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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2344

05/15/2015

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The bill was read for the first time and referred to the Committee on Health and Human Services Reform

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A bill for an act

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

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requiring licensure; establishing fees; proposing coding for new law as Minnesota

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Statutes, chapter 153B.

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

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

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

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Act."

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

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Subdivision 1. **Application.** For purposes of this act, the following words have

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the meanings given.

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Subd. 2. **Advisory council.** "Advisory council" means the Orthotics, Prosthetics,

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and Pedorthics Advisory Council established under section 153B.25.

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Subd. 3. **Board.** "Board" means the Board of Podiatric Medicine.

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Subd. 4. **Custom-fabricated device.** "Custom-fabricated device" means an orthosis,

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prosthesis, or pedorthic device for use by a patient that is fabricated to comprehensive

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measurements or a mold or patient model in accordance with a prescription and which

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requires on-site or in-person clinical and technical judgment in its design, fabrication,

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and fitting.

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Subd. 5. **Licensed assistant.** "Licensed assistant" means a person, licensed by the

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board, who is educated and trained to participate in comprehensive orthotic and prosthetic

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care while under the supervision of a licensed orthotist or licensed prosthetist. Assistants

may perform orthotic and prosthetic procedures and related tasks in the management of patient care. The assistant may fabricate, repair, and maintain orthoses and prostheses.

**Subd. 6. Licensed orthotic fitter.** "Licensed orthotic fitter" means a person licensed by the board who is educated and trained in providing certain orthoses, and is trained to conduct patient assessments, formulate treatment plans, implement treatment plans, perform follow-up, and practice management pursuant to a prescription. An orthotic fitter must be competent to fit certain custom-fitted, prefabricated, and off-the-shelf orthoses as follows:

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

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

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

(4) trusses.

**Subd. 7. Licensed orthotist.** "Licensed orthotist" means a person licensed by the board who is educated and trained to practice orthotics, which includes managing comprehensive orthotic patient care pursuant to a prescription. The use of the following titles, terms, or representations to the public is limited to a person who is licensed under this chapter as an orthotist: "orthosis," "orthotist," "brace," or similar description of services.

**Subd. 8. Licensed pedorthist.** "Licensed pedorthist" means a person licensed by the board who is educated and trained to manage comprehensive pedorthic patient care and who performs patient assessments, formulates and implements treatment plans, and performs follow-up and practice management pursuant to a prescription. A pedorthist may fit, fabricate, adjust, or modify devices within the scope of the pedorthist's education and training. Use of the following titles, terms, or representations to the public is limited to a person who is licensed under this chapter as a pedorthist: "pedorthic device," "pedorthist," or similar description of services.

**Subd. 9. Licensed prosthetist.** "Licensed prosthetist" means a person licensed by the board who is educated and trained to manage comprehensive prosthetic patient care, and who performs patient assessments, formulates and implements treatment plans, and performs follow-up and practice management pursuant to a prescription. Use of the following titles, terms, or representations to the public is limited to a person who is licensed under this chapter as a prosthetist: "prosthesis," "prosthetist," "artificial limb," or similar description of services.

3.1        Subd. 10. **Licensed prosthetist orthotist.** "Licensed prosthetist orthotist" means a  
3.2 person licensed by the board who is educated and trained to manage comprehensive  
3.3 prosthetic and orthotic patient care, and who performs patient assessments, formulates and  
3.4 implements treatment plans, and performs follow-up and practice management pursuant to  
3.5 a prescription. Use of the following titles, terms, or representations to the public is limited  
3.6 to a person who is licensed under this chapter as a prosthetist orthotist: "prosthesis,"  
3.7 "orthosis," "artificial limb," or similar description of services.

3.8        Subd. 11. **NCOPE.** "NCOPE" means National Commission on Orthotic and  
3.9 Prosthetic Education, an accreditation program that ensures educational institutions and  
3.10 residency programs meet the minimum standards of quality to prepare individuals to enter  
3.11 the orthotic, prosthetic, and pedorthic professions.

3.12        Subd. 12. **Orthosis.** "Orthosis" means an external device that is custom-fabricated  
3.13 or custom-fitted to a specific patient based on the patient's unique physical condition and  
3.14 is applied to a part of the body to help correct a deformity, provide support and protection,  
3.15 restrict motion, improve function, or relieve symptoms of a disease, syndrome, injury, or  
3.16 postoperative condition.

3.17        Subd. 13. **Orthotics.** "Orthotics" means the science and practice of evaluating,  
3.18 measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis  
3.19 pursuant to a prescription. The practice of orthotics includes providing the initial training  
3.20 necessary for fitting an orthotic device for the support, correction, or alleviation of  
3.21 neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

3.22        Subd. 14. **Over-the-counter.** "Over-the-counter" means a prefabricated,  
3.23 mass-produced item that is prepackaged, requires no professional advice or judgment in  
3.24 size selection or use, and is currently available at retail stores without a prescription.  
3.25 Over-the-counter items are not regulated by this act.

3.26        Subd. 15. **Off-the-shelf.** "Off-the-shelf" means a prefabricated device sized or  
3.27 modified for the patient's use pursuant to a prescription and which requires changes to be  
3.28 made by a qualified practitioner to achieve an individual fit, such as requiring the item  
3.29 to be trimmed, bent, or molded with or without heat, or requiring any other alterations  
3.30 beyond self adjustment.

3.31        Subd. 16. **Pedorthic device.** "Pedorthic device" means below-the-ankle partial  
3.32 foot prostheses for transmetatarsal and more distal amputations, foot orthoses, and  
3.33 subtalar-control foot orthoses to control the range of motion of the subtalar joint.  
3.34 A prescription is required for any pedorthic device, modification, or prefabricated  
3.35 below-the-knee orthosis addressing a medical condition that originates at the ankle or  
3.36 below. Pedorthic devices do not include nontherapeutic inlays or footwear regardless

of method of manufacture; unmodified, nontherapeutic over-the-counter shoes; or prefabricated foot care products.

**Subd. 17. Pedorthics.** "Pedorthics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device pursuant to a prescription for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity. The practice of pedorthics includes providing patient care and services pursuant to a prescription to prevent or ameliorate painful or disabling conditions of the foot and ankle.

**Subd. 18. Prescription.** "Prescription" means an order deemed medically necessary by a physician, podiatric physician, osteopathic physician, or a licensed health care provider who has authority in this state to prescribe orthotic and prosthetic devices, supplies, and services.

**Subd. 19. Prosthesis.** "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; external breast prosthesis; or cosmetic devices that do not have a significant impact on the musculoskeletal functions of the body.

**Subd. 20. Prosthetics.** "Prosthetics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis pursuant to a prescription. It includes providing the initial training necessary to fit a prosthesis in order to replace external parts of a human body lost due to amputation, congenital deformities, or absence.

**Subd. 21. Resident.** "Resident" means a person who has completed a NCOPE-approved education program in orthotics or prosthetics and is receiving clinical training in a residency accredited by NCOPE.

**Subd. 22. Residency.** "Residency" means a minimum of an NCOPE-approved program to acquire practical clinical training in orthotics and prosthetics in a patient care setting.

**Subd. 23. Supervisor.** "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, osteopathic physician, or podiatric physician licensed by the state of Minnesota from providing services within the physician's scope of practice;

(2) a professional regulated in this state, including but not limited to physical therapists and occupational therapists, 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 who is performing activities required by the program;

(ii) a resident enrolled in an 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, prosthetist orthotist, pedorthist, assistant, or fitter who is licensed in another state or territory of the United States or in another country that has equivalent licensure requirements as approved by the board from providing services within the professional's scope of practice subject to this paragraph, if 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, unless the individual withdraws the application for licensure or the board denies the license.

Sec. 4. **[153B.25] ORTHOTICS, PROSTHETICS, AND PEDORTHICS**  
**ADVISORY COUNCIL.**

Subdivision 1. **Creation; membership.** (a) There is established an Orthotics, Prosthetics, and Pedorthics Advisory Council which shall consist of seven voting members appointed by the board. Five members shall be licensed and practicing orthotists, prosthetists, or pedorthists. Each profession shall be represented on the advisory council. One member shall be a Minnesota-licensed doctor of podiatric medicine who is also a member of the Board of Podiatric Medicine, and one member shall be a public member.

(b) The council shall be organized and administered under section 15.059.

Subd. 2. **Duties.** The advisory council shall:

(1) advise the board on enforcement of the provisions contained in this chapter;

(2) review reports of investigations or complaints relating to individuals and make recommendations to the board as to whether a license should be denied or disciplinary action taken against an individual;

(3) advise the board regarding standards for licensure of professionals under this chapter; and

(4) perform other duties authorized for advisory councils by chapter 214, as directed by the board.

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

Subdivision 1. **Application.** An application for a 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, prosthetist, or prosthetist orthotist, an applicant shall meet orthotist, prosthetist, or prosthetist orthotist certification requirements of either the American Board for Certification in Orthotics, Prosthetics, and Pedorthics or the Board of Certification/Accreditation requirements in effect at the time of the individual's application for licensure and be in good standing with the certifying board.

(b) To be eligible for licensure as a pedorthist, an applicant shall meet the pedorthist certification requirements of either the American Board for Certification in Orthotics, Prosthetics, and Pedorthics or the Board of Certification/Accreditation that are in effect at the time of the individual's application for licensure and be in good standing with the certifying board.

(c) To be eligible for licensure as an orthotic or prosthetic assistant, an applicant shall meet the orthotic or prosthetic assistant certification requirements of the American Board for Certification in Orthotics, Prosthetics, and Pedorthics that are in effect at the time of the individual's application for licensure and be in good standing with the certifying board.

(d) To be eligible for licensure as an orthotic fitter, an applicant shall meet the orthotic fitter certification requirements of either the American Board for Certification in Orthotics, Prosthetics, and Pedorthics or the Board of Certification/Accreditation that are in effect at the time of the individual's application for licensure and be in good standing with the certifying board.

Subd. 3. **License term.** A license to practice is valid for a term of up to 24 months beginning on January 1 or commencing after initially fulfilling the license requirements and ending on December 31 of the following year.

Sec. 6. **[153B.35] EMPLOYMENT BY AN ACCREDITED FACILITY; SCOPE OF PRACTICE.**

A licensed orthotist, prosthetist, pedorthist, assistant, or orthotic fitter may provide limited, supervised patient care services beyond their licensed scope of practice if all of the following conditions are met:

(1) the licensee is employed by a patient care facility that is accredited by a national accrediting organization in orthotics, prosthetics, and pedorthics;

(2) written objective criteria are documented by the accredited facility to describe the knowledge and skills required by the licensee to demonstrate competency to provide additional specific and limited patient care services that are outside the licensee's scope of practice;

(3) the licensee provides patient care only at the direction of a supervisor who is licensed as an orthotist, pedorthist, or prosthetist who is employed by the facility to provide the specific patient care or services that are outside the licensee's scope of practice; and

(4) the supervised patient care occurs in compliance with facility accreditation standards.

Sec. 7. **[153B.40] CONTINUING EDUCATION.**

Subdivision 1. **Requirement.** Each licensee shall obtain the number of continuing education hours required by the certifying board to maintain certification status pursuant to the specific license category.

Subd. 2. **Proof of attendance.** A licensee must submit to the board proof of attendance at approved continuing education programs during the license renewal period in which it was attended in the form of a certificate, statement of continuing education credits from the American Board for Certification in Orthotics, Prosthetics, and Pedorthics or the Board of Certification/Accreditation, descriptive receipt, or affidavit. The board may conduct random audits.

Subd. 3. **Extension of continuing education requirements.** For good cause, a licensee may apply to the board for a six-month extension of the deadline for obtaining the required number of continuing education credits. No more than two consecutive extensions may be granted. For purposes of this subdivision, "good cause" includes unforeseen hardships such as illness, family emergency, or military call-up.

Sec. 8. **[153B.45] LICENSE RENEWAL.**

Subdivision 1. **Submission of license renewal application.** A licensee must submit to the board a license renewal application on a form provided by the board together with the license renewal fee. The completed form must be postmarked no later than January 1 in the year of renewal. The form must be signed by the licensee in the place provided for the renewal applicant's signature, include evidence of participation in approved continuing education programs, and any other information as the board may reasonably require.

8.1 Subd. 2. **Renewal application postmarked after January 1.** A renewal application  
8.2 postmarked after January 1 in the renewal year shall be returned to the licensee for addition  
8.3 of the late renewal fee. A license renewal application postmarked after January 1 in the  
8.4 renewal year is not complete until the late renewal fee has been received by the board.

8.5 Subd. 3. **Failure to submit renewal application.** (a) At any time after January 1 of  
8.6 the applicable renewal year, the board shall send notice to a licensee who has failed to  
8.7 apply for license renewal. The notice shall be mailed to the licensee at the last address on  
8.8 file with the board and shall include the following information:

8.9 (1) that the licensee has failed to submit application for license renewal;

8.10 (2) the amount of renewal and late fees;

8.11 (3) information about continuing education that must be submitted in order for  
8.12 the license to be renewed;

8.13 (4) that the licensee must respond within 30 calendar days after the notice was sent  
8.14 by the board; and

8.15 (5) that the licensee may voluntarily terminate the license by notifying the board  
8.16 or may apply for license renewal by sending the board a completed renewal application,  
8.17 license renewal and late fees, and evidence of compliance with continuing education  
8.18 requirements.

8.19 (b) Failure by the licensee to notify the board of the licensee's intent to voluntarily  
8.20 terminate the license or to submit a license renewal application shall result in expiration  
8.21 of the license and termination of the right to practice. The expiration of the license and  
8.22 termination of the right to practice shall not be considered disciplinary action against the  
8.23 licensee.

8.24 (c) A license that has been expired under this subdivision may be reinstated.

8.25 Sec. 9. **[153B.50] NAME AND ADDRESS CHANGE.**

8.26 (a) A licensee who has changed names must notify the board in writing within 90  
8.27 days and request a revised license. The board may require official documentation of the  
8.28 legal name change.

8.29 (b) A licensee must maintain with the board a correct mailing address to receive  
8.30 board communications and notices. A licensee who has changed addresses must notify the  
8.31 board in writing within 90 days. Mailing a notice by United States mail to a licensee's last  
8.32 known mailing address constitutes valid mailing.

8.33 Sec. 10. **[153B.55] INACTIVE STATUS.**



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

9.5 (b) A person requesting restoration from inactive status shall be required to pay the  
9.6 current renewal fee and comply with section 153B.45.

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

9.9 Sec. 11. **[153B.60] LICENSE LAPSE DUE TO MILITARY SERVICE.**

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

9.15 Sec. 12. **[153B.65] ENDORSEMENT.**

9.16 The board may license, without examination and on payment of the required fee,  
9.17 an applicant who is an orthotist, prosthetist, prosthetist orthotist, pedorthist, assistant, or  
9.18 fitter who is certified by the American Board for Certification in Orthotics, Prosthetics,  
9.19 and Pedorthics or a national certification organization with educational, experiential, and  
9.20 testing standards equal to or higher than the licensing requirements in Minnesota.

9.21 Sec. 13. **[153B.70] GROUNDS FOR DISCIPLINARY ACTION.**

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

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

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

9.26 (3) being convicted of any crime under the laws of the United States or of a state  
9.27 or territory of the United States which is a felony or misdemeanor, where an essential  
9.28 element of the crime is dishonesty or where the crime is directly related to the practice of  
9.29 the profession;

9.30 (4) making a misrepresentation in order to obtain or renew a license;

9.31 (5) displaying a pattern of practice or other behavior that demonstrates incapacity or  
9.32 incompetence to practice;

9.33 (6) aiding or assisting another person in violating the provisions of this chapter;

(7) failing to provide information within 60 days in response to a written request from the board, including documentation of completion of continuing education requirements;

(8) engaging in dishonorable, unethical, or unprofessional conduct;

(9) engaging in conduct of a character likely to deceive, defraud, or harm the public;

(10) inability to practice due to habitual intoxication, addiction to drugs, or mental or physical illness;

(11) being disciplined by another state or territory of the United States, the federal government, a national certification organization, or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to one of the grounds 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) incurring a finding by the board that the licensee, after the licensee has been placed on probationary status, has violated the conditions of the probation;

(14) abandoning a patient or client;

(15) willfully making or filing false records or reports in the course of the licensee's practice including, but not limited to, false records or reports filed with state or federal agencies;

(16) willfully failing to report suspected child maltreatment as required under the Maltreatment of Minors Act, section 626.556; or

(17) soliciting professional services using false or misleading advertising.

(b) A license to practice is automatically suspended if (1) a guardian of a licensee is appointed by order of a court pursuant to sections 524.5-101 to 524.5-502, for reasons other than the minority of the licensee, or (2) the licensee is committed by order of a court pursuant to chapter 253B. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing. The licensee may be reinstated to practice, either with or without restrictions, by demonstrating clear and convincing evidence of rehabilitation. The regulated person is not required to prove rehabilitation if the subsequent court decision overturns previous court findings of public risk.

(c) If the board has probable cause to believe that a licensee or applicant has violated paragraph (a), clause (10), it may direct the person to submit to a mental or physical examination. For the purpose of this section, every person is deemed to have consented to submit to a mental or physical examination when directed in writing by the board and to have waived all objections to the admissibility of the examining physician's testimony or

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

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

11.24 (e) If the board issues an order of immediate suspension of a license, a hearing must  
11.25 be held within 30 days of the suspension and completed without delay.

11.26 **Sec. 14. [153B.75] INVESTIGATION; NOTICE AND HEARINGS.**

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

11.29 **Sec. 15. [153B.80] UNLICENSED PRACTICE.**

11.30 Any person who practices as or makes a representation that the person is an orthotist,  
11.31 prosthetist, prosthetist orthotist, pedorthist, assistant, or fitter without a license shall be  
11.32 guilty of a misdemeanor. The board shall have the authority to seek a cease and desist  
11.33 order against any individual who is engaged in the unlicensed practice of a profession  
11.34 regulated by the board.

12.1       Sec. 16. **[153B.85] FEES.**

12.2           (a) The application fee for initial licensure shall not exceed \$600.

12.3           (b) The biennial renewal fee for a license to practice as an orthotist, prosthetist,  
12.4 prosthetist orthotist, or pedorthist shall not exceed \$600.

12.5           (c) The biennial renewal fee for a license to practice as an assistant or a fitter shall  
12.6 not exceed \$300.

12.7           (d) The initial licensure fee shall be the biennial renewal fee for the license issued  
12.8 prorated to the nearest dollar that is represented by the ratio of the number of days the  
12.9 license is held in the initial licensure period to 730 days.

12.10          (e) The fee for license restoration shall not exceed \$600.

12.11          (f) The fee for late license renewal is the license renewal fee in effect at the time of  
12.12 renewal plus \$100.

12.13          (g) The fee for license verification shall not exceed \$30.

12.14          (h) The fee to obtain a list of licensees shall not exceed \$25.

12.15       Sec. 17. **EFFECTIVE DATE.**

12.16          Sections 1 to 16 are effective January 1, 2017.