

American Board for Certification in Orthotics and Prosthetics

State Licensure Handbook

This State Licensure Handbook will aid you on your journey through the process of enacting meaningful orthotic and prosthetic practitioner licensing and regulations. State licensure can be easy to comply with as well as beneficial to your business and your profession. After enactment of proper state licensing, malpractice, fraud and abuse, and other improper O&P care in the state will decline, the profession will have the opportunity for better relations with State Agencies, and, most importantly, the public will have an added measure of protection and security. Licensing will ensure the consumer receives O&P services of consistently higher quality and are assured of initial and on going professional competence of the orthotists and prosthetists practicing in their state.

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

Rationale for State Licensure

1. The most effective rationale for a state to pursue state licensure is defensive, 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 high profile charges of malpractice/fraud or changes in the Practice Acts of 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.
2. Another very common reason for pursuing licensure is to standardize throughout a state the regulations regarding training and educational requirements. ABC supports integration of ABC certification requirements with state license requirements. In any case, the need for uniform statewide requirements is a compelling reason to pursue state licensure.
3. 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.

4. A combination of the reasons stated above form the fourth reason to pursue state licensure: leveling the competitive playing field throughout the profession to protect the public interest. Ensuring the training standards for technicians and practitioners protects the public from the harm that can be caused by an unscrupulous person or company. Of course it is cheaper in the short run to not certify/train technicians and practitioners, but such business practices are detrimental to the public and in the long run, to the O&P profession. Protections such as those provided through mandatory training, education and certification are precisely the job of state government.

The Down Side of Licensing O&P Professionals

1. Significant costs in both human and monetary resources, over long periods of time, are incurred in the pursuit of licensure.
2. Licensure is likely to result in some compromise of the profession's scope of practice during the political process.
3. Loss of control of the profession by O&P practitioners will incur as a governmental agency gains the ability to manage the profession.
4. Significant costs of licensure administration are likely to be incurred if licensure becomes a reality.
5. Some states have "sunset" provisions for legislation and regulation and must be taken into consideration.

Getting Started

1. Coalition and consensus building are the key components to achieving licensure. The very first step in this process is bringing your state's O&P practitioners into the consideration of the pursuit of state licensure early and being sure that everyone understands the reasoning behind seeking licensure.
2. Talk with ancillary groups who will be affected by O&P licensure – CPeds., PTs, OTs, and others. States who have been through the licensure process can be your best guides.

3. A decision you need to make early on your process is whether you will hire a state lobbyist to assist in your efforts. There are two schools of thought here:
 - a) Lobbyists are essential to gaining access and learning the political landscape of your state legislature. A lobbyist will guide you safely through the process and then become your eyes and ears after your bill is passed and regulations are in place.
 - b) 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 state association's specific needs and abilities.

4. Next you will want to research your state bureaucracy to determine who might end up with supervision over the profession regulation. If you end up in the wrong department, being regulated by people who have no insight into the O&P practice, you are in for frustrating times. In many states, there is a Department of Professional Licensing, and this may seem like the place for O&P at first glance. Be sure, however, that you talk to groups that are regulated by that agency before you settle on any particular department. Find out how many other sectors of health care providers are regulated and talk to them.
5. Find the right legislator to sponsor the bill.
 - a) Most legislation goes through the committee system. Try to pick the chairman or ranking member of the committee with jurisdiction over the department that you have chosen to regulate the profession.
 - b) 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 government.
 - c) Explain that unqualified providers are providing custom O&P devices they are not trained to provide and that licensure is a big step toward control of the problem.
6. Don't reinvent the wheel. Use other state O&P licensing laws and regulations in addition to the ABC model licensure bill. They will provide material for code and regulation drafts.

Writing a Bill

1. Once you have achieved consensus on the vision of your licensing requirements (based on the model statute 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.

2. 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.
3. An attorney can be hired to draft a bill.

Generate Support

1. Professional groups of related professionals exert a lot of influence and might scare off any would be detractors. You can usually work with the executive directors of the local and state associations. Of course, 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.
2. Consumer groups are 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 the state and explain to them the consumer protection benefits that licensing the profession provides. Enlist the support of these groups. Examples would be your state's Assistive Technology Project and state/local affiliates of the Amputee Coalition of America, United Cerebral Palsy, March of Dimes, Spina Bifida Association, AARP, etc. Because of close relationships with these groups, O&P professional may have served on their boards. Use those individuals as contacts.
3. Seek out (if you have not already done so in considering state regulatory agencies) other sectors of the profession such as therapists. Particularly in states where they are regulated, these [industries] tend to be fairly well connected and are usually willing and able to help in your effort.
4. 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

1. The State Medical Society, a very strong lobby group in nearly every state, will be concerned with the impact on their members who sell/provide over the counter. Make peace with them early on. Some definition compromises may be necessary, as may explicit exemption.
2. Pharmacists and other DME suppliers who provide pre-made orthoses may oppose your bill. DO NOT exempt these groups altogether or you will be creating a loophole that renders your license meaningless. Instead carve out the kind of devices that they usually provide.
3. Occupational and Physical Therapist who provide orthoses may demand exclusion/inclusion; otherwise they will kill the bill. Again, make peace and be prepared to compromise.
4. The ABC Model O&P Licensure Bill includes language that includes CPeds. It was developed in conjunction with the Board for Certification in Pedorthics. Work with the CPeds with your state to either include them within the legislation or exempt them from the regulations.
5. The ABC Model O&P Licensure Bill does not include language to include individuals with BOC credentials. If your state has a significant number of BOC practitioners, you will probably have to make compromises in this area as well.

Passing a Bill

1. Appoint one or more spokesperson(s) who are conveniently located to the state capital and who have the time to put into getting the bill passed. Your spokesperson(s) should understand the model, your specific vision and bill thoroughly.
2. Design a one-page handout with an attention grabbing title. The "Reasons for Licensure" attachment in the ABC Model O&P Licensure Bill can be used as a draft.
3. Go to the members of the committee having jurisdiction. 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 ready to say a lot in very little time. Leave your handout.
4. Attend all relevant committee meetings.

5. Be prepared to visit as many legislators/aides as you can see after the bill leaves committee. Fax letters and handouts to those you miss.
6. Be sure you understand the time frame available. It may be very short.
7. The legislative aide in your legislator/bill sponsor's office can make a tremendous difference in your information flow. Be a tactful, considerate, appreciative friend to them.
8. As soon as your bill passes the house or senate, find out what day the bills will go to the other body and repeat the above process at that time.

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:

1. 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.
2. Is this narrow self-interest or in broad interest? Legislators are far more receptive to general public good than narrow special interests.
3. How will this effect my district? All politics are local, and every legislator wonders how a proposal will play at home.
4. 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.
5. Are there any constituents who know or care about this? Nothing compares to hearing from the people who vote for the legislator.

If you can satisfy each of these questions for a legislator, you are well on your way to obtaining his or her support.

Here are some ineffective lobbying measures to avoid:

1. Legal memos. Legislators have neither the time nor the patience to wade through a legal document.

2. Glossy kits with lots of inserts. It may look pretty, but given the time constraints on most legislators, a glossy kit is far less effective than bullet points on a piece of paper.
3. Jargon filled communication. Legislators don't know – and don't want to know the profession's jargon.
4. 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.
5. Picketing, rallies, and demonstrations. Use substance over showmanship.
6. Petitions. Use only as a last resort, their effectiveness is questionable.

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

1. Having important and powerful people meet with the legislator. Legislators like to feel important. Meetings with important people fill this desire.
2. Personal spontaneous letters from constituents that start “ As your constituent I urge you to...” Nothing greases the wheels like hearing from a constituent/voter. Bullet points in the letter make it even more effective.
3. 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.

Here are eternal truths that lobbyists can live or die by:

1. Perception is reality.
2. The possible beats the ideal.
3. Squeaky wheels get the grease.
4. Silence means “Everything's OK.”
5. Pull the feathers that cause the goose to honk the least.
6. Corporations don't vote.
7. An organized minority beats an unorganized majority every single time.
8. You're always welcome if you bring expertise, political support or public support.

9. If they haven't learned, you haven't taught.
10. Face-to-face contact beats a phone call; a phone call beats a letter; anything beats a petition.
11. Don't expect them to remember your name or your face.
12. Don't feel uncomfortable just because you didn't vote for them.
13. Don't ask for the politically impossible.
14. Thank you goes a long way.
15. You don't have friends in politics, only allies.

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.

The Regulatory Process

Assume that you have been effective and the state legislature passes and the governor signs your bill into law. Time to celebrate because you are done, 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 the 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 been creating a 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 hard working 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-makings 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.

Many of the topics covered in the ABC Model State Licensing Bill will not make appropriate law, but do make excellent regulation. For example, while the law may require that training of orthotists and prosthetists take place, it may be in the regulations where the actual required amount of education and training is defined, approved training provider requirements are set forth and continuing education is provided for you. You must view the regulatory process as a continuation of the battle to see that your vision of regulation of the profession is fulfilled.

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 then 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 You Know How, Get Started Today

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

American Board for Certification in Orthotics and Prosthetics

330 John Carlyle Street, Suite 210, Alexandria, VA 22314

703-836-7114

*Licensure of the Orthotic, Prosthetic, & Pedorthic Profession*¹

- 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 Baccalaureate degree with specialized upper division 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 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. There have been significant documented cases of fraud and abuse within the Medicare 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 use of managed care programs 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 Illinois to regulate and license the practice of orthotics, prosthetics, and pedorthics.

¹Orthotics - the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or servicing an orthosis (*custom 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 servicing a prosthesis (*custom artificial limb*) for amputations and limb deficiencies. Pedorthics - the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device (*therapeutic footwear, foot orthoses for use at the ankle or below, and modified footwear*) for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury or deformity of the feet.