

(SENATE AUTHORS: HIGGINS)

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04/25/2012	6474	Introduction and first reading Referred to Health and Human Services

1.1

A bill for an act

1.2

relating to health; regulating the practice of orthotics, prosthetics, and pedorthics;

1.3

requiring licensure; proposing coding for new law as Minnesota Statutes, chapter

1.4

153B.

1.5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6

Section 1. **[153B.10] SHORT TITLE.**

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Chapter 153B may be cited as the Orthotics, Prosthetics, and Pedorthics Practice Act.

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Sec. 2. **[153B.15] DEFINITIONS.**

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(a) For purposes of this act, the following words have the meanings given.

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(b) "Board" means the Board of Orthotics, Prosthetics, and Pedorthics.

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(c) "Custom fabricated device" means an orthosis or pedorthic device made to patient

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measurements, sized or modified for use by the patient in accordance with a prescription,

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and which requires clinical and technical judgment and substantive alteration in its design.

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(d) "Licensed assistant" means a person, licensed by the board, who is educated

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and trained to participate in comprehensive orthotic and prosthetic care while under the

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supervision of a licensed orthotist or licensed prosthetist. Assistants may perform orthotic

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and prosthetic procedures and related tasks in the management of patient care. The

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assistant may fabricate, repair, and maintain orthoses and prostheses.

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(e) "Licensed orthotic fitter" means a person licensed by the board who is

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educated and trained in providing certain orthoses, and is trained to conduct patient

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assessments, formulate treatment plans, implement treatment plans, perform follow-up,

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and practice management. An orthotic fitter must be competent to fit certain custom-fitted,

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prefabricated, and off-the-shelf orthoses as follows:

2.1 (1) cervical orthoses, except those used to treat an unstable cervical condition;

2.2 (2) prefabricated orthoses for the upper and lower extremities, except those used in
2.3 the initial or acute treatment of long bone fractures and dislocations, therapeutic shoes and
2.4 inserts needed as a result of diabetes, and functional electrical stimulation orthoses;

2.5 (3) prefabricated spinal orthoses, except those used in the treatment of scoliosis or
2.6 unstable spinal conditions, including halo cervical orthoses;

2.7 (4) pressure gradient garments; and

2.8 (5) trusses.

2.9 (f) "Licensed orthotist" means a person licensed by the board who is educated and
2.10 trained to practice orthotics, which includes managing comprehensive orthotic patient
2.11 care. The use of the following titles, terms, or representations to the public is limited to
2.12 a person who is licensed under this chapter as an orthotist: orthosis, orthotist, brace, or
2.13 similar name or description of services.

2.14 (g) "Licensed mastectomy fitter" means a person licensed by the board who is
2.15 educated and trained in providing breast prostheses and post-mastectomy services,
2.16 including patient assessment, formulating a treatment plan, implementing a treatment
2.17 plan, follow-up, and practice management duties.

2.18 (h) "Licensed pedorthist" means a person licensed by the board who is educated and
2.19 trained to manage comprehensive pedorthic patient care, including patient assessment,
2.20 formulating a treatment plan, implementing a treatment plan, follow-up, and practice
2.21 management. A pedorthist may fit, fabricate, adjust, or modify devices within the scope
2.22 of education and training. Use of the following titles, terms, or representations to the
2.23 public is limited to a person who is licensed under this chapter as a pedorthist: "pedorthic
2.24 device," "pedorthist," or a similar title or description of services.

2.25 (i) "Licensed prosthetist" means a person licensed by the board who is educated and
2.26 trained to manage comprehensive prosthetic patient care, including patient assessment,
2.27 formulating a treatment plan, implementing a treatment plan, follow-up, and practice
2.28 management. Use of the following titles, terms, or representations to the public is limited
2.29 to a person who is licensed under this chapter as a prosthetist: "prosthesis," "prosthetist,"
2.30 "artificial limb," or similar title or description of services.

2.31 (j) "Licensed technician" means a person licensed by the board who assists an
2.32 orthotist or prosthetist by providing technical support, including fabrication, repairs, and
2.33 maintenance of orthoses and prostheses. A technician must be trained to be proficient in
2.34 current fabricating techniques, familiar with material properties, and skilled in the use of
2.35 appropriate equipment as defined by the board.

(k) "Licensed therapeutic shoe fitter" means a person licensed by the board who is specifically educated and trained to provide noncustom therapeutic shoes and noncustom multidensity inserts. A therapeutic shoe fitter provides patient assessment, formulates treatment plans, implements treatment plans, performs follow-up and practice management duties.

(l) "Orthosis" means a custom-designed, custom-fabricated, custom-fitted, prefabricated, and modified device to treat a neuromusculoskeletal disorder or acquired condition. Orthosis does not include items sold over-the-counter.

(m) "Orthotic and prosthetic education program" means an educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), consisting of:

(1) a basic curriculum or college level instruction in mathematics, physics, biology, chemistry, and psychology; and

(2) a specific curriculum of orthotics or prosthetics courses that includes:

(i) anatomy, biomechanics, pathomechanics, prosthetic-orthotic components and materials, gait training, and functional assessment; prosthetic or orthotic performance evaluation; prescription considerations; etiology of amputations and disease processes necessitating prosthetic or orthotic use; and medical management;

(ii) lectures related to pediatric, adult, and geriatric problems;

(iii) instruction in acute care techniques, including immediate and early postsurgical prosthetics and fracture management techniques; and

(iv) lectures, demonstrations, and laboratory experiences related to evaluating, measuring, casting, fitting, fabricating, aligning, and completing prostheses and orthoses;

(n) "Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis or pedorthic device under an order from a prescribing health care professional for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(o) "Over-the-counter" means a prefabricated, mass-produced item that is prepackaged and requires no professional advice or judgment in size selection or use.

(p) "Off-the-shelf" means a prefabricated device sized or modified for use by the patient in accordance with a prescription and which does not require substantial clinical judgment and substantive alteration for use.

(q) "Pedorthotic device" means therapeutic shoes, shoe modifications made for therapeutic purposes, below-the-ankle partial foot prostheses, foot orthoses, and subtalar-control foot orthoses to control the range of motion of the subtalar joint. A prescription is required for any pedorthic device, modification, or prefabricated

below-the-knee orthosis addressing a medical condition that originates at the ankle or below. Pedorthotic devices do not include nontherapeutic inlays or footwear regardless of method of manufacture; unmodified, nontherapeutic over-the-counter shoes; or prefabricated foot care products.

(r) "Pedorthic education program" means an education program approved by the National Commissioner on Orthotic and Prosthetic Education (NCOPE) that includes:

(1) a basic curriculum of instruction in the foot-related pathology of diseases, anatomy, and biomechanics; and

(2) a specific curriculum of pedorthic courses that includes lectures on shoes, foot orthoses, and shoe modifications; pedorthic components and materials; training and functional capabilities; pedorthic performance evaluation; prescription considerations; etiology of disease processes necessitating the use of pedorthic devices; medical management; pediatric and geriatric issues; and lectures, demonstrations, and laboratory experiences related to measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices.

(s) "Pedorthics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a prescribing health care professional for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity. The practice of pedorthics includes providing patient care and services by or under the direction and supervision of a licensed pedorthist to prevent or ameliorate painful or disabling conditions of the foot and ankle.

(t) "Prosthesis" means a custom-designed, fabricated, fitted, or modified device to treat partial or total limb loss for purposes of restoring physiological function or cosmesis. Prosthesis does not include artificial eyes, ears, fingers, or toes; dental appliances; or cosmetic devices that do not have a significant impact on the musculoskeletal functions of the body.

(u) "Prosthetics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a prescribing health care professional.

(v) "Prosthetist/Orthotist" means a person who practices prosthetics and orthotics.

(w) "Resident" means a person who has completed a CAAHEP accredited education program in orthotics or prosthetics and is receiving clinical training in a residency accredited by NCOPE.

(x) "Residency" means a minimum of a one year NCOPE accredited program to acquire practical clinical training in orthotics and prosthetics in a patient care setting.

(y) "Supervisor" means the licensed orthotist, prosthetist, or pedorthist who oversees and is responsible for the delivery of appropriate, effective, ethical, and safe orthotic, prosthetic or pedorthic patient care.

Sec. 3. **[153B.20] EXCEPTIONS.**

Nothing in this chapter shall prohibit:

(1) a physician licensed under chapter 147 from providing services within the physician's scope of practice;

(2) a professional regulated in this state from providing services within the professional's scope of practice;

(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 an accredited or approved orthotics, prosthetics, or pedorthics education program;

(ii) a resident enrolled in a NCOPE accredited residency program; or

(iii) a person working in a qualified, supervised work experience or internship who is obtaining the clinical experience necessary for licensure under this chapter; or

(5) an orthotist, prosthetist, pedorthist, assistant, fitter, or technician who is licensed in another state or territory of the United States or in another country if that jurisdiction's licensing requirements are equivalent to or exceed the requirements in this chapter and the individual is qualified and has applied for licensure under this chapter. The individual shall be allowed to practice for no longer than six months following the filing of the application for licensure, until the individual withdraws the application for licensure, or the board denies the license.

Sec. 4. **[153B.25] BOARD OF ORTHOTICS, PROSTHETICS, AND PEDORTHICS.**

Subdivision 1. **Creation; membership.** (a) There is established a Board of Orthotics, Prosthetics, and Pedorthics, which shall consist of nine voting members appointed by the governor. At least three members must be licensed and practicing orthotists, prosthetists, or pedorthists. Each profession must be represented on the board. At least two members must be health care professionals who work with or refer patients to orthotists, prosthetists, or pedorthists. At least two members must be public members. The board shall elect a chair and secretary-treasurer from its membership.

(b) Membership terms, compensation, removal, and vacancies are subject to the provisions of section 214.09.

Subd. 2. **Expenses; staff.** (a) Expenses of administration of this chapter shall be paid from the appropriation made to the board.

(b) The board shall employ an executive director subject to the terms described in section 214.04, subdivision 2a.

Subd. 3. **Rulemaking.** The board may adopt rules to administer and enforce the provisions of this chapter.

Subd. 4. **Immunity.** Members of the board shall be immune from liability for any disciplinary actions or other activities performed in good faith pursuant to duties of the board.

Sec. 5. **[153B.30] LICENSURE.**

Subdivision 1. **Application.** An application for an initial license shall be submitted to the board in the format required by the board and shall be accompanied by the required fee, which is nonrefundable.

Subd. 2. **Qualifications.** (a) To be eligible for licensure as an orthotist or prosthetist, a person shall:

- (1) possess a baccalaureate or higher degree from an accredited college or university;
 - (2) complete a CAAHEP accredited education program in orthotics or prosthetics;
 - (3) complete residency requirements in the discipline for which a license is sought;
- and

- (4) pass all examinations required by the board.

(b) To be eligible for licensure as a pedorthist, a person shall:

- (1) possess a high school diploma or GED;
- (2) complete an NCOPE approved pedorthic education program;
- (3) have at least 1,000 hours of pedorthic patient care experience; and
- (4) pass all examinations required by the board.

(c) To be eligible for a license to practice as an assistant, a person shall:

- (1) possess a high school diploma or GED;
- (2) present evidence satisfactory to the board that the applicant has completed an education program, including courses in the anatomical, biological, and physical sciences;
- (3) complete 1,000 hours of experience in orthotics or prosthetics as approved by the board; and

- (4) pass all examinations that are required by the board.

(d) To be eligible for licensure as an orthotic fitter a person shall:

- 7.1 (1) possess a high school diploma or GED;
7.2 (2) complete an NCOPE approved orthotic fitter course;
7.3 (3) complete 1,000 hours of experience in orthotic fitting as approved by the board;
7.4 and
7.5 (4) pass all examinations required by the board.
7.6 (e) To be eligible for licensure as a mastectomy fitter a person shall:
7.7 (1) possess a high school diploma or GED;
7.8 (2) complete an NCOPE approved mastectomy fitter course;
7.9 (3) complete 500 hours of mastectomy fitting experience as approved by the board;
7.10 and
7.11 (4) pass all examinations that are required by the board.
7.12 (f) To be eligible for licensure as a therapeutic shoe fitter a person shall:
7.13 (1) possess a high school diploma or GED;
7.14 (2) complete an NCOPE approved therapeutic shoe fitter course;
7.15 (3) complete 250 hours of therapeutic shoe fitting experience as approved by the
7.16 board; and
7.17 (4) pass all examinations required by the board.
7.18 (g) To qualify for a license to practice as an orthotic or prosthetic technician a person
7.19 shall:
7.20 (1) possess a high school diploma or GED; and
7.21 (i) complete an NCOPE approved orthotic or prosthetic technician program; or
7.22 (ii) have two years of technician experience in the discipline for which licensure is
7.23 sought under the direct supervision of a practitioner certified by the American Board for
7.24 Certification in Orthotics, Prosthetics, and Pedorthics (ABC); or
7.25 (2) in the case of employment at an orthotic or prosthetic central fabrication facility,
7.26 have two years of supervision by an ABC registered technician; and
7.27 (3) pass all examinations required by the board.
7.28 Subd. 3. Examination requirement. (a) The board may authorize examinations
7.29 of applicants at times and places as it may determine. The examination shall assess the
7.30 competency and the qualifications of the applicant to practice in their specific discipline.
7.31 (b) Applicants shall be required to pay a nonrefundable examination fee to the
7.32 board or to the examination service.
7.33 (c) An applicant who neglects, fails, or refuses to take an examination or fails to pass
7.34 an examination within three years after filing an application for licensure shall be denied a
7.35 license. The applicant may submit a new application for examination accompanied by

the nonrefundable fee and must provide proof of meeting qualification for licensure in effect at the time of the new application.

(d) The board shall establish the maximum number of attempts that an applicant may make to pass the examination within a specified period of time. The board may require additional training for the applicant before permitting a reexamination.

(e) The board may use consultants for the purpose of preparing and conducting examinations.

Sec. 6. [153B.35] TRANSITION PERIOD.

(a) Until January 1, 2016, a person certified as a Certified Fitter-orthotics, Certified Fitter-mastectomy, Certified Fitter-therapeutic shoes, Certified Pedorthist, Certified Orthotist, Certified Prosthetist, or Certified Prosthetist/Orthotist by the ABC or holding similar certifications from other certifying bodies with equivalent education and experience requirements and examination standards may apply for and shall be granted licensure upon payment of the required fee. After that date, any applicant for licensure must meet the requirements of this chapter.

(b) Until January 1, 2016, a person credentialed as a Registered Orthotic Assistant, Registered Prosthetic Assistant, Registered Orthotic/Prosthetic Assistant, Registered Orthotic Technician, Registered Prosthetic Technician, or Registered Orthotic/Prosthetic Technician by the ABC or holding similar certifications from other certifying bodies with equivalent education and experience requirements and examination standards may apply for and shall be granted licensure upon payment of the required fee. After that date, any applicant for licensure must meet the requirements of this chapter.

(c) On or after January 1, 2016, no person shall practice orthotics, prosthetics, or pedorthics in this state or make representation that the person is able to practice in the profession unless the person is licensed under this chapter.

Sec. 7. [153B.40] LICENSE RENEWAL; RESTORATION; MILITARY SERVICE.

(a) A license to practice is valid for two years from the date of issuance. At the time of license renewal the licensee must provide verification to the board that the licensee is in compliance with continuing education requirements.

(b) If a license is not renewed or is placed on inactive status, a person may have the license restored by:

(1) making application to the board;

(2) submitting the required nonrefundable restoration fee; and

(3) filing proof acceptable to the board of fitness to practice, including verification of active practice in another jurisdiction.

(c) A licensee whose license has expired while on active duty in the armed forces of the United States, with the National Guard called into service or training, or while in training or education preliminary to induction into military service may have the licensee's license renewed or restored without paying a lapsed renewal fee if the licensee provides verification to the board within two years of the termination of service obligation.

Sec. 8. **[153B.45] INACTIVE STATUS.**

(a) A licensee who notifies the board in the format required by the board may elect to place the licensee's credential on inactive status and shall be excused from payment of renewal fees until the licensee notifies the board in the format required by the board of the licensee's plan to return to practice.

(b) A person requesting restoration from inactive status shall be required to pay the current renewal fee and comply with section 153B.40.

(c) A person whose license has been placed on inactive status shall not practice in this state.

Sec. 9. **[153B.50] ENDORSEMENT.**

The board may license without examination and on payment of the required fee an applicant who is an orthotist, prosthetist, pedorthist, assistant, fitter, or technician who is:

(1) licensed under the laws of another state, territory, or country, if the requirements for licensure in that state, territory, or country are equal to or higher than the requirements for licensure in Minnesota; or

(2) certified by the ABC or a national certification organization with educational, experiential, and testing standards equal to or higher than the licensing requirements in Minnesota.

Sec. 10. **[153B.55] GROUNDS FOR DISCIPLINARY ACTION.**

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

(1) making a material misstatement in furnishing information to the board;

(2) violating or intentionally disregarding the requirements of this chapter;

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

- 10.1 (4) making a misrepresentation in or to obtain or renew a license;
10.2 (5) a pattern of practice or other behavior that demonstrates incapacity or
10.3 incompetence to practice;
10.4 (6) aiding or assisting another person in violating the provisions of this chapter;
10.5 (7) failing to provide information within 60 days in response to a written request
10.6 from the board;
10.7 (8) engaging in dishonorable, unethical, or unprofessional conduct;
10.8 (9) engaging in conduct of a character likely to deceive, defraud, or harm the public;
10.9 (10) inability to practice due to habitual intoxication, addiction to drugs, or mental
10.10 or physical illness;
10.11 (11) discipline by another state or territory of the United States, the federal
10.12 government, or foreign nation, if at least one of the grounds for the discipline is the same
10.13 or substantially equivalent to one of the grounds in this section;
10.14 (12) directly or indirectly giving to or receiving from a person, firm, corporation,
10.15 partnership, or association a fee, commission, rebate, or other form of compensation for
10.16 professional services not actually or personally rendered;
10.17 (13) a finding by the board that the licensee, after the licensee has been placed on
10.18 probationary status, has violated the conditions of the probation;
10.19 (14) abandonment of a patient or client;
10.20 (15) willfully making or filing false records or reports in the course of the licensee's
10.21 practice including, but not limited to, false records or reports filed with state or federal
10.22 agencies;
10.23 (16) willfully failing to report suspected child maltreatment as required under the
10.24 Maltreatment of Minors Act, section 626.556; and
10.25 (17) soliciting professional services using false or misleading advertising.
10.26 (b) A license to practice is automatically suspended if (1) a guardian of a licensee is
10.27 appointed by order of a court pursuant to sections 524.5-101 to 524.5-502, for reasons
10.28 other than the minority of the licensee; or (2) the licensee is committed by order of a court
10.29 pursuant to chapter 253B. The license remains suspended until the licensee is restored to
10.30 capacity by a court and, upon petition by the licensee, the suspension is terminated by the
10.31 board after a hearing. The licensee may be reinstated to practice, either with or without
10.32 restrictions, by demonstrating clear and convincing evidence of rehabilitation. The
10.33 regulated person is not required to prove rehabilitation if the subsequent court decision
10.34 overturns previous court findings of public risk.
10.35 (c) If the board has probable cause to believe that a licensee or applicant has violated
10.36 paragraph (a), clause (10), it may direct the person to submit to a mental or physical

11.1 examination. For the purpose of this section, every person is deemed to have consented to
11.2 submit to a mental or physical examination when directed in writing by the board and to
11.3 have waived all objections to the admissibility of the examining physician's testimony or
11.4 examination report on the grounds that the testimony or report constitutes a privileged
11.5 communication. Failure of a regulated person to submit to an examination when directed
11.6 constitutes an admission of the allegations against the person, unless the failure was due to
11.7 circumstances beyond the person's control, in which case a default and final order may be
11.8 entered without the taking of testimony or presentation of evidence. A regulated person
11.9 affected under this paragraph shall at reasonable intervals be given an opportunity to
11.10 demonstrate that the person can resume the competent practice of the regulated profession
11.11 with reasonable skill and safety to the public. In any proceeding under this paragraph,
11.12 neither the record of proceedings nor the orders entered by the board shall be used against
11.13 a regulated person in any other proceeding.

11.14 (d) In addition to ordering a physical or mental examination, the board may,
11.15 notwithstanding section 13.384 or 144.651 or any other law limiting access to medical or
11.16 other health data, obtain medical data and health records relating to a licensee or applicant
11.17 without the person's or applicant's consent if the board has probable cause to believe that
11.18 a licensee comes under paragraph (a), clause (10). The medical data may be requested
11.19 from a provider, as defined in section 144.291, subdivision 2, paragraph (h), an insurance
11.20 company, or a government agency, including the Department of Human Services. A
11.21 provider, insurance company, or government agency shall comply with any written request
11.22 of the board under this subdivision and is not liable in any action for damages for releasing
11.23 the data requested by the board if the data are released pursuant to a written request under
11.24 this subdivision, unless the information is false and the provider giving the information
11.25 knew, or had reason to believe, the information was false. Information obtained under this
11.26 subdivision is classified as private under sections 13.01 to 13.87.

11.27 (e) If the board issues an order of immediate suspension of a license, a hearing must
11.28 be held within 15 days of the suspension and completed without delay.

11.29 **Sec. 11. [153B.60] INVESTIGATION; NOTICE AND HEARINGS.**

11.30 The board has the authority to investigate alleged violations of this chapter, conduct
11.31 hearings, and impose corrective or disciplinary action as provided in section 214.103.

11.32 **Sec. 12. [153B.65] UNLICENSED PRACTICE.**

11.33 Any person who practices or makes a representation that the person is an orthotist,
11.34 prosthetist, pedorthist, assistant, fitter, or technician without a license shall be guilty

12.1 of a misdemeanor. The board shall have the authority to seek a cease and desist order
12.2 against any individual who is engaged in the unlicensed practice of a profession regulated
12.3 by the board.

12.4 Sec. 13. **[153B.70] FEES.**

12.5 (a) The application fee for initial licensure is \$.....

12.6 (b) The biennial renewal fee for a license to practice as an orthotist or prosthetist is
12.7 \$.....

12.8 (c) The biennial renewal fee for a license to practice as a pedorthist is \$.....

12.9 (d) The biennial renewal fee for a license to practice as an assistant or a fitter is \$.....

12.10 (e) The biennial renewal fee for a license to practice as a technician is \$.....

12.11 (f) The fee for license restoration is \$.....

12.12 Sec. 14. **EFFECTIVE DATE.**

12.13 This chapter is effective January 1, 2014.