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

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I N S E N A T E

June 19, 2012

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:

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

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

2. The practice of podiatry shall not include treating any part of the 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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or cutting operations upon the malleoli UNLESS THE PODIATRIST OBTAINS AN ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD ANKLE SURGERY OR PODIATRIC ADVANCED ANKLE SURGERY. PODIATRISTS WHO HAVE OBTAINED AN ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC STANDARD ANKLE SURGERY MAY PERFORM SURGERY ON THE ANKLE WHICH MAY INCLUDE SOFT TISSUE AND OSSEOUS PROCEDURES EXCEPT THOSE PROCEDURES SPECIFICALLY AUTHORIZED FOR PODIATRISTS WHO HAVE OBTAINED AN ISSUANCE OF A PRIVILEGE FOR ADVANCED ANKLE SURGERY. PODIATRISTS WHO HAVE OBTAINED AN ISSUANCE OF A PRIVILEGE TO PERFORM PODIATRIC ADVANCED ANKLE SURGERY MAY PERFORM SURGERY ON THE ANKLE WHICH MAY INCLUDE ANKLE FRACTURE FIXATION, ANKLE FUSION, ANKLE ARTHROSCOPY, INSERTION OR REMOVAL OF EXTERNAL FIXATION PINS INTO OR FROM THE TIBIAL DIAPHYSIS AT OR BELOW THE LEVEL OF THE MYOTENDINOUS JUNCTION OF THE TRICEPS SURAE, AND INSERTION AND REMOVAL OF RETROGRADE TIBIOTALOCALCANNEAL INTRAMEDULLARY RODS AND LOCKING SCREWS UP TO THE LEVEL OF THE MYOTENDINOUS JUNCTION OF THE TRICEPS SURAE, BUT DOES NOT INCLUDE THE SURGICAL TREATMENT OF COMPLICATIONS WITHIN THE TIBIAL DIAPHYSIS RELATED TO THE USE OF SUCH EXTERNAL FIXATION PINS. Podiatrists licensed to practice, but not authorized to prescribe or administer narcotics prior to the effective date of this subdivision, may do so only after certification by the department in accordance with the qualifications established by the commissioner. The practice of podiatry shall include administering only local anesthetics for therapeutic purposes as well as for anesthesia and treatment under general anesthesia administered by authorized persons. THE PRACTICE OF PODIATRY BY ANY LICENSEE SHALL NOT INCLUDE PARTIAL OR TOTAL ANKLE REPLACEMENTS NOR THE TREATMENT OF PILON FRACTURES.

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

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

A. APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

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

C. TRAINING AND CERTIFICATION: EITHER:

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

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

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

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

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

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

A. APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

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

C. EXPERIENCE AND CERTIFICATION: EITHER:

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

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

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

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

S 7010. ANKLE SURGERY LIMITED PERMITS. A LIMITED PERMIT TO PERFORM PODIATRIC STANDARD 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 QUALIFICATION/CERTIFICATION REQUIREMENTS SET FORTH IN SUBDIVISION ONE 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 STANDARD ANKLE SURGERY PRIVILEGE PURSUANT TO SUBDIVISION ONE OF SECTION SEVEN THOUSAND NINE OF THIS ARTICLE. SUCH PERMITS SHALL AUTHORIZE THE PERFORMANCE OF PODIATRIC STANDARD ANKLE SURGERY ONLY UNDER THE DIRECT PERSONAL SUPERVISION OF A LICENSED PODIATRIST HOLDING A PODIATRIC STANDARD ANKLE 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.

S 5. Paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules is amended by adding a new subparagraph (iv) to read as follows:

(IV) IN AN ACTION FOR PODIATRIC MEDICAL MALPRACTICE, A PHYSICIAN MAY BE CALLED AS AN EXPERT WITNESS AT TRIAL.

S 6. This act shall take effect eighteen months after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the provisions of this act on its effective date is authorized to be made on or before such effective date.