

**Public Act 91-0590**

SB658 Enrolled

LRB9103047Actm

AN ACT to create the Orthotics, Prosthetics, and Pedorthics Practice Act.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Orthotics, Prosthetics, and Pedorthics Practice Act.

Section 5. Declaration of public policy. The practice of orthotics and prosthetics in the State of Illinois is an allied health profession recognized by the American Medical Association, with educational standards established by the Commission on Accreditation of Allied Health Education Programs. The practice of pedorthics in the State of Illinois is an allied health profession recognized by the American Academy of Orthopaedic Surgeons, with educational standards established by the Board for Certification in Pedorthics. The increasing population of elderly and physically challenged individuals who need orthotic, prosthetic, and pedorthic services requires that the orthotic, prosthetic, and pedorthic professions be regulated to ensure the provision of high-quality services and devices. The people of Illinois deserve the best care available, and will benefit from the assurance of initial and ongoing professional competence of the orthotists, prosthetists, and pedorthists practicing in this State. The practice of orthotics, prosthetics, and pedorthics serves to improve and enhance the lives of individuals with disabilities by enabling them to resume productive lives following serious illness, injury, or trauma. Unregulated dispensing of orthotic, prosthetic, and pedorthic care does not adequately meet the needs or serve the interests of the public. In keeping with State requirements imposed on similar health disciplines, licensure of the orthotic, prosthetic, and pedorthic professions will help ensure the health and safety of consumers, as well as maximize their functional abilities and productivity levels. This Act shall be liberally construed to best carry out these subjects and purposes.

Section 10. Definitions. As used in this Act:

"Assistant" means a person who assists an orthotist, prosthetist, or prosthetist/orthotist with patient care services and fabrication of orthoses or prostheses under the supervision of a licensed orthotist or prosthetist.

"Board" means the Board of Orthotics, Prosthetics, and Pedorthics.

"Custom" means that an orthosis, prosthesis, or pedorthic device is designed, fabricated, and aligned specifically for one person in accordance with sound biomechanical principles.

"Custom fitted" means that a prefabricated orthosis, prosthesis, or pedorthic device is modified and aligned specifically for one person in accordance with sound biomechanical principles.

"Department" means the Department of Professional Regulation.

"Director" means the Director of Professional Regulation.

"Facility" means the business location where orthotic, prosthetic, or pedorthic care is provided and, in the case of an orthotic/prosthetic facility, has the appropriate clinical and laboratory space and equipment to provide comprehensive orthotic, prosthetic, and pedorthic care and, in the case of a pedorthic

orthotic or prosthetic care and, in the case of a pedorthic facility, has the appropriate clinical space and equipment to provide pedorthic care. Licensed orthotists, prosthetists, and pedorthists must be available to either provide care or supervise the provision of care by registered staff.

"Licensed orthotist" means a person licensed under this Act to practice orthotics and who represents himself or herself to the public by title or description of services that includes the term "orthotic", "orthotist", "brace", or a similar title or description of services.

"Licensed pedorthist" means a person licensed under this Act to practice pedorthics and who represents himself or herself to the public by the title or description of services that include the term "pedorthic", "pedorthist", or a similar title or description of services.

"Licensed physician" means a person licensed under the Medical Practice Act of 1987.

"Licensed podiatrist" means a person licensed under the Podiatric Medical Practice Act of 1987.

"Licensed prosthetist" means a person licensed under this Act to practice prosthetics and who represents himself or herself to the public by title or description of services that includes the term "prosthetic", "prosthetist", "artificial limb", or a similar title or description of services.

"Orthosis" means a custom-fabricated or custom-fitted brace or support designed to provide for alignment, correction, or prevention of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity. "Orthosis" does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices carried in stock and sold as "over-the-counter" items by a drug store, department store, corset shop, or surgical supply facility.

"Orthotic and Prosthetic Education Program" means a course of instruction accredited by the Commission on Accreditation of Allied Health Education Programs, consisting of (i) a basic curriculum of college level instruction in math, physics, biology, chemistry, and psychology and (ii) a specific curriculum in orthotic or prosthetic courses, including: (A) lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic-orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management; (B) subject matter related to pediatric and geriatric problems; (C) instruction in acute care techniques, such as immediate and early post-surgical prosthetics and fracture bracing techniques; and (D) lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses.

"Orthotic and prosthetic scope of practice" means a list of tasks, with relative weight given to such factors as importance, criticality, and frequency, based on internationally accepted standards of orthotic and prosthetic care as outlined by the International Society of Prosthetics and Orthotics' professional profile for Category I and Category III orthotic and prosthetic personnel.

"Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction,

disease, injury, or deformity.

"Orthotist" means a person who measures, designs, fabricates, fits, or services orthoses and assists in the formulation of the order of orthoses as ordered by a licensed physician for the support or correction of disabilities caused by neuro-musculoskeletal diseases, injuries, or deformities.

"Over-the-counter" means a prefabricated, mass-produced device that is prepackaged and requires no professional advice or judgement in either size selection or use, including fabric or elastic supports, corsets, generic arch supports, elastic hoses.

"Pedorthic device" means therapeutic footwear, foot orthoses for use at the ankle or below, and modified footwear made for therapeutic purposes. "Pedorthic device" does not include non-therapeutic accommodative inlays or non-therapeutic accommodative footwear, regardless of method of manufacture, shoe modifications made for non-therapeutic purposes, unmodified, over-the-counter shoes, or prefabricated foot care products.

"Pedorthic education program" means a course of instruction accredited by the Board for Certification in Pedorthics consisting of (i) a basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics and (ii) a specific curriculum in pedorthic courses, including lectures covering shoes, foot orthoses, and shoe modifications, pedorthic components and materials, training and functional capabilities, pedorthic performance evaluation, prescription considerations, etiology of disease processes necessitating use of pedorthic devices, medical management, subject matter related to pediatric and geriatric problems, and lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices.

"Pedorthic scope of practice" means a list of tasks with relative weight given to such factors as importance, criticality, and frequency based on nationally accepted standards of pedorthic care as outlined by the Board for Certification in Pedorthics' comprehensive analysis with an empirical validation study of the profession performed by an independent testing company.

"Pedorthics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

"Pedorthist" means a person who measures, designs, fabricates, fits, or services pedorthic devices and assists in the formulation of the order of pedorthic devices as ordered by a licensed physician for the support or correction of disabilities caused by neuro-musculoskeletal diseases, injuries, or deformities.

"Person" means a natural person.

"Prosthesis" means an artificial medical device that is not surgically implanted and that is used to replace a missing limb, appendage, or any other external human body part including an artificial limb, hand, or foot. "Prosthesis" does not include artificial eyes, ears, fingers, or toes, dental appliances, cosmetic devices such as artificial breasts, eyelashes, or wigs, or other devices that do not have a significant impact on the musculoskeletal functions of the body.

"Prosthetics" means the science and practice of

evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician.

"Prosthetist" means a person who measures, designs, fabricates, fits, or services prostheses and assists in the formulation of the order of prostheses as ordered by a licensed physician for the replacement of external parts of the human body lost due to amputation or congenital deformities or absences.

"Prosthetist/orthotist" means a person who practices both disciplines of prosthetics and orthotics and who represents himself or herself to the public by title or by description of services.

"Resident" means a person who has completed an education program in either orthotics or prosthetics and is continuing his or her clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education.

"Technician" means a person who assists an orthotist, prosthetist, prosthetist/orthotist, or pedorthist with fabrication of orthoses, prostheses, or pedorthic devices but does not provide direct patient care.

Section 15. Exceptions. This Act shall not be construed to prohibit:

(1) a physician licensed in this State from engaging in the practice for which he or she is licensed;

(2) a person licensed in this State under any other Act from engaging in the practice for which he or she is licensed;

(3) the practice of orthotics, prosthetics, or pedorthics by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;

(4) the practice of orthotics, prosthetics, or pedorthics by (i) a student enrolled in a school of orthotics, prosthetics, or pedorthics, (ii) a resident continuing his or her clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education, or (iii) a student in a qualified work experience program or internship in pedorthics;

(5) the practice of orthotics, prosthetics, or pedorthics by one who is an orthotist, prosthetist, or pedorthist licensed under the laws of another state or territory of the United States or another country and has applied in writing to the Department, in a form and substance satisfactory to the Department, for a license as orthotist, prosthetist, or pedorthist and who is qualified to receive the license under Section 40 until (i) the expiration of 6 months after the filing of the written application, (ii) the withdrawal of the application, or (iii) the denial of the application by the Department;

(6) a person licensed by this State as a physical therapist or occupational therapist from engaging in his or her profession; or

(7) a physician licensed under the Podiatric Medical Practice Act of 1997 from engaging in his or her profession.

Section 20. Powers and duties of the Department.

(a) The Department shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois for the administration of licensure Acts and shall exercise other powers and duties necessary for effectuating the purposes of this Act.

(b) The Department may adopt rules to administer and enforce this Act including, but not limited to, fees for

original licensure and renewal and restoration of licenses and may prescribe forms to be issued to implement its rules. The Department shall exercise the powers and duties prescribed by this Act. At a minimum, the rules adopted by the Department shall include standards and criteria for licensure and for professional conduct and discipline. The Department shall consult with the Board in adopting rules. Notice of proposed rulemaking shall be transmitted to the Board, and the Department shall review the Board's response and any recommendations made in writing with proper explanation of deviations from the Board's recommendations and response.

(c) The Department at any time may seek the expert advice and knowledge of the Board on any matter relating to the enforcement of this Act.

(d) Department may adopt rules as necessary to establish eligibility for facility registration and standards.

Section 25. Board of Orthotics, Prosthetics, and Pedorthics.

(a) There is established a Board of Orthotics, Prosthetics, and Pedorthics, which shall consist of 6 voting members to be appointed by the Director. Three members shall be practicing licensed orthotists, licensed prosthetists, or licensed pedorthists. These members may be licensed in more than one discipline and their appointments must equally represent all 3 disciplines. One member shall be a member of the public who is a consumer of orthotic, prosthetic, or pedorthic professional services. One member shall be a public member who is not licensed under this Act or a consumer of services licensed under this Act. One member shall be a licensed physician.

(b) Each member of the Board shall serve a term of 3 years, except that of the initial appointments to the Board, 2 members shall be appointed for one year, 2 members shall be appointed for 2 years, and 2 members shall be appointed for 3 years. Each member shall hold office and execute his or her Board responsibilities until the qualification and appointment of his or her successor. No member of the Board shall serve more than 8 consecutive years or 2 full terms, whichever is greater.

(c) Members of the Board shall receive as compensation a reasonable sum as determined by the Director for each day actually engaged in the duties of the office and shall be reimbursed for reasonable expenses incurred in performing the duties of the office.

(d) A quorum of the Board shall consist of a majority of Board members currently appointed.

(e) The Director may terminate the appointment of any member for cause which, in the opinion of the Director reasonably justifies termination, which may include, but is not limited to, a Board member who does not attend 2 consecutive meetings.

(f) Membership of the Board should reasonably reflect representation from the geographic areas in this State.

Section 30. Board; immunity; chairperson.

(a) Members of the Board shall be immune from suit in any action based upon any disciplinary proceeding or other activities performed in good faith as members of the Board.

(b) The Board shall annually elect a chairperson and vice chairperson who shall be licensed under this Act.

Section 35. Application for original license. An application for an original license shall be made to the

Department in writing on a form prescribed by the Department and shall be accompanied by the required fee, which shall not be refundable. An application shall require information that in the judgement of the Department will enable the Department to pass on the qualifications of the applicant for a license.

Section 40. Qualifications for licensure as orthotist, prosthetist, or pedorthist.

(a) To qualify for a license to practice orthotics or prosthetics, a person shall:

(1) possess a baccalaureate degree from a college or university;

(2) have completed the amount of formal training, including, but not limited to, any hours of classroom education and clinical practice established and approved by the Department;

(3) complete a clinical residency in the professional area for which a license is sought in accordance with standards, guidelines, or procedures for residencies inside or outside this State established and approved by the Department. The majority of training must be devoted to services performed under the supervision of a licensed practitioner of orthotics or prosthetics or a person certified as a Certified Orthotist (CO), Certified Prosthetist (CP), or Certified Prosthetist Orthotist (CPO) whose certification was obtained before the effective date of this Act;

(4) pass all written, practical, and oral examinations that are required and approved by the Department; and

(5) be qualified to practice in accordance with internationally accepted standards of orthotic and prosthetic care.

(b) To qualify for a license to practice pedorthics, a person shall:

(1) possess a high school diploma or its equivalent;

(2) have completed the amount of formal training, including, but not limited to, any hours of classroom education and clinical practice established and approved by the Department;

(3) complete a qualified work experience program or internship in pedorthics in accordance with any standards, guidelines, or procedures established and approved by the Department;

(4) pass all examinations that are required and approved by the Department; and

(5) be qualified to practice in accordance with nationally accepted standards of pedorthic care.

(c) The standards and requirements for licensure established by the Department shall be substantially equal to or in excess of standards commonly accepted in the profession of orthotics, prosthetics, or pedorthics. The Department shall adopt rules as necessary to set the standards and requirements.

(d) A person may be licensed in more than one discipline.

Section 45. Examination requirement.

(a) The Department may authorize examinations of applicants as orthotists, prosthetists, or pedorthists at times and places as it may determine. The examination of applicants shall be of a character to fairly test the qualifications of the applicant to practice orthotics, prosthetics, or pedorthics.

(b) Applicants for examination as orthotists.

(b) Applicants for examination as orthotists, prosthetists, and pedorthists shall be required to pay, either to the Department or the designated testing service, a fee covering the cost of providing the examination. Failure to appear for the examination on the scheduled date at the time and place specified after the applicant's application for examination has been received and acknowledged by the Department or the designated testing service shall result in the forfeiture of the examination fee.

(c) If an applicant neglects, fails, or refuses to take an examination or fails to pass an examination for a license under this Act within 3 years after filing his or her application, the application shall be denied. All fees are nonrefundable. The applicant may make a new application for examination accompanied by the required fee and must furnish proof of meeting qualifications for licensure in effect at the time of new application.

(d) The Department shall set by rule the maximum number of attempts that an applicant may make to pass the examination within a specified period of time. The Department shall also determine any further training required before a reexamination.

(e) The Department may employ consultants for the purpose of preparing and conducting examinations. An applicant for an examination as an orthotist, a prosthetist, or pedorthist shall be required to pay, either to the Department or to the designated testing service, a fee covering the cost of providing the examination.

#### Section 50. Assistants; technicians.

(a) No person shall work as an assistant to an orthotist, prosthetist, or prosthetist/orthotist and provide patient care services or fabrication of orthoses or prostheses, unless he or she is doing the work under the supervision of a licensed orthotist or prosthetist.

(b) No person shall work as a technician, as defined in this Act, unless the work is performed under the supervision of a person licensed under this Act.

#### Section 55. Transition period.

(a) Until January 1, 2002, a person certified as a Certified Orthotist (CO), Certified Prosthetist (CP), or Certified Prosthetist Orthotist (CPO) by the American Board for Certification in Prosthetics and Orthotics, Incorporated, or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and shall be granted orthotic or prosthetic licensure under this Act upon payment of the required fee. After that date, any applicant for licensure as an orthotist or a prosthetist shall meet the requirements of subsection (a) of Section 40 of this Act.

(b) Until January 1, 2002, a person certified as a Certified Pedorthist (CPed) by the Board for Certification in Pedorthics, Incorporated, or a person certified as a Certified Orthotist (CO) or Certified Prosthetist Orthotist (CPO) by the American Board for Certification in Prosthetics and Orthotics, Incorporated, or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards may apply for and shall be granted pedorthic licensure under this Act upon payment of the required fee. After that date, any applicant for licensure as a pedorthist shall meet the requirements of subsection (b) of Section 40 of this Act.

(c) On and after January 1, 2002, no person shall practice orthotics, prosthetics, or pedorthics in this State or hold himself or herself out as being able to practice

either profession, unless he or she is licensed in accordance with Section 40 of this Act.

(d) Notwithstanding any other provision of this Section, a person who has practiced full-time for the past 7 years in a prosthetic/orthotic facility as an orthotist, prosthetist, prosthetist/orthotist, assistant, or technician or in a pedorthic facility as a pedorthist or pedorthic technician on the effective date of this Act may file an application with the Board within 60 days after the enforcement of this Section begins pursuant to Section 56 of this Act in order to continue to practice orthotics, prosthetics, or pedorthics at his or her identified level of practice. The applicant shall be issued a license or certificate of registration to practice orthotics, prosthetics, or pedorthics under the provisions of this Act without examination upon receipt by the Department of payment of the licensing or registration fee required under Section 70 of this Act and after the Board has completed an investigation of the applicant's work history. The Board shall complete its investigation for the purposes of this Section within 6 months of the date of the application. The investigation may include, but is not limited to, completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

Section 56. Enforcement. The licensure requirements of Sections 40, 50, and 55 shall not be enforced until 12 months after the adoption of final administrative rules for this Act.

Section 57. Limitation on provision of care and services. A licensed orthotist or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist. A licensed prosthetist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician.

Section 60. Renewal; restoration; military service.

(a) The expiration date and renewal period for each license issued under this Act shall be set by rule of the Department. The Board shall establish continuing education requirements for the renewal of a license. These requirements shall be based on established standards of competence.

(b) A person who has permitted his or her license to expire or who has had his or her license on inactive status may have his or her license restored by (i) making application to the Department, (ii) filing proof acceptable to the Department of his or her fitness to have his or her license restored including, but not limited to, sworn evidence certifying to active practice in another jurisdiction satisfactory to the Department, and (iii) paying the required restoration fee. If the person has not maintained an active practice in another jurisdiction satisfactory to the Department, the Board shall determine, by an evaluation program established by rule, his or her fitness to resume active status and may require the person to complete a period of evaluated clinical experience and may require successful completion of an examination.

(c) A person whose license expired while he or she was (i) in federal service on active duty within the armed forces of the United States or with the State militia called into service or training or (ii) in training or education under the supervision of the United States preliminary to induction into military service may have his or her license renewed or restored without paying a lapsed renewal fee if within 2

restored without paying a lapsed renewal fee if, within 2 years after termination from the service, training, or education except under conditions other than honorable, he or she furnished the Department with satisfactory evidence that he or she has been so engaged and that his or her service, training, or education has been terminated.

Section 65. Elective inactive status. A person who notifies the Department in writing on forms prescribed by the Department may elect to place his or her license on an inactive status and shall, subject to rules of the Department, be excused from payment of renewal fees until he or she notifies the Department in writing of his or her desire to resume active status.

A person requesting restoration from inactive status shall be required to pay the current renewal fee and shall be required to restore his or her license as provided in Section 60 of this Act.

An orthotist, prosthetist, or pedorthist whose license is on inactive status shall not practice orthotics, prosthetics, or pedorthics in this State.

Section 70. Endorsement. The Department may, at its discretion, license as either an orthotist, prosthetist, or pedorthist, without examination and on payment of the required fee, an applicant who is an orthotist, prosthetist, or pedorthist who is (i) licensed under the laws of another state, territory, or country, if the requirements for licensure in that state, territory, or country in which the applicant was licensed were, at the date of his or her licensure, substantially equal to the requirements in force in this State on that date or (ii) certified by a national certification organization with educational and testing standards equal to or more stringent than the licensing requirements of this State.

Section 75. Fees.

(a) The Department shall provide by rule for a schedule of fees to be paid for licenses by all applicants. All fees are not refundable.

(b) The fees for the administration and enforcement of this Act including, but not limited to, original licensure, renewal, and restoration shall be set by rule by the Department.

(c) All fees and fines collected under this Act shall be deposited into the General Professions Dedicated Fund.

Section 80. Roster of licensees and registrants. The Department shall maintain a current roster of the names and addresses of all licensees, registrants, and all persons whose licenses have been suspended or revoked within the previous year. This roster shall be available upon written request and payment of the required fee.

Section 85. Practice by corporations. Nothing in this Act shall restrict licensees from forming professional service corporations under the provisions of the Professional Service Corporation Act.

Section 90. Grounds for discipline.

(a) The Department may refuse to issue or renew a license, may revoke or suspend a license, or may suspend, place on probation, censure, or reprimand a licensee for one or any combination of the following:

- (1) Making a material misstatement in furnishing information to the Department or the Board.
- (2) Violations of or negligent or intentional

disregard of this Act or its rules.

(3) Conviction of any crime that under the laws of the United States or of a state or territory of the United States is a felony or a misdemeanor, an essential element of which is dishonesty, or of a crime that is directly related to the practice of the profession.

(4) Making a misrepresentation for the purpose of obtaining a license.

(5) A pattern of practice or other behavior that demonstrates incapacity or incompetence to practice under this Act.

(6) Gross negligence under this Act.

(7) Aiding or assisting another person in violating a provision of this Act or its rules.

(8) Failing to provide information within 60 days in response to a written request made by the Department.

(9) Engaging in dishonorable, unethical, or unprofessional conduct or conduct of a character likely to deceive, defraud, or harm the public.

(10) Habitual intoxication or addiction to the use of drugs.

(11) Discipline by another state or territory of the United States, the federal government, or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to one set forth in this Section.

(12) Directly or indirectly giving to or receiving from a person, firm, corporation, partnership, or association a fee, commission, rebate, or other form of compensation for professional services not actually or personally rendered.

(13) A finding by the Board that the licensee or registrant, after having his or her license placed on probationary status, has violated the terms of probation.

(14) Abandonment of a patient or client.

(15) Wilfully making or filing false records or reports in his or her practice including, but not limited to, false records filed with State agencies or departments.

(16) Wilfully failing to report an instance of suspected child abuse or neglect as required by the Abused and Neglected Child Reporting Act.

(17) Physical illness including, but not limited to, deterioration through the aging process or loss of motor skill that results in the inability to practice the profession with reasonable judgement, skill, or safety.

(18) Solicitation of professional services using false or misleading advertising.

(b) The determination by a circuit court that a licensee or registrant is subject to involuntary admission or judicial admission, as provided in the Mental Health and Developmental Disabilities Code, operates as an automatic suspension. The suspension will end only upon (i) a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the issuance of a court order so finding and discharging the patient and (ii) the recommendation of the Board to the Director that the licensee or registrant be allowed to resume his or her practice.

(c) In enforcing this Section, the Department or Board upon a showing of a possible violation may compel an individual licensed to practice under this Act, or who has applied for licensure under this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department. The Department or Board may order the examining physician to present testimony concerning the mental or physical examination of the licensee or applicant.

mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The examining physicians shall be specifically designated by the Board or Department. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of this examination. The examination shall be performed by a physician licensed to practice medicine in all its branches. Failure of an individual to submit to a mental or physical examination, when directed, shall be grounds for suspension of his or her license until the individual submits to the examination if the Department finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause.

If the Department or Board finds an individual unable to practice because of the reasons set forth in this Section, the Department or Board may require that individual to submit to care, counseling, or treatment by physicians approved or designated by the Department or Board, as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice; or, in lieu of care, counseling, or treatment, the Department may file, or the Board may recommend to the Department to file, a complaint to immediately suspend, revoke, or otherwise discipline the license of the individual. An individual whose license was granted, continued, reinstated, renewed, disciplined or supervised subject to such terms, conditions, or restrictions, and who fails to comply with such terms, conditions, or restrictions, shall be referred to the Director for a determination as to whether the individual shall have his or her license suspended immediately, pending a hearing by the Department.

In instances in which the Director immediately suspends a person's license under this Section, a hearing on that person's license must be convened by the Department within 15 days after the suspension and completed without appreciable delay. The Department and Board shall have the authority to review the subject individual's record of treatment and counseling regarding the impairment to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records.

An individual licensed under this Act and affected under this Section shall be afforded an opportunity to demonstrate to the Department or Board that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

#### Section 95. Injunction; cease and desist order.

(a) If any person violates a provision of this Act, the Director may, in the name of the People of the State of Illinois and through the Attorney General of the State of Illinois, petition for an order enjoining the violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin the violation. If it is established that the person has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

(b) If a person practices as an orthotist, prosthetist, or pedorthist or holds himself or herself out as an orthotist, prosthetist, or pedorthist without being licensed

or registered under the provisions of this Act, then any other licensed or registered orthotist, prosthetist, or pedorthist, any interested party, or any person injured by the person may, in addition to the Director, petition for relief as provided in subsection (a) of this Section.

(c) Whenever in the opinion of the Department a person violates a provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against him or her. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued immediately.

Section 100. Investigations; notice and hearing. The Department may investigate the actions of an applicant or of a person or persons holding or claiming to hold a license. Before refusing to issue or renew a license, the Department shall, at least 10 days prior to the date set for the hearing, notify in writing the applicant for or holder of a license of the nature of the charges and that a hearing will be held on the date designated. The written notice may be served by personal delivery or by certified or registered mail to the respondent at the address disclosed on his or her last notification to the Department. At the time and place fixed in the notice, the Board shall proceed to hear the charges. The parties or their counsel shall be afforded ample opportunity to present statements, testimony, evidence, and argument that may be pertinent to the charges or to the defense to the charges. The Board may continue the hearing from time to time.

Section 105. Transcript. The Department, at its own expense, shall preserve a record of all proceedings at the formal hearing of a case involving the refusal to issue or renew a license. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Board, and orders of the Department shall be in the record of the proceeding.

Section 110. Compelling testimony. A circuit court may, upon application of the Director or his or her designee or the applicant or licensee against whom proceedings under Section 100 of this Act are pending, enter an order requiring the attendance of witnesses and their testimony and requiring the production of documents, papers, files, books, and records in connection with a hearing or investigation. The court may compel obedience to its order through contempt proceedings.

Section 115. Board findings and recommendations. At the conclusion of a hearing, the Board shall present to the Director a written report of its findings and recommendations. The report shall contain a finding of whether or not the accused person violated this Act or failed to comply with the conditions required in this Act. The Board shall specify the nature of the violation or failure to comply and shall make its recommendations to the Director. The report of findings and recommendations of the Board shall be the basis for the Department's order for the refusal or for the granting of a license, unless the Director determines that the Board report is contrary to the manifest weight of the evidence, in which case the Director may issue an order

in contravention to the Board report. A Board finding is not admissible in evidence against the person in a criminal prosecution brought for a violation of this Act, but the hearing and finding are not a bar to a criminal prosecution brought for a violation of this Act.

Section 120. Motion for rehearing. In any case involving the refusal to issue or renew a license or the discipline of a licensee, a copy of the Board's report shall be served upon the respondent by the Department, either personally or as provided in this Act for the service of the notice of hearing. Within 20 days after service, the respondent may present to the Department a motion in writing for a rehearing, which shall specify the particular grounds for rehearing. If no motion for rehearing is filed, then upon the expiration of the time specified for filing the motion, or if a motion for rehearing is denied, upon the denial, the Director may enter an order in accordance with recommendations of the Board, except as provided in Section 115 of this Act. If the respondent orders from the reporting service and pays for a transcript of the record within the time for filing a motion for rehearing, the 20-day period within which the motion may be filed shall commence upon the delivery of the transcript to the respondent.

Section 125. Rehearing on order of Director. Whenever the Director is not satisfied that substantial justice has been done in the revocation, suspension, or refusal to issue or renew a license the Director may order a rehearing by the same or other examiners.

Section 130. Appointment of hearing officer. The Director shall have the authority to appoint an attorney licensed to practice law in the State of Illinois to serve as a hearing officer in an action for refusal to issue or renew a license or to discipline a licensee. The hearing officer shall have full authority to conduct the hearing. The hearing officer shall report his or her findings and recommendations to the Board and the Director. The Board shall have 60 days from receipt of the report to review the report of the hearing officer and present its findings of fact, conclusions of law, and recommendations to the Director. If the Board fails to present its report within the 60-day period, the Director shall issue an order based on the report of the hearing officer. If the Director determines that the Board's report is contrary to the manifest weight of the evidence, he or she may issue an order in contravention of the Board's report.

Section 135. Order or certified copy. An order or a certified copy of an order, over the seal of the Department and purporting to be signed by the Director, shall be prima facie proof:

- (1) that the signature is the genuine signature of the Director;
  - (2) that the Director is duly appointed and qualified;
- and
- (3) that the Board and its members are qualified to act.

Section 140. Restoration of suspended or revoked license. At any time after the suspension or revocation of any license, the Department may restore the license to the accused person upon the written recommendation of the Board unless, after an investigation and a hearing, the Board determines that restoration is not in the public interest.

Section 145. Surrender of license. Upon the revocation or suspension of a license, the licensee shall immediately surrender the license to the Department, and if the licensee fails to do so, the Department shall have the right to seize the license.

Section 150. Temporary suspension of a license. The Director may temporarily suspend the license of an orthotist, prosthetist, or pedorthist without a hearing simultaneously with the institution of proceedings for a hearing provided for in Section 95 of this Act if the Director finds that evidence in his or her possession indicates that a licensee's continuation in practice would constitute an imminent danger to the public. If the Director temporarily suspends a license without a hearing, a hearing by the Board must be held within 30 days after the suspension.

Section 155. Administrative Review Law; venue. All final administrative decisions of the Department are subject to judicial review pursuant to the provisions of the Administrative Review Law and its rules. The term "administrative decision" has the same meaning as in Section 3-101 of the Administrative Review Law. Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides, but if the party is not a resident of this State, the venue shall be in Sangamon County.

Section 160. Certifications of record; costs. The Department shall not be required to certify any record to the court or file any answer in court or otherwise appear in any court in a judicial review proceeding unless there is filed in the court with the complaint a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record, which shall be computed at the rate of 20 cents per page of the record. Failure on the part of a plaintiff to file a receipt in court shall be grounds for dismissal of the action.

Section 165. Penalties. A person who is found to have violated a provision of this Act is guilty of a Class A misdemeanor for a first offense and is guilty of a Class 4 felony for a second or subsequent offense.

Section 170. Illinois Administrative Procedure Act. The Illinois Administrative Procedure Act is hereby expressly adopted and incorporated in this Act as if all of the provisions of that Act were included in this Act, except that the provision of subsection (d) of Section 10-65 of the Illinois Administrative Procedure Act, which provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention, continuation, or renewal of the license, is specifically excluded and for purposes of this Act. The notice required under Section 10-25 of the Illinois Administrative Procedure Act is deemed sufficient when mailed to the last known address of a party.

Section 175. Home rule preemption. It is declared to be the public policy of this State, pursuant to paragraph (h) of Section 6 of Article VII of the Illinois Constitution of 1970, that a power or function set forth in this Act to be exercised by the State is an exclusive State power or function. No power or function granted under this Act shall be exercised concurrently, either directly or indirectly, by a unit of local government, including home rule units, except

as otherwise provided in this Act.

Section 250. The Regulatory Sunset Act is amended by adding Section 4.20 as follows:

(5 ILCS 80/4.20 new)

Sec. 4.20. Act repealed on January 1, 2010. The following Act is repealed on January 1, 2010:

The Illinois Orthotics, Prosthetics, and Pedorthics Practice Act.

Section 999. Effective date. This Act takes effect January 1, 2000.