

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 607                              Orthotics, Prosthetics, and Pedorthics  
**SPONSOR(S):** Cretul and others  
**TIED BILLS:**    **IDEN./SIM. BILLS:** SB 1696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Health Quality</u>	_____	<u>Owen</u>	<u>Lowell</u>
2) <u>Healthcare Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

House Bill 607 revises definitions of orthotics, prosthetics, and pedorthics and amends the composition of and member terms of the Board of Orthotists and Prosthetists (board). It specifies requirements for licensure, registration as a resident, examination, and licensure renewal, including a criminal background check for all practitioners licensed under part XIC of chapter 468, F.S.

The bill repeals the board's authority to issue a temporary license and restricts the activities of unlicensed support personnel. The bill requires the posting of a license or registration and information about the department's Consumer Services Unit at each facility where patients are seen. It also requires each licensee or resident to wear an identification badge.

The bill adds making deceptive, untrue, or fraudulent representations in the practice of orthotics, prosthetics, or pedorthics and practicing orthotics, prosthetics, or pedorthics without a licensed physician's written prescription for those devices or prostheses that require such prescription to the list of acts that constitute grounds for discipline.

The bill specifies that a person operating under the supervision of a licensed medical doctor, osteopathic doctor, chiropractor, or podiatrist is not exempt from licensure under chapter 468, part XIV, F.S. The bill also removes the exemption of a licensed pharmacist or any person acting under the supervision of a licensed pharmacist who is practicing orthotics or pedorthics as part of the practice of the profession of pharmacy. The Board of Pharmacy's rulemaking authority regarding the practice of orthotics and pedorthics by a pharmacist is stricken.

Finally, the bill provides rulemaking authority to the board relating to the allowable uses and abbreviations of titles.

This bill may implicate Article II, s.3 of the Florida Constitution as an unlawful delegation of legislative authority (see Constitutional issues).

The bill appears to have a positive fiscal impact on the Medical Quality Assurance Trust Fund if sufficient individuals seek registration as an orthotics or prosthetics resident (See fiscal analysis).

Sections seven and nine, relating to support personnel and practitioner and resident identification are effective January 1, 2009. The remainder of the bill is effective July 1, 2008.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill requires that a person seeking to attain the required orthotics and prosthetics experience in this state register as a resident with the department.

### B. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

Prior to 1997, the practices of orthotics and prosthetics were not regulated in Florida. Chapter 97-284, Laws of Florida, created the practice act for the regulation of these professions. There have been no substantive amendments to this practice act since its inception in 1997.

#### Orthotist, Prosthetist, Pedorthist

An orthotist is a healthcare professional who makes and fits orthoses, such as braces, splints, surgical supports, and corrective shoes, for patients who need added support for body parts that have been weakened by injury, disease, or disorders of the nerves, muscles, or bones.<sup>1</sup> A prosthetist is a healthcare professional who designs, makes and fits appliances for missing limbs.<sup>2</sup> A pedorthist is a healthcare professional who is trained in the assessment, design, manufacture, fit and modification of foot appliances and footwear for the purposes of alleviating painful or debilitating conditions and providing assistance for abnormalities or limited actions of the lower limb.<sup>3</sup>

Once a doctor writes a prescription, the patient visits the healthcare professional who then designs the appliance that has been prescribed. The clinician takes the measurements and moulds necessary to fabricate the artificial limb.

For example, if the appliance prescribed is an artificial leg, a prosthetist must design one based on the proper length, shoe size, width and other important factors. Prosthetists also make plaster casts of the limbs that the prosthesis will be attached to. This is necessary to make sure that the new appliances fit properly and cause as little discomfort as possible. Once the prosthetist and patient determine the design and materials, prosthetists will supervise technicians while they build the appliances. When the prosthesis is ready, the prosthetist then fits the device, and makes any adjustments necessary to ensure optimal functional use by the patient. They might provide counseling on how to use the appliance and recommend therapy. This scenario is similar for the orthotic and pedorthic process as well.

Orthotists, prosthetists, and pedorthists work together with physicians, surgeons, physical and occupational therapists and social workers to form a multi-disciplinary team to provide the most comprehensive care possible for each individual.

#### Board of Orthotists and Prosthetists

The Board of Orthotists and Prosthetists (board) consists of seven members appointed by the Governor and confirmed by the Senate for four year staggered terms. The board is responsible for adopting rules relating to the administration of the practice act and standards of practice for orthotists, prosthetists,

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<sup>1</sup> Schools in the U.S.A., "Career Search: Orthotist," [http://www.schoolsintheusa.com/careerprofiles\\_details.cfm?CarID=663](http://www.schoolsintheusa.com/careerprofiles_details.cfm?CarID=663) (last visited March 16, 2008).

<sup>2</sup> Schools in the U.S.A., "Career Search: Prosthetist," [http://www.schoolsintheusa.com/careerprofiles\\_details.cfm?carId=665](http://www.schoolsintheusa.com/careerprofiles_details.cfm?carId=665) (last visited March 16, 2008).

<sup>3</sup> Pedorthic Association of Canada, "What is a Pedorthist?" <http://www.pedorthic.ca/public/what.html> (last visited March 16, 2008).

and pedorthists, and for issuing biennial licenses to practice orthotics and prosthetics. The board is comprised of the following members:

- Two prosthetists
  - One must have three years of experience after receiving a Bachelor of Science degree in Orthotics and Prosthetics
  - One must be a practicing prosthetist with at least six years of experience after receiving certification from a national certifying body
- Two orthotists
  - One must have three years of experience after receiving a Bachelor of Science degree in Orthotics and Prosthetics
  - One must be a practicing orthotist with at least six years of experience after receiving certification from a national certifying body
- Two users of prosthetic or orthotic devices
  - May not derive economic benefit from the fitting or dispensing of orthotic or prosthetic devices
  - May not have ever been orthotists or prosthetists or members of a closely related profession
- One physician who is licensed as a medical doctor, osteopathic doctor, chiropractor, or podiatrist with extensive knowledge of orthotics or prosthetics

One of the prosthetist or orthotist members must have received training in pedorthics and have three years of pedorthic experience as part of his or her practice.

#### The Path to Licensure

A person applying for licensure must first apply to the department to take the appropriate licensure examination. The board may accept the exam results of a national orthotic, prosthetic, or pedorthic standards organization in lieu of administering the state exam.<sup>4</sup> The board has approved the American Board for Certification in Orthotics, Prosthetics, and Pedorthics (ABC) exam for orthotist and prosthetist applicants; the Board for Certification in Pedorthics exam for pedorthists; and the Surgical Appliance Institute and Trulife Healthcare examinations for orthotic fitter and orthotic fitter assistant applicants.<sup>5</sup>

The board must verify that an applicant for licensure examination meets the following requirements:<sup>6</sup>

- Has completed the application form and paid all applicable fees;
- Is of good moral character;
- Is 18 years of age or older;
- Has completed the appropriate educational preparation, including practical training requirements;
- Has successfully completed an appropriate clinical internship in the professional area for which the license is sought.

In addition to the requirements listed above, an applicant must meet the following requirements for each license he or she is seeking:

- Orthotist
  - A Bachelor of Science degree in Orthotics and Prosthetics from a regionally accredited college or university, or a bachelor's degree with a certificate in orthotics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent; and
  - An appropriate internship of one year of qualified experience or a residency program recognized by the board.<sup>7</sup>
- Prosthetist

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<sup>4</sup> Section 468.803(2), F.S.

<sup>5</sup> Rule 64B14-4.001, F.A.C.

<sup>6</sup> Section 468.803(2)(a)-(e), F.S.

<sup>7</sup> Section 468.803(3)(a), F.S.

- A Bachelor of Science degree in Orthotics and Prosthetics from a regionally accredited college or university, or a bachelor's degree with a certificate in prosthetics from a program recognized by the Commission on Accreditation of Allied Health Education Programs, or its equivalent; and
- An appropriate internship of one year of qualified experience or a residency program recognized by the board.<sup>8</sup>
- Orthotic Fitter
  - A high school diploma or its equivalent;
  - A minimum of 40 hours of training in orthotics education; and
  - Two years of experience in orthotics.<sup>9</sup>
- Orthotic Fitter Assistant
  - A high school diploma or its equivalent; and
  - A minimum of 40 hours of training in orthotics education.<sup>10</sup>
- Pedorthist
  - A high school diploma or its equivalent;
  - A minimum of 120 hours of training;
  - An internship of 80 hours of qualified working experience.<sup>11</sup>

The board specifies in rule that an approved internship must:<sup>12</sup>

- Consist of orthotic or prosthetic clinical experience practicing under the supervision of a licensed or ABC-certified orthotist or prosthetist;
- Consist of a minimum of 1,900 hours and may not exceed 2,700 hours;
- Be completed at facilities primarily engaged in providing orthotic and prosthetic patient care; and
- Meet specific objectives.
  - Clinical assessment, patient management, professional responsibility, practice management, and technical implementation.

St. Petersburg College is the only educational institution in Florida that offers a bachelor's degree in orthotics and prosthetics.

The department is authorized to renew a license upon receipt of the \$500 renewal fee. The board is also authorized in s. 468.806, F.S., to adopt rules to prescribe continuing education (CE) requirements for licensure renewal. Within 24 months immediately preceding the license renewal date, orthotists, prosthetists, and pedorthists are required to complete 30 hours of CE; orthotic fitters are required to complete 20 hours of CE; and orthotic fitter assistants are required to complete 10 hours of CE.<sup>13</sup>

The board is authorized in s. 468.807, F.S., to issue a temporary license to:

- An applicant for licensure who has recently moved to this state and has applied for a license, if the applicant is licensed in another state with comparable licensure standards; or
- An applicant certified by a national certifying organization whose highest current educational and training requirements are equal to or exceed the requirements in statute, and who presents proof that he or she has been actively engaged in the practice of orthotics, prosthetics, or pedorthics within five years prior to the application.

According to the department, there are currently no temporary licenses issued in Florida.

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<sup>8</sup> Section 468.803(3)(b), F.S.

<sup>9</sup> Section 468.803(3)(c), F.S.

<sup>10</sup> Section 468.803(3)(d), F.S.

<sup>11</sup> Section 468.803(3)(e), F.S.

<sup>12</sup> Rule 64B14-4.100, F.A.C.

<sup>13</sup> Rule 64B14-5.002, F.A.C.

### Support Personnel

A licensed orthotist, prosthetist, or pedorthist is authorized to delegate duties to non-licensed supportive personnel if the duties are performed under the direct supervision of a licensed orthotist, prosthetist, or pedorthist. The supervising licensee is responsible for all acts performed by the support personnel.<sup>14</sup>

### Disciplinary Action

The following acts constitute grounds for denial of a license or disciplinary action:<sup>15</sup>

- Attempting to procure a license by fraudulent misrepresentation;
- Having a license to practice orthotics, prosthetics, or pedorthics revoked, suspended, or otherwise acted against, including the denial of licensure in another jurisdiction;
- Being convicted or found guilty of or pleading nolo contendere to a crime that directly relates to the practice of orthotics, prosthetics, or pedorthics;
- Filing a report or record that the licensee knows is false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing;
- Advertising goods or services in a fraudulent, false, deceptive, or misleading manner;
- Violation of an order of the board, agency, or department previously entered in a disciplinary hearing or failure to comply with a subpoena issued by the board, agency, or department;
- Practicing with a revoked, suspended, or inactive license;
- Gross or repeated malpractice or the failure to deliver orthotic, prosthetic, or pedorthic services with that level of care and skill which is recognized by a reasonably prudent licensed practitioner with similar professional training as being acceptable under similar conditions and circumstances;
- Failing to provide written notice of any applicable warranty for an orthosis, prosthesis, or pedorthic device that is provided to a patient; or
- Violating any provision of Chapter 468 or Chapter 456, F.S., or any rules adopted pursuant to those chapters.

### Exemptions from Licensure

Section 488.812, F.S., specifies that the licensure requirements not apply to:

- A person who is licensed under Chapter 458 (medical doctor), Chapter 459 (osteopathic doctor), Chapter 460 (chiropractor), or Chapter 461 (podiatrist);
- A person performing services for the federal government;
- A person fulfilling the supervised residency or internship experience requirements;
- A student, fellow, or trainee in orthotics, prosthetics, or pedorthics pursuing a course of study at a college or university, if done under a licensed supervisor;
- An instructor in a regionally accredited university or college, while performing regularly assigned work under the curriculum of the school;
- A person engaged exclusively in the fabricating, fitting, or servicing of devices.

Licensed healthcare professionals are permitted to perform work that may fall under orthotics, prosthetics, or pedorthics, as long as they do not hold themselves out to be a licensed orthotist, prosthetist, or pedorthist.

A licensed pharmacist or person acting under the supervision of a licensed pharmacist is allowed to practice orthotics or pedorthics. According to s. 468.812(3), F.S., the Board of Pharmacy is required to develop rules to govern the practice of orthotics and pedorthics by a pharmacist. The Board of Pharmacy adopted such rules to specify that a pharmacist must act pursuant to a licensed physician's written prescription and must assume the responsibility for assessing the patient, planning the patient's treatment program, and directing the program. The pharmacist's professional responsibilities include:<sup>16</sup>

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<sup>14</sup> Section 468.808, F.S.

<sup>15</sup> Section 468.811, F.S.

<sup>16</sup> Rule 64B16-27.850, F.A.C.

- Ongoing consultation with the prescribing physician regarding information that will impact the patient's medical and functional outcomes;
- Orthotic and/or pedorthic evaluation of the patient;
- Identification and documentation of precautions, special problems, and contraindications;
- Development of a treatment plan including the short and long term goals;
- Implementation of a treatment plan;
- Periodic review and update of the treatment plan;
- Collaboration with members of the healthcare team when appropriate;
- Advising the patient of the nature and purpose of the services to be rendered and the techniques for use and care of an orthosis or pedorthic device; and
- Determination of the appropriateness of proper fit and function of any orthosis or pedorthic device.

## **Effect of Proposed Changes**

### Definitions

The terms internship, mandatory courses, resident and therapeutic are newly defined. The scope of practice of orthotics, orthotic fitter, orthotic fitter assistant, pedorthics, and prosthetics is further defined and the board is given the authority to further describe the scope of practice by rule using nationally recognized descriptor codes.

The definition for orthotic fitter, orthotic fitter assistant, orthotics, pedorthics, and prosthetics are modified to delete the requirement that they be done "pursuant to a licensed physician's written prescription."

The definitions for orthotics, pedorthics, and prosthetics are modified to delete the requirement that the orthotist, pedorthist, or prosthetist consult with a licensed occupational therapist or physical therapist regarding treatment, if the patient is under the therapist's care.

### Board of Orthotists and Prosthetists

The bill maintains the number of members on the board, but modifies the professional and educational requirements of the board members who are licensed orthotists and prosthetists. The bill expands who can serve as consumer members of the board to include individuals who have a familiar relationship to orthotics or prosthetics users.

The bill removes the staggered terms of the board members, although the terms would remain staggered due to the current expiration dates.

### Authority to Adopt Rules

The bill provides authority to the board to define standards of practice for orthotic fitters, orthotic fitter assistants, and residents.

### License, Registration, and Examination Requirements

The bill requires an individual seeking to attain the required orthotics and prosthetics experience to be approved by the board and registered as a resident by the department. Each registration is valid for two years and may only be renewed once. To be considered by the board for registration, the applicant must have a Bachelor of Science or higher-level postgraduate degree in Orthotics and Prosthetics or, at a minimum, a bachelor's degree and a certificate in orthotics or prosthetics. The board is allowed to set a registration fee not to exceed \$500.

The bill requires each applicant for registration, examination, or licensure to submit fingerprints for a criminal background check by the Florida Department of Law Enforcement and the Federal Bureau of Investigation, along with payment for the costs incurred to process the fingerprints.

The bill requires mandatory courses for licensure as an orthotist, prosthetist, orthotic fitter, orthotic fitter assistant, and pedorthist. It also expands the educational requirements for orthotists and

prosthetists to include a higher-level postgraduate degree in orthotics and prosthetics, in addition to a Bachelor's degree in orthotics and prosthetics. The orthotic fitter licensure requirement is amended to include two years of "supervised" experience in orthotics.

#### Biennial Renewal of License

The bill requires applicants for license renewal to submit the necessary information to conduct a statewide criminal background check by the Florida Department of Law Enforcement, along with payment for the costs incurred to process the information.

The bill amends the continuing education requirements to include courses to safeguard the welfare of the public and licensed practitioners, and grants the board rulemaking authority to establish standards and qualifications for continuing education courses and providers. The bill specifies that "Florida Association of Orthotists and Prosthetists, Inc." is an approved provider of continuing education courses, including the mandatory courses.

#### Temporary License

The bill repeals s. 468.807, F.S., which permits temporary licensure.

#### Support Personnel

Effective January 1, 2009, the bill specifies that a licensed orthotist, prosthetist, or pedorthist may only delegate duties to support personnel that do not include patient evaluation, treatment formulation, or the final fitting of a device prior to patient use. The bill also requires support personnel to wear an identification tag, as defined by board rule.

#### Prohibitions and Penalties

The bill specifies that a person may not practice orthotics, prosthetics, or pedorthics without a license "or registration".

#### Practitioner and Resident Identification

Effective January 1, 2009, the bill creates a section of law that requires a licensee or person registered with the department to post a valid license or registration and a recent photograph at each facility where patients are seen. The person is also required to post a notice stating the department's Consumer Services Unit address, internet website, and telephone number in close proximity to the posted license or registration.

The bill also requires each licensee or person registered with the department to prominently wear an identification tag or badge with their name, recent photograph, and license or registration number during patient contact.

#### Disciplinary Proceedings

The bill modifies the current disciplinary guidelines to apply disciplinary action for those who are registered as well as those who are licensed.

The bill amends the disciplinary guidelines to include making deceptive, untrue, or fraudulent representations in the licensed or unlicensed practice of orthotics, prosthetics, or pedorthics. Discipline is also imposed for practicing orthotics, prosthetics, or pedorthics or practicing as an orthotic fitter or an orthotic fitter assistant without a licensed physician's written prescription for those orthotic or pedorthic devices or prostheses that requires such prescription.

#### Exemptions from Licensure

The bill specifies that the exemption from licensure does not apply to persons who are supervised by an exempt licensee of Chapter 458 (medical doctor), Chapter 459 (osteopathic doctor), Chapter 460 (chiropractor), or Chapter 461 (podiatrist).

The bill removes the exemption for a person fulfilling the supervised residency or internship experience requirements, since the bill requires this person to register with the department. It also specifies that a

person engaged in the fabrication of orthoses, pedorthic devices, or prostheses is exempt only when there is no patient contact.

The bill eliminates the provision exempting any licensed pharmacist or person acting under the supervision of a licensed pharmacist from practicing orthotics or pedorthics. It also eliminates the Board of Pharmacy's rulemaking authority.

Use of Title

The bill expands title protection for certain licensed and/or registered orthotists, prosthetists, prosthetist-orthotists, orthotic fitters, orthotic fitter assistants, pedorthists, prosthetic residents, and orthotic residents. It also gives the board the authority to adopt rules relating to the allowable uses and abbreviations of titles.

C. SECTION DIRECTORY:

Section 1: Amends s. 468.80, F.S., Relating to definitions.

Section 2: Amends s. 468.801, F.S., Relating to the Board of Orthotists and Prosthetists.

Section 3: Amends s. 458.802, F.S., Relating to the authority to adopt rules.

Section 4: Amends s. 468.803, F.S., Relating to license, registration, and examination requirements.

Section 5: Amends s. 468.806, F.S., Relating to biennial license renewal.

Section 6: Repeals s. 468.807, F.S., Relating to temporary license.

Section 7: Amends s. 468.808, F.S., Relating to support personnel, providing an effective date.

Section 8: Amends s. 468.809, F.S., Relating to prohibitions and penalties.

Section 9: Creates s. 468.8095, F.S., Relating to practitioner and resident identification, providing an effective date.

Section 10: Amends s. 468.811, F.S., Relating to disciplinary proceedings.

Section 11: Amends s. 468.812, F.S., Relating to exemptions from licensure.

Section 12: Amends s. 468.813, F.S., Relating to the use of titles.

Section 13. Providing effective dates.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department has projected that there will be 12 individuals seeking registration as an Orthotics or Prosthetics resident in the first year and registration renewal in the third year. The initial registration fee is \$500 and the renewal fee is \$250. The department will also collect a background screening fee from each initial and renewal applicant in the amount equal to the cost of the screening.

<b>Estimated Revenue</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>	<b>4th Year</b>
<i>Initial Registration Fee</i>	\$ 6,000	\$ -	\$ -	\$ -



<i>Registration Renewal Fee</i>	\$ -	\$ -	\$ 3,000	\$ -
<i>Background screening Fee</i>	\$ 4,859	\$ 26,524	\$ 4,352	\$ 31,262
<b>Total Estimated Revenues</b>	<b>\$ 10,859</b>	<b>\$ 26,524</b>	<b>\$ 7,352</b>	<b>\$ 31,262</b>

2. Expenditures:

The department has stated that they will not require additional staff to implement the provisions of the bill, but will require an increase to the Division of Medical Quality Assurance operating budget.

<b>Estimated Expenditures</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>	<b>4th Year</b>
<b>Contracted Services</b>				
<i>Fee processing</i>	\$ 95	\$ -	\$ 95	\$ -
<i>Background screenings</i>	\$ 4,859	\$ 26,524	\$ 4,352	\$ 31,262
<b>Total Estimated Expenditures</b>	<b>\$ 4,953</b>	<b>\$ 26,524</b>	<b>\$ 4,446</b>	<b>\$ 31,262</b>

The Division of Medical Quality Assurance currently contracts with a vendor who processes all initial and renewal applications and related fees. The cost of the contract is based on a \$7.89 per application rate.

The bill requires all professions regulated under chapter 468, part XIV, to have a statewide criminal history check. Currently, the department has an agreement with the Florida Department of Law Enforcement (FDLE) to reimburse for all statewide and national fingerprint screenings submitted for processing.

The department reimburses at a rate of \$42.25 per screening for initial applicants (\$23 statewide FDLE + \$19.25 national FBI). The department projects that 115 applicants will require initial applicant screenings in the first year (103 new applicants per year for established classes + 12 new O&P resident applicants) and 103 initial applicant screenings annually thereafter.

The department reimburses at a rate of \$23 per screening for renewal applicants (FDLE only). The department projects that 964 applicants will require renewal screenings in the second year, which is the next renewal year for the professions regulated by chapter 468, part XIV. Another 1170 renewal screenings will need to be processed in the fourth year and biannually thereafter (964 projected FY09-10 licensees + 103 new applicants in FY09-10 + 103 new applicants in FY10-11).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who want to practice as an orthotics or prosthetics resident must register with the department and pay a fee. In addition, all professions regulated under chapter 468, part XIV must pay for a background screening for each renewal cycle.

D. FISCAL COMMENTS:

The department would be required to update the COMPAS licensure system to accommodate an additional class of orthotics and prosthetics known as resident, which is consistent with adding any new

profession or sub-class of profession to the system. However, any additional workload related to the update of the COMPAS system can be absorbed within existing resources.

There will be costs associated with rule promulgation for continuing education and title usage, but can be absorbed within existing resources.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### 2. Other:

Providing broad discretion to the board to “further describe” the scope of practice of practitioners licensed under part XIV of chapter 468, F.S. may implicate Article II, s.3<sup>17</sup> of the Florida Constitution as an unlawful delegation of legislative authority. This section of the Florida Constitution has been interpreted to require that “administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”<sup>18</sup> The bill does not appear to provide such guidance to the board.

#### B. RULE-MAKING AUTHORITY:

As noted in the Constitutional Issues section above, the bill does not appear to provide clear direction to the board regarding the further description of the scope of practice of licensees under part XIV of chapter 468, F.S.

For all other provisions, the bill appears to provide adequate rulemaking authority for the department.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 613-626, repealing the Board of Pharmacy’s rulemaking authority may adversely affect the validity of rules promulgated by the Board that were created pursuant to such authority.<sup>19</sup>

According to the department, the Board of Medicine voted to oppose this bill on patient safety grounds. The board feels the bill appears to remove or limit the role of physicians and other health care practitioners in the care provided by orthotists and prosthetists. They state that currently, physicians are involved in this process and provide evaluations, appropriate referrals, and surgical resolutions, if appropriate.

According to the department, the Board of Orthotists and Prosthetists supports the concept of regulating residents since allowing them to remain unregulated could lead to the unlicensed practice of the profession. The board also supports criminal background checks at initial licensure and renewal.

#### D. STATEMENT OF THE SPONSOR

I would first like to thank the staff for the hard work on this bill. We have worked to ensure every interested party has come together to agree on this good bill.

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<sup>17</sup> “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

<sup>18</sup> *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

<sup>19</sup> See Rule 64B16-27.850, F.A.C.

There are two issues I would like to address that are mentioned in the staff analysis. The first is the question of the constitutionality of the language implicating Article II, s. 3 as an unlawful delegation of legislative authority. The strike-all I will be offering addresses this concern and ensures constitutionality of the bill.

The second issue I would like to clarify is the Board of Medicine's objections outlined on page 10 of the staff analysis. The Board of Medicine's objections were to the original bill not to the strike-all I will be offering. The Board is not opposed to the language proposed in the strike-all.

Again thank you and I would appreciate your support of this good bill.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**