



# American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC)

## STATE LICENSURE HANDBOOK

The ABC State Licensure Handbook will aid you on your journey through the process of enacting meaningful orthotic and prosthetic licensing and regulations. State licensure compliance can be easy as well as beneficial to your business and profession. With the enactment of appropriate state licensing, malpractice, fraud, abuse and other improper O&P care will decline in the state. In addition, the profession will have the opportunity for better relationships with State Agencies and most importantly, patients will have an added measure of protection and security. Licensing will ensure patients receive O&P services from orthotic and prosthetic professionals who have met initial qualifications and who have ongoing licensure requirements.

The ABC Model O&P Licensure Bill can be an important tool for drafting the licensure law in your state. It is the framework to provide a working draft, subject to changing times, by which O&P practitioners and state governments can work together. The Model Licensure Bill is the result of the collective experiences of O&P professionals and regulators coming together and sharing the essence of what actually works in state licensing laws.

### Rationale for State Licensure

- A traditional reason for pursuing state licensure is to standardize regulations for training and educational requirements throughout the state. While ABC supports integration of ABC certification requirements with state license requirements, the most compelling reason to pursue state licensure is the recognized need for uniform statewide requirements.
- The pursuit of state licensure can be a defensive strategy, motivated by the concern that if an incident should trigger legislators to proceed on their own, the O&P profession will have little or no influence on the legislation. In the fast moving world of state politics, an event such as a high profile charge of malpractice/fraud or changes in the Practice Acts of physical and occupational therapists, athletic trainers and other allied health practitioners can lead to undesirable state licensing laws literally overnight. The best defense against unwanted licensing is a good offense that proactively puts in place appropriate licensure requirements.
- Many altruistic individuals in the O&P profession cite improving professionalism as the number one reason for the pursuit of state licensure. They are correct. Statewide requirements that include minimum standards for education and training cannot help but improve both the image and the actual performance of licensed practitioners.
- A combination of the points stated above lead to another goal of pursuing state licensure, leveling the competitive playing field throughout the profession to protect the public interest. Ensuring that the education and training standards for O&P professionals protect the public from the harm that can be caused by unscrupulous persons or companies. It is less expensive in the short run to not license professionals, but this may be detrimental to the public and in the long run, to the O&P profession. Protections such as those provided through mandatory education, training, examination and licensure are precisely the job of state government.

## The Potential Downside of Licensing O&P Professionals

- Significant costs in both human and monetary resources over a long period of time can be incurred in the pursuit of licensure.
- Licensure may result in some compromise of the profession's scope of practice during the political process.
- Loss of control of the profession by O&P practitioners is possible as a governmental agency gains the ability to manage the profession.
- Fixed long-term costs of licensure administration are likely to be incurred if licensure becomes a reality.
- Some states have sunset provisions for legislation and regulation that should be taken into consideration. A sunset provision or clause is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law. This means that the statute will have to be reapproved in order to remain in place. Opening the statute up to be reapproved does provide outside groups the opportunity to revise the law.

## Getting Started

- Coalition and consensus building are the key components to achieving state licensure. The first step in this process is to bring your state's O&P professionals and other stakeholders into the conversation and pursuit of state licensure. Be sure that everyone understands the motives behind seeking licensure. Talk with those groups who will be affected by O&P licensure. States who have already been through the licensure process can be a good resource.
- Decide whether or not to hire a lobbyist to assist in your efforts. There are two schools of thought here:
  - Lobbyists are essential to gaining access and steering you through the political landscape of your state legislature. A lobbyist will guide you safely through the process and then become your eyes and ears after the bill is passed and regulations are in place, or
  - Lobbyists are a waste of money and will simply tell you what you already know, i.e., that an effective grassroots campaign is the only way to go and profession volunteer leaders will be the driving force behind the effort anyway.

You need to make an informed decision on this issue based on your specific needs and abilities.

- Next you will want to research your state's regulatory structures to determine what entity might be given supervision over the profession's regulation. If the regulation ends up in the wrong department, being regulated by people who have no insight into the O&P profession, the ultimate result could be negative. In many states, there is a Department of Professional Regulation and this may appear to be the appropriate place for O&P licensure at first glance. Be sure, however, that you talk to other groups that are currently regulated by that agency before you settle on any particular department. Find out what agencies other health care providers are regulated by and talk to them.
- Find the right legislator to sponsor the bill.
  - Most legislation goes through the committee system. Try to pick the chairman or ranking member of the committee with jurisdiction over the department or agency that you have chosen to regulate the profession.
  - Convince the legislator by stressing the consumer aspects of the issue. Since qualified O&P providers have specialized education and training, the consumer has every right to expect a competent and honest practitioner who has been scrutinized by his/her government.
  - Explain that unqualified providers who are not educated or trained in the provision of care are providing custom O&P devices and that licensure is an appropriate step toward control of the problem.

Use other state O&P licensing laws and regulations in addition to the ABC model licensure act for guidance. They will provide material for code and regulation drafts. You can find an interactive Licensure Map on ABC's website that shows all states that currently have some form of licensure

## Writing a Bill

- Once you have achieved consensus on the vision of your licensing requirements (based on this model act and your consensus building efforts) you need to begin the process of drafting a bill. Keep in mind that a bill can be as specific and detailed as you and your bill sponsor like. However, much of the specific requirements that you want to enact will come not in the law but in the regulations written by the agency that you have chosen to regulate the profession.
- Your legislator or lobbyist may be able to send the model to a state agency to have the bill produced. If other sectors of O&P related care are licensed, the new bill may have to conform to what is already in the code, and may be an amendment to current code that does not make sense as a stand-alone document.
- The more restrictive the statute the less flexibility the agency will have in implementing the law.

## Generate Support

- It may be beneficial to work with related groups of influential providers. You can usually work with the executive directors of your local and state O&P associations. It is a good idea to establish a liaison with these groups at a state level even if you are not quite ready to pursue state licensure. Such a relationship will pay dividends when you are ready to move forward.
- Consumer groups are also effective proponents in most state legislatures, and having them on your side can be a real benefit to your efforts. Take the time to reach out to consumer groups throughout your state and explain to them the consumer protection benefits that licensing the profession provides and enlist their support. Examples would be state/ local affiliates of the Amputee Coalition, United Cerebral Palsy, March of Dimes, Spina Bifida Association, AARP, etc. The close relationships that O&P professionals have with these groups may provide you with helpful contacts.
- Seek out (if you have not already done so in considering state regulatory agencies) other sectors of the profession such as physical or occupational therapists. In states where they are regulated, these professions tend to be fairly well connected and are usually willing and able to help in your effort.
- Your most important advocates, of course, will come from within the O&P profession. An effective grassroots campaign that connects O&P professionals with their state legislators to ask for support and co-sponsorship of your bill will be your most effective tool in gaining support.

## Know and Deal with the Potential Opposition

- Your State Medical Society will be concerned with the impact on their members who dispense over-the-counter devices. Work with them early in the process. Some definition compromises may be necessary and may require explicit exemption.
- Pharmacists and other DME suppliers who provide off-the-shelf and prefabricated orthoses may oppose your bill. You should not exempt these groups altogether or you will be creating a loophole that renders your license meaningless. In the case of pharmacists, you should review your state's pharmacist practice act to determine if provision of any specific devices is explicitly described.
- Occupational and physical therapists who provide orthoses may demand exclusion/inclusion. Again, try to build consensus and understanding and be prepared to compromise.
- The ABC Model O&P Licensure Act has language that includes pedorthists and fitters. Work with the pedorthists and fitters in your state to either include them in the legislation or exempt them from the regulations.
- The ABC Model O&P Licensure Act does not contain language to include individuals with other O&P credentials. Instead, it describes the education, clinical training and examinations required for obtaining licensure. These standards are consistent with ABC's certification eligibility requirements. Typically licensure laws include some form of grandfathering provision. If a person has been practicing for an established period of time in the state they will be able to become licensed. Regardless of what certification someone possesses, getting a license is based on their meeting the new qualifications.

## Passing a Bill

- Appoint one or more spokespersons who are conveniently located to your state capital and who have the time to devote to getting the bill passed. Your spokesperson should understand the model, your specific vision and bill thoroughly.
- Design a one-page handout to promote your cause. The Licensure of the Orthotic, Prosthetic and Pedorthic Profession attachment to this handbook can be used as a draft.
- Personally visit the members of the legislative committees who have jurisdiction over the bill. Try to take a supportive O&P practitioner from each legislator's district with you. Speak with each legislator or his/her legislative aide. Be prepared to be specific and succinct.
- Attend all relevant committee meetings.
- Visit as many legislators/aides as you can after the bill leaves committee. Provide letters and handouts to those whom you are unable to meet.
- Be sure you understand the time frame available. It may be very short.
- The legislative aide in your legislator/bill sponsor's office can make a tremendous difference in your information flow. Be tactful, considerate and appreciative while working with them.
- As soon as your bill passes the House or Senate, find out what day the bill will go to the other body and repeat the above process.

## How to Lobby Your Legislator

Things to remember before you launch your lobbying campaign. State legislators are very busy people who must juggle many different issues at once.

When you lobby these individuals, be aware of the questions legislators ask themselves:

- Does this make sense? A legislator who by definition is pressed for time will ask him or herself how the desired action measures against common sense.
- Is this narrow self-interest or in the interest of a broader constituent group? Legislators are far more receptive to general public good than narrow special interests.
- How will this affect my district? All politics are local and every legislator wonders how a proposal will play at home.
- Will it help me politically? Who will be the supporters and who will be the opposition? Legislators want to know whether an issue will help or hurt their reelection chances.
- Are there any constituents who know or care about this? Nothing compares to hearing from the people who vote for the legislator.
- Become their expert resource on O&P—not only for your initiative but also as future issues arise.
- Above all ALWAYS CLOSE THE DEAL. Be persistent with the legislator and at the end of the meeting ask for a decision as to whether the legislator will support your bill. If the legislator puts you off, ask when you can expect him or her to make a decision. Call back or visit again at that time.

*Here are some ineffective lobbying measures to avoid:*

- Legal memos. Legislators have neither the time nor the patience to wade through a legal document.
- Glossy kits with lots of inserts. It may look nice, but given the time constraints on most legislators, a glossy kit is far less effective than bullet points on a piece of paper.
- Jargon filled communication. Legislators don't know – and don't want to know the profession's jargon.
- Letters that only refer to bill numbers. Time pressed legislators do not have the time to look up a bill number to see what you are talking about.

- Picketing, rallies and demonstrations. Use substance over showmanship.
- Petitions. Use only as a last resort, their effectiveness is questionable.

*Here are some effective lobbying measures that are time tested:*

- Having important and powerful people meet with the legislator. Legislators like to feel important. Meetings with important people fill this desire.
- Personal letters from constituents that start “As your constituent I urge you to...” Nothing works like hearing from a constituent/voter. Bullet points in the letter make it even more effective.
- Personal visits and/or phone calls by constituents. These work best when the legislator has the time to listen so they can learn about the issue. Remember to keep your message and request simple.

## The Regulatory Process

Assume that you have been effective and the state legislature passes and the governor signs your bill into law. It’s time to celebrate because you are finished, right? WRONG! Your spokesperson(s) must be willing to continue to work with the State to create the regulations and be involved with any licensure board/committee created by the bill.

Enacting legislation is only the beginning of a process that will literally never end. The most common mistake made in enacting a state licensure is quitting before the regulations are written. As noted above, much of your vision will only be fulfilled at the regulatory level. But hopefully you have chosen your agency well and have created a good working relationship with them during the legislative process.

In the best case, a regulatory agency will be sympathetic to your cause and will have strict instructions in the law as to how to go about achieving the vision that you have set forth. In the worst case, you will have a hostile agency that has a mandate from the legislature to simply **Regulate the O&P profession** and can do however it sees fit.

Reality usually falls somewhere in between. Regulators are hardworking individuals whose job it is to enforce the law. They do this oftentimes by interpreting the will of the legislature and molding the regulations to the tools that they have available. So again, the suggestion that you understand the agency that will eventually regulate the profession is critical.

Regulation, more than legislation, is your opportunity to get into specific issues and create the detailed framework for regulation of the profession. Most states have a set regulatory process that involves rule-making with opportunities for public comment. You should have a clear understanding of the regulatory process and the steps that regulation goes through on its path to codification.

You should know the individuals who work for and are in charge of the agency you have chosen. Most importantly, you need to have a clear plan as to how your vision will be realized through the regulatory process, keeping in mind that good law makes for good regulation. An excellent guide is the ABC Model Administrative Rules. The ABC model rules is a template of what elements the regulations should include.

## A Never Ending Story

So you’ve achieved a law and regulations that fulfill your vision. NOW you’re done, right? Wrong. You will need to be ever vigilant to see that no one exempts himself or herself from the law, that no one takes the teeth out of the law and to generally improve the law as time goes by. Once you have achieved licensure, you must remain active in it.

To the extent that there is professional representation on the regulatory board with jurisdiction over the regulatory agency, that representation must be used to maximum effect. To the extent that enforcement hinges on licensed providers reporting non-compliers, the profession must take responsibility for policing itself.

### **Now That You Know How, Get Started Today**

Whether you have a law in place that you are unhappy with or you are completely unregulated, you now have the tools and information you need to get started. Realize that the process may take many years or could happen very quickly. The key is to remain flexible in the very fluid world of politics.

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## **Model for Legislative Handout**

*Fill in your state name before distributing*

### **Physically Challenged Patients Need Protection**

*Licensure of the Orthotic, Prosthetic, & Pedorthic Profession*

The practice of orthotics and prosthetics 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. Those standards are a Master's degree with specialized upper division orthotic and prosthetic curricula, post-graduate clinical residency and mandatory continuing education. The practice of pedorthics is an allied health profession recognized by the American Academy of Orthopedic Surgeons with educational standards established by the National Commission on Orthotic and Prosthetic Education.

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. There have been significant documented cases of fraud and abuse within the Medicare/Medicaid system, increasing overall costs.

Citizens of (state) 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. Increased pressure to reduce healthcare reimbursement could result in care based on cost savings and profits - not improving the quality of life.

The present unregulated system for providing orthotic, prosthetic and pedorthic care does not adequately meet the needs or protect the interests of the public. There is a lack of uniformity amongst state agencies and, for the consumer there is no recourse for disciplinary action in the case of incompetent or negligent care.

In keeping with state requirements imposed on similar health disciplines, licensure of the orthotic, prosthetic and pedorthic profession will help ensure the health and safety of (state) consumers, as well as maximize their functional abilities and productivity levels.

In order to promote the welfare of the physically challenged and advance the highest levels of competency and ethics in the practice of orthotics, prosthetics and pedorthics it is necessary for (state) to regulate and license the practice of orthotics, prosthetics and pedorthics.

Orthotics – the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or repairing an orthosis (custom fabricated or fitted brace) for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury or deformity.

Prosthetics – the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or repairing a prosthesis (custom artificial limb) for individuals with an amputation or limb deficiency.

Pedorthics – the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or repairing a pedorthic device for the prevention or amelioration of painful and/or disabling conditions of the foot and ankle.