UNMODIFIED, OVER-THE-COUNTER SHOES; OR PREFABRICATED FOOT CARE PRODUCTS. FOR PURPOSES OF THIS SUBDIVISION, "ACCOMMODATIVE" MEANS DESIGNED WITH THE PRIMARY GOAL OF CONFORMING TO THE INDIVIDUAL'S ANATOMY AND "INLAY" MEANS ANY REMOVABLE MATERIAL UPON WHICH THE FOOT DIRECTLY RESTS INSIDE THE SHOE AND WHICH MAY BE AN INTEGRAL DESIGN COMPONENT OF THE SHOE.

5. "PEDORTHICS" MEANS THE PRACTICE, PURSUANT TO A LICENSED PHYSICIAN'S WRITTEN PRESCRIPTION, OF EVALUATING, TREATMENT FORMULATING, MEASURING, DESIGNING, FABRICATING, ASSEMBLING, FITTING, ADJUSTING, SERVICING, OR PROVIDING THE INITIAL TRAINING NECESSARY TO ACCOMPLISH THE FITTING OF A PEDORTHIC DEVICE.

6. "PEDORTHIST" MEANS A PERSON LICENSED TO PRACTICE PEDORTHICS PURSUANT TO THIS CHAPTER.

7. "PROSTHESIS" MEANS A MEDICAL DEVICE USED TO REPLACE A MISSING APPENDAGE OR OTHER EXTERNAL BODY PART, INCLUDING AN ARTIFICIAL LIMB, HAND, OR FOOT. IT DOES NOT INCLUDE SURGICALLY IMPLANTED DEVICES OR ARTIFICIAL EYES; DENTAL APPLIANCES; OSTOMY PRODUCTS; COSMETIC DEVICES SUCH AS BREAST PROSTHESES, EYELASHES, OR WIGS; OR OTHER DEVICES THAT DO NOT HAVE A SIGNIFICANT IMPACT ON THE MUSCULOSKELETAL FUNCTIONS OF THE BODY.

8. "PROSTHETICS" MEANS THE PRACTICE, PURSUANT TO A LICENSED PHYSICIAN'S WRITTEN PRESCRIPTION, OF EVALUATING, TREATMENT FORMULATING, MEASURING, DESIGNING, FABRICATING, ASSEMBLING, FITTING, ADJUSTING, SERVICING, OR PROVIDING THE INITIAL TRAINING NECESSARY TO ACCOMPLISH THE FITTING OF A PROSTHESIS.

9. "PROSTHETIST" MEANS A PERSON LICENSED TO PRACTICE PROSTHETICS PURSUANT TO THIS CHAPTER.

10. "PROSTHETIST-ORTHOTIST" MEANS A PERSON LICENSED TO PRACTICE AS A PROSTHETIST AND AS AN ORTHOTIST.

S 8802. PRACTICE OF ORTHOTICS, PROSTHETICS AND PEDORTHICS; AND THE USE OF THE TITLES "ORTHOTIST", "PROSTHETIST" AND "PEDORTHIST". ONLY A PERSON LICENSED OR OTHERWISE AUTHORIZED UNDER THIS ARTICLE SHALL PRACTICE THE PROFESSION OF ORTHOTICS AND/OR PROSTHETICS OR PEDORTHICS, OR USE THE TITLE "ORTHOTIST", "PROSTHETIST", "PEDORTHIST" OR "PROSTHETIST/ORTHOTIST" IN CONNECTION WITH HIS OR HER NAME OR WITH ANY TRADE NAME IN THE CONDUCT OF HIS OR HER PROFESSION.

S 8803. STATE BOARD FOR ORTHOTICS, PROSTHETICS AND PEDORTHICS. 1. A STATE BOARD FOR ORTHOTICS, PROSTHETICS AND PEDORTHICS SHALL BE APPOINTED BY THE BOARD OF REGENTS UPON THE RECOMMENDATION OF THE COMMISSIONER FOR THE PURPOSE OF ASSISTING THE BOARD OF REGENTS AND THE DEPARTMENT ON MATTERS OF LICENSURE AND PROFESSIONAL CONDUCT IN ACCORDANCE WITH SECTION SIXTY-FIVE HUNDRED EIGHT OF THIS TITLE.

2. THE BOARD SHALL CONSIST OF NINE INDIVIDUALS, TO BE COMPOSED OF THE FOLLOWING:

(A) SIX MEMBERS SHALL BE LICENSED OR EXEMPT PURSUANT TO THIS ARTICLE;

(B) ONE MEMBER WHO SHALL BE AN EDUCATOR OF ORTHOTICS AND/OR PROSTHETICS;

(C) ONE MEMBER WHO SHALL BE A LICENSED PHYSICIAN;

(D) ONE MEMBER WHO SHALL BE AN INDIVIDUAL NOT POSSESSING EITHER LICENSURE OR TRAINING IN MEDICINE, ORTHOTICS, PROSTHETICS OR PEDORTHICS AND SHALL REPRESENT THE PUBLIC AT LARGE;

3. MEMBERS OF THE BOARD SHALL SERVE TWO YEAR TERMS, PROVIDED, HOWEVER, THAT NO MEMBER SHALL SERVE MORE THAN TWO TERMS.

4. AN EXECUTIVE SECRETARY TO THE BOARD SHALL BE APPOINTED BY THE BOARD OF REGENTS ON RECOMMENDATION OF THE COMMISSIONER.

S 8804. REQUIREMENTS AND PROCEDURES FOR PROFESSIONAL LICENSURE. TO QUALIFY FOR A LICENSE FOR THE PRACTICE OF ORTHOTICS, PROSTHETICS AND PEDORTHICS, AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

1. APPLICATION. FILE AN APPLICATION WITH THE DEPARTMENT;

2. EDUCATION.

(A)(I) FOR A LICENSE TO PRACTICE ORTHOTICS AND/OR PROSTHETICS COMPLETE EDUCATIONAL PREPARATION OF A FOUR-YEAR BACCALAUREATE OR HIGHER DEGREE IN ORTHOTICS AND/OR PROSTHETICS FROM AN ACCREDITED COLLEGE PROGRAM APPROVED BY THE STATE BOARD; OR

(II) SUBMIT EVIDENCE OF LICENSE OR CERTIFICATION, THE EDUCATIONAL PREPARATION FOR WHICH IS DETERMINED BY THE DEPARTMENT TO BE EQUIVALENT TO A COLLEGE PROGRAM REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH, FROM ANY STATE OR COUNTRY, SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

(B) FOR A LICENSE TO PRACTICE PEDORTHICS HAVE RECEIVED A HIGH SCHOOL DIPLOMA OR ITS EQUIVALENT, HAVE A MINIMUM OF ONE HUNDRED TWENTY HOURS OF TRAINING AS APPROVED BY THE BOARD AND HAVE COMPLETED AN INTERNSHIP OF EIGHTY HOURS QUALIFIED WORKING EXPERIENCE AS APPROVED BY THE BOARD.

3. EXPERIENCE. HAVE EXPERIENCE SATISFACTORY TO THE STATE BOARD FOR ORTHOTICS, PROSTHETICS AND PEDORTHICS IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

4. EXAMINATION. PASS AN ORAL, WRITTEN AND PRACTICAL EXAMINATION SATISFACTORY TO THE STATE BOARD FOR ORTHOTICS, PROSTHETICS AND PEDORTHICS AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

5. AGE. BE AT LEAST TWENTY-ONE YEARS OF AGE;

6. CHARACTER. BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT;

7. CITIZENSHIP OR IMMIGRATION STATUS. BE A UNITED STATES CITIZEN OR AN ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE IN THE UNITED STATES; AND

8. FEES. PAY A FEE OF THREE HUNDRED FIFTY DOLLARS TO THE DEPARTMENT FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND FOR AN INITIAL LICENSE; A FEE OF ONE HUNDRED FIFTY DOLLARS FOR EACH REEXAMINATION; A FEE OF TWO HUNDRED DOLLARS FOR AN INITIAL LICENSE FOR PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION; AND A FEE OF FIVE HUNDRED DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8805. EXEMPTIONS. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT, PREVENT OR IN ANY MANNER EXPAND OR LIMIT:

1. THE AUTHORITY OF ANY PERSON OTHERWISE AUTHORIZED BY LAW OR REGULATION TO PRACTICE OR PERFORM ANY FUNCTION OF AN ORTHOTIST, PROSTHETIST OR PEDORTHIST; OR

2. THE ACTIVITIES AND SERVICES OF ANY PERSON WHO IS LICENSED TO PRACTICE MEDICINE AND SURGERY, DENTISTRY OR PODIATRY BY THE STATE; OR

3. AN ORTHOTIST, PROSTHETIST OR PEDORTHIST LICENSED IN ANOTHER STATE OR COUNTRY FROM CONDUCTING A TEACHING CLINICAL DEMONSTRATION IN CONNECTION WITH A PROGRAM OF BASIC CLINICAL EDUCATION, GRADUATE EDUCATION, OR POSTGRADUATE EDUCATION IN AN APPROVED SCHOOL OF ORTHOTICS, PROSTHETICS OR PEDORTHICS OR IN ITS AFFILIATED CLINICAL FACILITY OR HEALTH CARE AGENCY, OR BEFORE A GROUP OF LICENSED ORTHOTISTS, PROSTHETISTS OR PEDORTHISTS WHO ARE MEMBERS OF A PROFESSIONAL SOCIETY; OR

4. AN ORTHOTIC OR PROSTHETIC SPECIALIST WHO IS SERVING IN THE ARMED FORCES OR THE PUBLIC HEALTH SERVICE OF THE UNITED STATES OR IS EMPLOYED BY THE VETERANS ADMINISTRATION FROM PRACTICING THE PROFESSION OF ORTHOTICS OR PROSTHETICS, PROVIDED SUCH PRACTICE IS LIMITED TO SUCH SERVICE OR EMPLOYMENT; OR

5. AN ORTHOTIC OR PROSTHETIC STUDENT FROM ENGAGING IN CLINICAL PRACTICE UNDER THE SUPERVISION OF A LICENSED ORTHOTIST OR PROSTHETIST AS PART OF A PROGRAM CONDUCTED IN AN APPROVED SCHOOL OF ORTHOTICS OR PROSTHETICS, OR IN A CLINICAL FACILITY OR HEALTH CARE AGENCY AFFILIATED WITH THE SCHOOL OF ORTHOTICS OR PROSTHETICS AND THE SUPERVISION OF AN ORTHOTIC OR PROSTHETIC STUDENT BY A LICENSED ORTHOTIST OR PROSTHETIST SHALL BE ON-SITE SUPERVISION AND NOT NECESSARILY DIRECT PERSONAL SUPERVISION; OR

6. AN ORTHOTIC OR PROSTHETIC GRADUATE OF AN APPROVED PROGRAM FROM ENGAGING IN CLINICAL PRACTICE UNDER THE ON-SITE, BUT NOT NECESSARILY DIRECT PERSONAL SUPERVISION OF A LICENSED ORTHOTIST OR PROSTHETIST PROVIDED THE GRADUATE HAS APPLIED AND PAID A FEE FOR THE LICENSING AND EXAMINATION.

S 8806. LICENSURE WITHOUT EXAMINATION. 1. WITHIN EIGHTEEN MONTHS AFTER THE EFFECTIVE DATE OF REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS ARTICLE, THE DEPARTMENT MAY ISSUE A LICENSE TO PRACTICE THE PROFESSION OF ORTHOTICS, PROSTHETICS OR PEDORTHICS WITHOUT AN EXAMINATION TO A PERSON WHO MEETS THE REQUIREMENTS OF SUBDIVISIONS ONE, FIVE, SIX AND SEVEN OF SECTION EIGHTY-EIGHT HUNDRED FOUR OF THIS ARTICLE AND WHO IN ADDITION HAS PRACTICED FULL-TIME FOR THE PAST FIVE YEARS IN AN ESTABLISHED PROSTHETIC, ORTHOTIC OR PEDORTHIC FACILITY AS AN ORTHOTIST, PROSTHETIST OR PEDORTHIST. THE APPLICANT MAY OBTAIN A LICENSE TO PRACTICE ORTHOTICS, PROSTHETICS OR PEDORTHICS UNDER THE PROVISIONS OF THIS ARTICLE AFTER THE BOARD HAS COMPLETED AN INVESTIGATION INTO THE APPLICANT'S WORK HISTORY. SUCH INVESTIGATION MAY INCLUDE, BUT IS NOT LIMITED TO, SUBMISSION BY THE APPLICANT OF A SWORN STATEMENT DETAILING THE APPLICANT'S WORK HISTORY AND SCOPE OF PRACTICE. THE BOARD SHALL COMPLETE ITS INVESTIGATION FOR THE PURPOSES OF THIS SUBDIVISION WITHIN SIX MONTHS AFTER THE DATE OF THE APPLICATION.

2. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE DEEMED TO AFFECT THE VALIDITY OF ANY LICENSE OR PERMIT RELATING TO THE PRACTICE OF ORTHOTICS, PROSTHETICS OR PEDORTHICS IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS

ARTICLE, OR THE CONTINUATION OR ANY ADMINISTRATIVE ACTION OR PROCEEDING COMMENCED PRIOR TO SUCH EFFECTIVE DATE.

S 2. This act shall take effect January 1, 2010; provided, however, that any actions necessary for the implementation of the provisions of this act on its effective date are authorized to be completed on or before such effective date.