



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech

SUBJECT: Proposed Amendment to the Regulations of the
Commissioner of Education Relating to Podiatric Ankle
Surgery Privileges

DATE: February 3, 2014

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents approve the addition of section 65.8 of the Regulations of the Commissioner of Education relating to podiatric ankle surgery privileges?

Reason(s) for Consideration

Required by State statute (Chapter 438 of the Laws of 2012).

Proposed Handling

The proposed rule will be presented to the Professional Practice Committee for recommendation and to the full Board for adoption as a permanent rule at the February 2014 meeting of the Board of Regents. In addition, the proposed rule is also being presented for adoption as an emergency rule to ensure that the rule is in effect on February 17, 2014, which is the effective date of Chapter 438 of the Laws of 2012. A copy of the permanent rule, the emergency rule, and a Statement of Facts and Circumstances Which Necessitate Emergency Action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed rule was discussed by the Professional Practice Committee at the November 2013 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on November 27, 2013 for a 45-day public comment period. Public comment was received from one commenter. An Assessment of Public Comment is attached.

Background Information

Chapter 438 of the Laws of 2012, which will become effective on February 17, 2014, amended the Education Law to expand the scope of practice of podiatrists. Until that date, the scope of practice continues to be limited to diagnosing, treating, operating and prescribing for any disease, injury, deformity or other condition of the foot. When the new law takes effect, podiatrists will be able to treat certain wounds that occur between the foot and the knee.

In addition, Chapter 438 authorizes the provision of ankle surgery by podiatrists who obtain a privilege from the State Education Department to perform such surgery. The law provides for the issuance of two levels of privilege. Holders of the standard ankle surgery privilege will be able to perform soft tissue and osseous procedures on the ankle, except for those procedures which are reserved to podiatrists holding the advanced ankle surgery privilege. The reserved procedures are:

- ankle fracture fixation;
- ankle fusion;
- ankle arthroscopy;
- insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and
- insertion and removal of retrograde tibiototalcanneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae.

Education Law section 7009 establishes the requirements to be met for a podiatrist to obtain an ankle surgery privilege. In addition to the submission of an application, licensure as a podiatrist, and the payment of a fee, the applicant must meet specified training and certification requirements. There are three training and certification routes available to podiatrists seeking the standard privilege and two routes available to those seeking the advanced privilege. Education Law section 7010 establishes ankle surgery limited permits to authorize the performance of podiatric standard ankle surgery only under the direct personal supervision of a licensed podiatrist holding a standard or advanced privilege or of a licensed physician certified in orthopedic surgery by a national certifying board having certification standards acceptable to the department. The limited permits will enable licensed podiatrists to obtain the additional training they may need to qualify for an ankle surgery privilege.

Each of the routes for obtaining an ankle surgery privilege requires completion of an accredited residency program in podiatric medicine and surgery and either national board certification or qualification in reconstructive rearfoot and ankle surgery. Four of the five routes also require additional training, acceptable to the Department, in midfoot, rearfoot, and ankle procedures. The proposed regulations:

1. define the term “accrediting agency acceptable to the department” with regard to the accreditation of podiatric residencies;
2. define the term “certification standards acceptable to the department” with regard to the certification of podiatric residency programs; and
3. set the requirements for the approval of the additional training that may be required for issuance of an ankle surgery privilege. Within each level of the privilege, the shorter the residency program undertaken by the podiatrist and the lower his or her board certification status, the greater the amount of additional training and experience required by the Department.

Recommendation

It is recommended that the Board of Regents take the following actions:

VOTED: That section 65.8 of the Regulations of the Commissioner of Education be added, as submitted, effective February 26, 2014; and it is further

VOTED: That section 65.8 of the Regulations of the Commissioner of Education be added, as submitted, effective February 17, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to ensure the timely implementation of Chapter 438 of the Laws of 2012.

Timetable for Implementation

If adopted at the February 2014 Regents meeting, the emergency adoption will become effective on February 17, 2014 and the permanent rule will become effective on February 26, 2014.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6507, 7001 and 7009 of the Education Law and Chapter 438 of the Laws of 2012

Section 65.8 of the Regulations of the Commissioner of Education is added, effective February 26, 2014, to read as follows:

§ 65.8 Podiatric ankle surgery privileges.

(a) Definitions. As used in this section:

(1) "Accrediting agency acceptable to the department" shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting podiatric residencies and as having accreditation standards that are applied in a fair, consistent, and nondiscriminatory manner.

(2) "Certification standards acceptable to the department" shall mean standards accepted by the department as reliable for the purpose of granting board qualification and certification to podiatrists engaged in reconstructive rearfoot and ankle surgery and applied in a fair, consistent, and nondiscriminatory manner.

(b) For issuance of a privilege to perform podiatric standard ankle surgery, as that term is used in Education Law section 7001(2), the applicant shall:

(1) file an application with the department;

(2) be licensed as a podiatrist in the state;

(3) pay a fee of \$220 to the department; and

(4) either:

(i) (a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; or

(ii) (a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be board qualified but not yet certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in standard or advanced midfoot, rearfoot and ankle procedures that consist of not less than 10 ankle procedures in the five years immediately preceding application, provided that not less than five procedures shall be osseous procedures and not less than five procedures shall be soft tissue procedures, and further provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this clause, if performed within the time constraints of this clause; or

(iii) (a) have graduated before June 1, 2006 from a two-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in standard or advanced midfoot, rearfoot and ankle procedures that consist of not less than 20 ankle procedures in the five years

immediately preceding application, provided that not less than 10 procedures shall be osseous procedures and not less than 10 procedures shall be soft tissue procedures.

(c) For issuance of a privilege to perform podiatric advanced ankle surgery, as that term is used in Education Law section 7001(2), the applicant shall:

(1) file an application with the department;

(2) be licensed as a podiatrist in the state;

(3) pay a fee of \$220 to the department; and

(4) either:

(i) (a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in advanced midfoot, rearfoot and ankle procedures that consist of:

(1) not less than 10 ankle procedures in the five years immediately preceding application, provided that not less than five procedures shall be osseous procedures and not less than five procedures shall be soft tissue procedures, and further provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause; and

(2) not less than 15 procedures in the following categories in the ten years immediately preceding application, which shall include the specified numbers for each type of procedure, provided that procedures performed in a residency program in

podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause, and further provided that the same procedure may be used to satisfy the requirements of both this subclause and subclause (1) of this clause, if it, in fact, meets the requirements of both:

(i) not less than three ankle fracture fixation procedures, which may include, but are not limited to:

(A) the insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

(B) the insertion and removal of retrograde tibiototalcanneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae;

(ii) not less than three ankle fusion procedures; and

(iii) not less than one ankle arthroscopy; or

(ii) (a) have graduated before June 1, 2006 from a two-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in advanced midfoot, rearfoot and ankle procedures that consist of:

(1) not less than 20 ankle procedures in the five years immediately preceding application, provided that not less than 10 procedures shall be osseous procedures and not less than 10 procedures shall be soft tissue procedures; and

(2) not less than 15 procedures in the following categories in the ten years immediately preceding application, which shall include the specified numbers for each type of procedure, provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause, and further provided that the same procedure may be used to satisfy the requirements of both this subclause and subclause (1) of this clause, if it, in fact, meets the requirements of both:

(i) not less than three ankle fracture fixation procedures, which may include, but are not limited to:

(A) the insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

(B) the insertion and removal of retrograde tibiototalcalcaneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae;

(ii) not less than three ankle fusion procedures; and

(iii) not less than one ankle arthroscopy.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 438 of the Laws of 2012, which amended Education Law section 7001 and added Education Law sections 7009 and 7010 regarding the scope of practice of podiatry, the creation of standard and advanced podiatric ankle surgery privileges, and the creation of ankle surgery limited permits

The proposed rule has been adopted as a permanent rule at the February 10-11, 2014 Regents meeting. Pursuant to SAPA §203(1), the earliest effective date of the permanent rule is February 26, 2014, the date a Notice of Adoption will be published in the State Register. However, Chapter 438 of the Laws of 2012 becomes effective on February 17, 2014. Therefore, emergency action is necessary at the February 2014 Regents meeting for the preservation of the public health and general welfare in order to ensure that the rule is in effect on the effective date of Chapter 438 of the Laws of 2012 so that the Chapter may be timely implemented.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6507, 7001 and 7009 of the Education Law and Chapter 438 of the Laws of 2012

Section 65.8 of the Regulations of the Commissioner of Education is added, effective February 17, 2014, to read as follows:

§ 65.8 Podiatric ankle surgery privileges.

(a) Definitions. As used in this section:

(1) "Accrediting agency acceptable to the department" shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting podiatric residencies and as having accreditation standards that are applied in a fair, consistent, and nondiscriminatory manner.

(2) "Certification standards acceptable to the department" shall mean standards accepted by the department as reliable for the purpose of granting board qualification and certification to podiatrists engaged in reconstructive rearfoot and ankle surgery and applied in a fair, consistent, and nondiscriminatory manner.

(b) For issuance of a privilege to perform podiatric standard ankle surgery, as that term is used in Education Law section 7001(2), the applicant shall:

(1) file an application with the department;

(2) be licensed as a podiatrist in the state;

(3) pay a fee of \$220 to the department; and

(4) either:

(i) (a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; or

(ii) (a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be board qualified but not yet certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in standard or advanced midfoot, rearfoot and ankle procedures that consist of not less than 10 ankle procedures in the five years immediately preceding application, provided that not less than five procedures shall be osseous procedures and not less than five procedures shall be soft tissue procedures, and further provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this clause, if performed within the time constraints of this clause; or

(iii) (a) have graduated before June 1, 2006 from a two-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in standard or advanced midfoot, rearfoot and ankle procedures that consist of not less than 20 ankle procedures in the five years

immediately preceding application, provided that not less than 10 procedures shall be osseous procedures and not less than 10 procedures shall be soft tissue procedures.

(c) For issuance of a privilege to perform podiatric advanced ankle surgery, as that term is used in Education Law section 7001(2), the applicant shall:

(1) file an application with the department;

(2) be licensed as a podiatrist in the state;

(3) pay a fee of \$220 to the department; and

(4) either:

(i) (a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in advanced midfoot, rearfoot and ankle procedures that consist of:

(1) not less than 10 ankle procedures in the five years immediately preceding application, provided that not less than five procedures shall be osseous procedures and not less than five procedures shall be soft tissue procedures, and further provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause; and

(2) not less than 15 procedures in the following categories in the ten years immediately preceding application, which shall include the specified numbers for each type of procedure, provided that procedures performed in a residency program in

podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause, and further provided that the same procedure may be used to satisfy the requirements of both this subclause and subclause (1) of this clause, if it, in fact, meets the requirements of both:

(i) not less than three ankle fracture fixation procedures, which may include, but are not limited to:

(A) the insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

(B) the insertion and removal of retrograde tibiototalcanneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae;

(ii) not less than three ankle fusion procedures; and

(iii) not less than one ankle arthroscopy; or

(ii) (a) have graduated before June 1, 2006 from a two-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in advanced midfoot, rearfoot and ankle procedures that consist of:

(1) not less than 20 ankle procedures in the five years immediately preceding application, provided that not less than 10 procedures shall be osseous procedures and not less than 10 procedures shall be soft tissue procedures; and

(2) not less than 15 procedures in the following categories in the ten years immediately preceding application, which shall include the specified numbers for each type of procedure, provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause, and further provided that the same procedure may be used to satisfy the requirements of both this subclause and subclause (1) of this clause, if it, in fact, meets the requirements of both:

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(A) the insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

(B) the insertion and removal of retrograde tibiototalcalcaneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae;

(ii) not less than three ankle fusion procedures; and

(iii) not less than one ankle arthroscopy.

8 NYCRR §65.8

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the November 27, 2013 State Register, the State Education Department received one comment which is summarized as follows.

COMMENT:

The commenter noted that the proposed regulations reflect informed discussions by the State Board for Podiatry and consideration of the commenter's previously shared concerns. Specifically, the commenter expressed support for the proposed regulatory provisions regarding the number of years within which the required experience must be acquired and the categorization of procedures necessary to demonstrate the required training and experience for award of the advanced podiatric ankle surgery privilege.

The commenter opposes certain proposed requirements related to specific procedures as over-reaching and impractical. Specifically, the commenter wrote that the enabling statute for the proposed regulations created categories of procedures to be authorized under the advanced privilege but did not require experience in each of those procedures. The commenter indicated that some procedures are not performed with sufficient regularity to afford applicants for the advanced privilege the opportunity to meet the proposed requirements. The commenter recommended employing the concept of "surgical alternatives" in the development of the regulations rather than the proposed requirement of completing a specific number of specific procedures as the single approach by which requisite training and experience may be demonstrated.

DEPARTMENT RESPONSE:

In developing the proposed regulation, the State Board for Podiatry and the Department considered the objections and alternative suggested by this commenter and

modified the approach taken in earlier drafts to allow for more flexibility. The proposed requirements are designed to assure that applicants for the advanced privilege have the training and experience necessary to be able to perform the procedures that are limited to those holding that privilege, while at the same time not requiring the completion of procedures for which there will not be sufficient opportunities to perform.