

Texas Civil Statutes Article 4529e
Texas State Board of Examiners of Perfusionists
The Licensed Perfusionists Act

22 Texas Administrative Code §761
Board Rules
Effective April 4, 1996

Texas Civil Statutes
Article 4529e. Texas State Board of Examiners of Perfusionists

Art. 4529e. Licensed perfusionists

Short Title

Sec. 1. This article may be cited as the Licensed Perfusionists Act.

Legislative Findings; Purpose

Sec. 2. (a) The Legislature finds that:

(1) the citizens of this state are entitled to the protection of their health, safety, and welfare from the unqualified or unprofessional practice of perfusion;

(2) the practice of perfusion by unauthorized, unqualified, unprofessional, or incompetent persons is a threat to the public; and

(3) the practice of perfusion is a dynamic and changing health care field which is continually evolving to include more sophisticated and demanding patient care activities.

(b) The purpose of this article is to protect the public from the dangers described by Subsection (a) of this section by:

(1) establishing minimum standards of education, training, and competency for persons engaged in the practice of perfusionist and of the performance of perfusion services in a manner that provides for the continued evolution of the practice of perfusion; and

(2) ensuring that the privilege of practicing in the field of perfusion is entrusted only to those licensed and regulated under this article.

Definitions

Sec. 3. In this article:

(1) "Board" means the Texas State Board of Examiners of Perfusionists.

(2) "Board of health" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Commissioner" means the commissioner of health.

(5) "Extracorporeal circulation" means the diversion of a patients's blood through a heart-lung machine or a similar device that assumes the functions of the patients' heart, lungs, or both.

(6) "Licensed perfusionist" means a person licensed under this article.

(7) "Perfusion" means the functions necessary for the support, treatment, measurements, or supplementation of the cardiovascular, circulatory, or respiratory system, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring the parameters of the systems under an order and under the supervision of a licensed physician, including:

(A) the use of extracorporeal circulation, cardiopulmonary support techniques, and other therapeutic and diagnostic technologies;

(B) counterpulsation, ventricular assistance, or autotransfusion (including blood conservation techniques), administration of cardioplegia, and isolated limb perfusion;

(C) the use of techniques of involving blood management, advanced life support, and other related functions; and

(D) in the performance of the acts described in this subsection:

(i) the administration of:

- (aa) pharmacological and therapeutic agents; or
- (bb) blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as order by the physician;
- (ii) the performance and use of
 - (aa) anticoagulation analysis;
 - (bb) physiologic analysis;
 - (cc) blood gas and chemistry analysis;
 - (dd) hematocrit analysis;
 - (ee) hypothermia;
 - (ff) hyperthermia;
 - (gg) hemoconcentration; and
 - (hh) hemodilution; and
- (ii) the observation of signs an symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.
- (8) "Perfusion protocols" means perfusion-related policies and protocols developed or approved by a licensed health facility or a physician through collaboration with administrators, licensed perfusionists, and other health professionals.
- (9) "Provisional licensed perfusionist" means a person provisionally licensed under this article.

Board: Membership

- Sec. 4.**
- (a) The Texas State Board of Examiners of Perfusionists is created.
 - (b) The board is composed of nine members. Three members must be members of the general public. Five members must be perfusionists licensed under this article. One member must be a physician licensed by the Texas State Board of Medical Examiners who is also board certified in cardiovascular surgery.
 - (c) the governor with the advice and consent of the senate shall appoint the board members, who shall serve staggered terms of six years with three members' terms expiring February 1 of each odd-numbered year.
 - (d) A license holder eligible for appointment as a licensed perfusionists board member must have been licensed under this article for at least three years before appointment to the board.
 - (e) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act, for step 1, salary group 17, of the position classification salary schedule.
 - (f) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member and may not be an employee of the board who is exempt form the State's position classification plan or is compensated at or above the amount described by he General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. For the purpose of this subsection and Subsection (e) of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.
 - (g) It is the intent of the legislature that the membership of the board reflect the historical and culture diversity of the inhabitants of this state. Appointments to the board should be made without discrimination based on race, creed, sex, religion, national origin, or geographical distribution of the appointees.
 - (h) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because the person's activities for compensation on behalf of a profession related to the operation of the board.

Grounds for Removal

- Sec. 5.**
- (a) It is a ground for removal from the board if a member.
 - (1) does not have at the time of appointments the qualifications required for appointment to the board:

- (2) does not maintain during service on the board the qualifications required for appointment to the board;
 - (3) violates a prohibition established by the article;
 - (4) cannot discharge the members's term for a substantial part of the term for which the member is appointed because of illness or disability; or
 - (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.
- (b) The validity of an action of the board is not affected by the fact by that it is taken when a ground for removal of a member of the board exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the group. The presiding officer shall then notify the governor that a potential ground for removal exists.

Officers; Meetings; Quorum; Expenses

- Sec. 6.** (a) Not later than the 30th day after the day its new member are appointed by the governor, the board shall meet to elect a chairman and vice-chairman who shall hold office according to rules adopted by the board.
- (b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board. The rules may not be inconsistent with the present rules of the department relating to meetings of boards.
- (c) A majority of the members constitutes a quorum.
- (d) A member of the board is entitled to a per diem as set by the General Appropriations Act for each day that the member engages in the business of the board. A member is entitled to compensation for travel expenses as provided by the General Appropriations Act.

Powers and Duties of Board

- Sec. 7.** (a) The board may adopt rules not inconsistent with this article as are necessary for the governing of its own proceedings, the performance of its duties, the regulations of the practice of perfusion in this state, and the enforcement of this article. In adopting rules, the board shall adopt procedural rules not in consistent with existing rules and procedures of the board of health or the department.
- (b) The board shall:
- (1) adopt and publish a code of ethics and adopt an official seal;
 - (2) establish the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal license;
 - (3) revoke, suspend, or deny a license, probate a license suspension, or reprimand a license holder for a violation of this article, the code of ethics, or the rules of the board;
 - (4) spend funds necessary for the proper administration of its assigned duties;
 - (5) establish reasonable and necessary fees for the administration and implementation of this article;
 - (6) comply with the open meetings law, Chapter 271, Acts of the 60th legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments, and the Administrative Procedures and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;
 - (7) provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees;
 - (8) develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board;
 - (9) develop and implement policies clearly defines the respective responsibilities of the board and the staff of the board;
 - (10) prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or develop, mental disability can be provided reasonable access to the board's program and comply with the federal and state laws for programs and facility accessibility;

(11) comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board; and

(12) establish continuing education professional education programs for licensed perfusionists and provisional licensed perfusionists under this chapter, the standard which shall be at least as stringent as those of the American Board of Cardiovascular Perfusion or its successor agency; and shall:

(A) establish a minimum number of hours of continuing education required to renew a license under this article;

(B) develop a process to evaluate and approve continuing education courses;

(C) identify the key factors for the competent performance by a license holder of the license holder's professional duties; and

(D) adopt a procedure to assess a license holder's participation in continuing education programs.

(c) The board may not adopt rules restricting competitive or advertising by a person regulated by the board except to prohibit false, misleading or deceptive practices. The board may not include in its rules to prohibit false, misleading or deceptive practices by a person regulated by the board, a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the personal voice in an advertisement;

(3) relates to the size of duration of any advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(d) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number if the board for directing complaints to the board. The board may provide for that notification:

(1) on each license form, application, or written contact for services of a person licensed under this article;

(2) on a sign prominently displayed in the place of business of each person licensed under this article; or

(3) in a bill for services provided by a person licensed under this article.

(e) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

Administrative Function: Personnel

Sec. 8. (a) The basic personnel and necessary facilities required to administer this article shall be the personnel and facilities of the department. The department personnel shall act as the agents of the board. If necessary to the administration or implementation of this article, the department by agreement may secure and provide for compensation for services that it considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(b) The commissioner shall designate an employee to serve as executive secretary of the board. The executive secretary shall be an employee of the department. The executive secretary shall be the administrator of the licensing activities for the board.

(c) In addition to other duties prescribed by this article and by the department, the executive secretary shall:

(1) keep and full accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purpose and objectives of this article, including rules and proposals on administrative procedures constant with this article.

(4) exercise general supervision over persons employed by the department in the administration of this article.

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant;

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize:

(8) develop an inter-agency career ladder program which shall require intra-agency posting of all nonentry

level positions concurrently with any public posting;

(9) develop a system of annual performance evaluations based on measurable job tasks, which shall be the basis for all merit pay for board employees; and

(10) prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or natural origin, which policy statement must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Paragraph (A) of this subdivision, and be filed with the governor's office and that must include:

(A) personnel policies, including policies relating to recruitment evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(B) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(C) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(D) reasonable methods to appropriately address those areas of underuse.

Fees: Funds: Annual Report: Audit

Sec. 9. (a) After Consultation with the commissioner or the department, the board shall set the fees imposed by this article in amounts so that the fees in the aggregate produce sufficient revenue to cover the cost of administering this article without accumulating an unnecessary surplus in the licensed perfusionists fund created by this section.

(b) The amount of the fees that may be imposed in connection with a licensed under this article may not exceed the following:

- (1) application fee: \$75;
- (2) examination fee: \$100;
- (3) initial license fee: \$75;
- (4) initial provisional license fee: \$75;
- (5) license renewal fee: \$75;
- (6) delinquency fee: \$50; and
- (7) duplicate license fee: \$10.

(c) The fees set by the board may be adjusted so that the total fees collected are sufficient to meet the expenses of administering this article.

(d) The department shall receive and account for funds derived under this article. The funds shall be deposited in the state treasury to the credit of a special fund to be known as the licensed perfusionists fund to be used only for the administration of this article.

(e) The board shall make a complete and detailed written report to the governor, lieutenant governor, and speaker of the house of representatives accounting for all funds received and disbursed by the board or the department for the administration of this article during the preceding year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(f) The financial transactions of the board or the department in relation to the administration of this article are subject to audit by the state auditor in accordance with Chapter 321, Government Code, and its subsequent amendments.

Applicant qualifications: Application Review

Sec. 10. (a) An applicant for a perfusionist license must submit a sworn application accompanied by an application fee.

(b) The board shall prescribe the form of the application and by the rule may establish dates by which the applications and fees must be received. These rules must not be inconsistent with present rules of the department related to application dates of other licenses.

(c) To qualify for the licensing examination, the applicant must have successfully completed a perfusion education program approved by the board.

(d) In approving education programs necessary for qualification for licensing examination, the board shall

approve only a program that has educational standards that are at least as stringent as those established by the Accreditation Committee for Perfusion Education and approved by the Committee on Allied Health Education and Accreditation of the American Medical Association or their successors.

(e) Not later than the 45th day after the date of receipt of a properly submitted and timely application and not later than the 30th day before the next examination date, the department shall notify an applicant in writing that the applicant's application and any other relevant evidence pertaining to applicant qualifications established by the board by rule have been received and investigated. The notice shall state whether the application and other evidence submitted have qualified the applicant for examination. If the applicant has not qualified for examination, the notice shall state the reasons for lack of qualification.

Examination

Sec. 11. (a) To qualify for a license, an applicant must pass a competency examination. Examinations shall be prepared or approved by the board and administered to qualified applicants at least once each calendar year.

(b) An examination prescribed by the board may be or may include the written and oral examinations given by the American Board of Cardiovascular Perfusion or by a national or state testing service in lieu of an examination prepared by the board. The board shall have the written portion of the examination, if any, validated by an independent testing professional.

(c) Not later than the 30th day after the date on which a licensing examination is administered under this article, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination within two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(e) The board by rule shall establish:

(1) a limit on the number of times an applicant who fails an examination may retake the examination;

(2) requirements for retaking the examination; and

(3) alternative methods of examination competency.

License

Sec. 12. (a) A person who meets the licensing qualifications under this article is entitled to receive a license as a licensed perfusionist.

(b) The license holder must:

(1) display the license certificate in an appropriate and public manner; or

(2) maintain on file at all times during which the license holder provides services in a health care facility a true and correct copy of the licensed certificate in the appropriate records of the facility; and

(3) keep the department informed of any change of address.

(c) A license certificate issued by the board is the property of the board and shall be surrendered on demand.

License Expiration: Renewal

Sec. 13.

(a) A license is valid for one year from the date it is issued and may be renewed annually.

(b) The board of health by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by submitting proof satisfactory to the board of compliance with the continuing professional education requirements prescribed by the board and paying the required renewal fee to the department before the expiration date of the license.

(d) If a person's license has been expired for not more than 90 days, the person may renew the license by submitting

proof satisfactory to the board of compliance with the continuing professional education requirements prescribed by the board and paying to the department the required renewal fee and a penalty fee that is one-half of the renewal fee.

(e) If a person's license has been expired more than 90 days but less than two years, the person renew the license by submitting proof satisfactory to the board of compliance with the continuing professional education requirements prescribed by the board and paying to the department all unpaid renewal fees and a penalty fee that is equal to the renewal fee.

(f) If a person license has been expired two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining a license.

(g) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently appropriately licensed or certified and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

(h) The department shall notify each license holder in writing of the license expiration date before the 30th day before that date by notice to the license holder at the license holder's last known address according to the records of the board.

Provisional License

Sec. 14. (a) A license as a provisional licensed perfusionist may be issued by the board to a person who has successfully completed an approved perfusion education program on the filing of an application, payment of an application fee, and the submission of evidence satisfactory to the board of the successful completion of the education requirements set forth in Section 10 of this article.

(b) A provisional licensed perfusionist shall be under the supervision and direction of a licensed perfusionist at all times during which the provisional licensed perfusionist performs perfusion. When the board finds that a licensed perfusionist is not reasonably available to provide such supervision and direction, and upon application by the provisional licensed perfusionist to and approval by the board, the supervision and direction of a provisional licensed perfusionist required by this subsection may be performed by a physician licensed by the Texas State Board of Medical Examiners and certified by the American Board of Thoracic Surgeons, Inc., or certified in cardiovascular surgery by the American Osteopathic Board of Surgery. Rules adopted by the board governing such supervision and direction may not require the immediate physical presence of the supervising licensed perfusionist or physician.

(c) A person qualified for a provisional license under this article is entitled to receive a license as a provisional licensed perfusionist. A provisional licensed perfusionist shall comply with Sections 12(b) and (c) of this article.

(d) A provisional license is valid for one year from the date it is issued and may be renewed annually not more than five times by the same procedure established for renewal under Section 13 of this article if the application for renewal is signed by a supervising licensed perfusionist.

Endorsement

Sec. 15. On receipt of an application and application fee, the board shall waive the examination requirements for an applicant who at the time of application.

(1) is appropriately licensed or certified by another state, territory, or possession of the United States if the requirements of that state, territory, or possession for the license or certificate are the substantial equivalent of the requirements of this article as determined by the board: or

(2) hold a certificate as certified clinical perfusionist issued by the American Board of Cardiovascular Perfusionist prior to January 1, 1994, and who may practice perfusion in another state, territory, or possession of the United States which does not credential perfusionists.

Prohibited Acts: Penalty

Sec. 16. (a) A person may not engage or offer to engage in perfusion, as defined in this article, for compensation or use the title or represent or imply that the person has the title of "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP" and may not use any facsimile of those titles in any manner to indicate or imply that the person is a licensed perfusionist or provisional licensed perfusionist unless the person holds an appropriate license issued under this article.

(b) A person may not use the title or represent or imply that the person has the title of "certified clinical perfusionist" or use the letters "CCP" and may not use any facsimile of those titles in any manner to indicate or imply that the person is a certified clinical perfusionist by the American Board of Cardiovascular Perfusion unless the person holds a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion.

(c) A person commits an offense if the person knowingly or intentionally violates Subsection (a)(b) of this section. An offense under this section is a Class B misdemeanor.

Exemptions

Sec. 17. This article does not apply to:

- (1) a person licensed by another health professional licensing board if:
 - (A) the person does not represent to the public, direct or indirectly, that the person is licensed under this article, and does not use any name, title, or designation indicating that the person is licensed under this article; and
 - (B) the person confines the person's acts or practice to the scope of practice authorized by the other health professional licensing laws;
- (2) a student enrolled in an accredited perfusion education program if perfusion services performed by the student:
 - (A) are an integral part of the student's course of study; and
 - (B) are performed under the direct supervision of a licensed perfusionist assigned to supervise the student and who is on duty and immediately available in the assigned patient care area;
- (3) a person who has successfully completed an approved perfusion program but who has not been issued a license as a provisional licensed perfusionist in accordance with the provisions of Section 14 of this article and:
 - (A) is at all times in compliance with the provisions of Section 14(b) of this article; and
 - (B) receives a license as a provisional licensed perfusionist within 180 days of the date upon which the person successfully completed an approved perfusion education program;
- (4) the practice of any legally qualified perfusionist employed by the United States government while in the discharge of official duties; or
- (5) a person who is not a resident of this state if:
 - (A) the person is authorized to perform the activities and services of perfusion under the laws of the state of the person's residence and is found by the board to possess educational and training qualifications substantially similar to those required of persons qualified to practice in this state; and
 - (B) such activities and services are performed for not more than 30 days in any one year; or
- (6) a person performing autotransfusion or blood conservation techniques under the supervision of a licensed physician.

Complaint Procedure in General

Sec. 18. (a) The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;
 - (2) a summary of findings made at each step of the complaint process;
 - (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
 - (4) other relevant information.
- (b) If written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.
- (c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

- (d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Complaint Investigation and Disposition

Sec. 19. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive director of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Informal Proceedings

Sec. 20. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and
- (2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard and must require the presence of a representative of the office of the attorney general or the board's legal counsel to advise the board or the board's employees.

Monitoring of License Holder

Sec. 21. The board by rule shall develop a system for monitoring license holders' compliance with requirements of this article. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Revocation and Suspension: Ex Parte Communication

Sec. 22. (a) The board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder on proof of:

- (1) any violation of this article; or
 - (2) any violation of a rule or code of ethics adopted by the board.
- (b) If a license suspension is probated, the board may require the license holder:
- (1) to report regularly to the board on matters that are the basis of the probation;

- (2) to limit practice to the areas prescribed by the board; or
- (3) to continue the person's professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing before a hearings officer appointed by the State Office of Administrative Hearings. The board shall prescribe procedures by all decisions to suspend or revoke a license are appealable to the board.

(d) Proceedings for the suspension or revocation of a license are governed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(e) The board by rule shall adopt a broad schedule of sanctions for violations under this article. The State Office of Administrative Hearings shall use the schedule for any sanction imposed as the result of a hearing conducted by that office.

(f) A member of the board or hearings examiner may not communicate with a party to a proceeding pending before the board or the hearings examiner or with a party's representative unless notice and an opportunity to participate are given to each party to the proceeding if the member or hearings examiner proposes to make a decision, a finding of fact, or a conclusion of law in the proceeding.

Duties of the Board

Sec. 23. For the purposes of this article, the board:

- (1) shall request and receive necessary assistance from state educational institutions or other state agencies;
- (2) shall prepare information of consumer interest describing the regulatory functions of the board, the procedures by which consumer complaints are filed and resolved, and the profession of perfusion and shall make the information available to the public and appropriate state agencies;
- (3) shall prepare a registry of licensed perfusionists and provisional licensed perfusionists and make this information available to the general public license holders, and appropriate state agencies; and
- (4) may request the attorney general or the appropriate county or district attorney to institute a suit to enjoin a violation of this article in addition to any other action, proceeding, or remedy authorized by law.

Sunset Provision

Sec. 24. The Texas State Board of Examiners of Perfusionists is subject to Chapter 325, Government Code (Texas Sunset Act), and its subsequent amendments. Unless continued in existence as provided by that chapter, the Board is abolished September 1, 2005. Added by Acts 1993, 73rd Leg., ch. 545, §1, eff. Jan. 1, 1994.

Historical and Statutory Notes

Section 2 of the 1993 Act provides:

“(a) Notwithstanding Section 4, Article 4529e, Revised Statutes, as added by this Act, not later than December 31, 1993, the governor shall make the initial appointments to the Texas State Board of Examiners of Perfusionists as follows:

“(1) one member engaged in the practice of perfusion, the physician member, and one public member, who shall serve until February 1, 1995.

“(2) two members engaged in the practice of perfusion and one public member, who shall serve until February 1, 1997; and

“(3) two members engaged in the practice of perfusion and one public member, who shall serve until February 1, 1999.

“(b) A person actively engaged in the practice of perfusion consistent with applicable law on or prior to January 1, 1993, shall receive a license as a licensed perfusionist without examination if application is made before December 31, 1995, so long as the person submits proof satisfactory to the board that the person meets one of the following requirements:

“(1) the person as of January 1, 1994, was operating cardiopulmonary bypass systems during cardiopulmonary surgery in a health care facility licensed in the United States as the person's primary function and been operating the systems since January 1, 1989;

“(2) the person has had at least five years' experience operating cardiopulmonary bypass systems during cardiopulmonary surgery in a health care facility licensed in the United States since January 1, 1988; or

"(3) the person has successfully completed a perfusion education program approved by the Committee on Allied Health Education and Accreditation of the American Medical Association, or their successors, after January 1, 1988, and hold a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion.

"(c) Notwithstanding Section 4, Article 4529a, Revised statutes, as added by this Act, a perfusionist member of the Texas State Board of Examiners of Perfusionists:

"(1) is not required to be licensed if the member was appointed to the Board before January 1, 1985; and

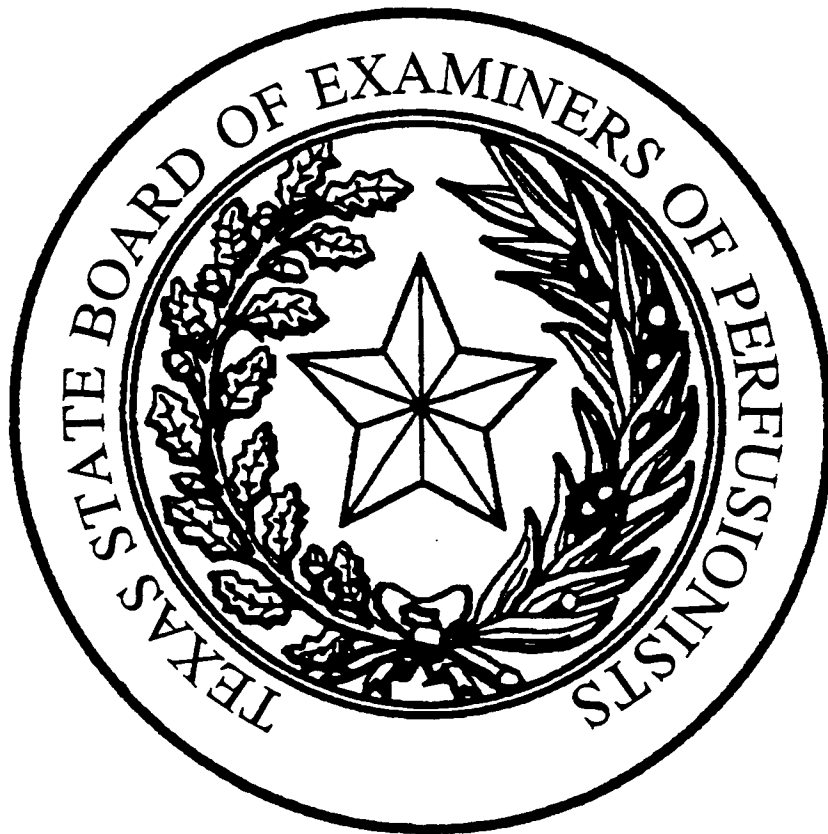
"(2) is not required to be licensed under Article 4529a, Revised Statutes, as added by this Act, for three years or more if the member was appointed to the board within four years following the effective date of this Act."

Title of Act:

An Act relating to the regulation of the practice of perfusion; providing penalty. Acts 1983, 73, 73rd Leg., ch. 545.

Cross References

Punishment, Class B misdemeanor, see V.T.C.A.
Penal Code, 512.22.



22 Texas Administrative Code §761
Board Rules
Effective April 4, 1996

TEXAS STATE BOARD OF EXAMINERS OF PERFUSIONISTS

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Title 22. Examining Boards
Part XXX. Texas State Board of Examiners of Perfusionists
Chapter 781. Perfusionists

§781.1 Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act - The Licensed Perfusionists Act, Texas Civil Statutes, Article 4529e.

APA - The Administrative Procedure Act, Government Code.

Board - The Texas State Board of Examiners of Perfusionists.

Board of Health - The Texas Board of Health.

Cardiopulmonary Surgery - Surgery pertaining to the heart, great vessels, or lungs.

Commissioner - The Commissioner of Health.

Contested Case - A proceeding in accordance with APA and this chapter, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

Delegated authority - As defined in the Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06 (d)(1) and the rules pertaining thereto adopted by the Texas State Board of Medical Examiners.

Department - The Texas Department of Health

Extracorporeal circulation - The diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, or both.

Formal hearing - A formal hearing or proceeding in accordance with this chapter and includes a contested case.

Formally trained - Completion of an organized educational activity which:

(A) includes supervised and directed instruction specific to the perfusion procedures to be performed by the individual;

(B) includes specific objectives, activities and an evaluation of competency; and

(C) is specifically supervised and directed by another individual qualified to provide the training and supervision.

Health care professional - A licensed perfusionist, provisional licensed perfusionist, or any person licensed, certified, or

registered by the state in a health-related profession.

Hearing examiner - A person duly designated and appointed who conducts formal hearings under this chapter on behalf of the board.

Licensed perfusionist - A person licensed under the Act who practices perfusion.

Licensed physician - A physician licensed under Texas Civil Statutes, Article 4495b, by the Texas State Board of Medical Examiners.

Licensee - A person who holds a current license as a perfusionist or provisional licensed perfusionist issued by the board.

Perfusion - The function necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory system, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring the parameters of the system under an order and under the supervision of a licensed physician, including:

(A) the use of extracorporeal circulation, cardiopulmonary support techniques, and other therapeutic and diagnostic technologies;

(B) counterpulsation, ventricular assistance, or autotransfusion (including blood conservation techniques), administration of cardioplegia, and isolated limb perfusion;

(C) the use of techniques involving blood management, advanced life support, and other related functions; and

(D) in the performance of the acts described in this subsection:

(i) the administration of:

(I) pharmacological and therapeutic agents; or

(II) blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) the performance and use of:

(I) anticoagulation analysis;

(II) physiologic analysis;

(III) blood gas and chemistry analysis;

(IV) hematocrit analysis;

hypothermia; (V)

hypothermia; (VI)

hyperthermia; (VII)

hemococoncentration; and (VIII)

hemodilution; and

(iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

Perfusionist - An individual who practices perfusion.

Perfusion protocols - Perfusion-related policies and protocols developed or approved by a licensed health facility or a physician through collaboration with administrators, licensed perfusionists, and other health professionals.

Pleading - Any written allegation filed by a party concerning its claim or position.

Provisional licensed perfusionist - A person provisionally licensed under this Act.

5781.2. The Board's Operation.

(a) **Purpose.** This section sets out the organization and administration and other general procedures and policies governing the operation of the board.

(b) **Officers.**

(1) **Chairman.**

(A) The chairman shall preside at all board meetings at which he or she is in attendance and perform all duties prescribed by law or board rules.

(B) The chairman is authorized by the board to make day-to-day minor decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(C) The chairman shall serve as an ex-officio member of all committees except the complaint committee.

(2) **Vice-chairman.**

(A) The vice-chairman shall perform the duties of the chairman in case of the absence or disability of the chairman.

(B) In case the office of chairman becomes vacant, the vice-chairman shall serve until a successor is elected.

(c) **Meetings.**

(1) The board shall hold at least two regular meetings and additional meetings as necessary during each year, at such designated date, place, and time as may be determined by the chairman.

(2) Special meetings may be called by the chairman at such times, dates, and places as become necessary for the transaction of board business.

(3) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(d) **Quorum.** A quorum of the board necessary to conduct official business is five members.

(e) **Transaction of official business.**

(1) The board may transact official business only when in a legally constituted meeting with a quorum present.

(2) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is in pursuance of specific instructions of the board.

(3) Board action shall require a majority vote of those members present and voting.

(f) **Policy against discrimination.** The board shall make decisions in the discharge of its statutory authority without discrimination based on any person's race, creed, gender, religion, national origin, geographical distribution, age, physical condition, or economic status.

(g) **Impartiality.** Any board member who is unable to be impartial in any proceeding before the board, such as that pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this to the board and shall not participate in any board proceedings involving that individual.

(h) **Attendance.**

(1) The policy of the board is that members shall attend regular and committee meetings as scheduled.

(2) The board may report to the governor and the Texas Sunset Advisory Commission the attendance records of members.

(3) Except in case of emergency, board members shall notify the executive secretary at least 48 hours prior to the scheduled meeting if unable to be present.

(4) Except in case of emergency, the executive secretary shall notify the chairman at least 48 hours prior to the scheduled meeting if unable to be present.

(l) Reimbursement for expense.

(1) A board member is entitled to a per diem payment at the rate set by the General Appropriations Act for each day that the member engages in the business of the board.

(2) A board member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(3) Payment to board members of per diem and transportation expenses shall be requested on official state travel vouchers which have been approved by the executive secretary.

(4) Board-approved requests for board staff for out-of-state travel for board activities shall be approved by the Associate Commissioner for Health Care Quality and Standards of the department on appropriate forms.

(5) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(j) Rules of order. The latest edition of Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by these board rules.

(k) Agendas.

(1) The executive secretary shall prepare and submit to each member of the board, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of board business which have been approved for discussion by the chairman.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(l) Minutes.

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments prior to approval by the board.

(2) After approval by the board, the minutes of any board meeting are official only when affixed with the original signatures of the chairman and the executive secretary.

(3) The official minutes of board meetings shall be kept in the office of the executive secretary and shall be available to any person desiring to examine them during regular office hours.

(m) Official records.

(1) All official records of the board including application materials, except files containing information considered confidential under the provisions of the Texas Open Records Act, Texas Government Code, Chapter 552 shall be open for inspection during regular office hours.

(2) A person desiring to examine official records shall be required to identify himself and sign statements listing the records requested and examined.

(3) Official records may not be taken from board offices; however, persons may obtain photocopies of files upon written request and by paying the cost per page set by the department. Payment shall be made prior to release of the records.

(n) Elections.

(1) At the meeting held nearest to February 1 of each odd-numbered year, the board shall elect by a majority vote of those members present and voting, a chairman and a vice-chairman.

(2) A vacancy which occurs in the offices of chairman or vice-chairman shall be filled, for the duration of the unexpired term, by a majority vote of those members present and voting at the next board meeting.

(3) A board member shall not serve more than two consecutive terms in the office of chairman or vice chairman.

(o) Committees.

(1) The board or the chairman with the approval of the board may establish committees deemed necessary to assist the board in carrying out its duties and responsibilities.

(2) The chairman may appoint the members of the board to serve on committees and may designate the committee chairman.

(3) The chairman of the board may appoint nonboard members to serve as committee members on a consultant or voluntary basis, subject to board approval.

(4) Committee chairmen shall make regular reports to the board in interim written reports or at regular meetings, as needed.

(5) Committees shall direct all reports or other materials to the executive secretary for distribution.

(6) Committees shall meet when called by the chairman of the committee or when so directed by the board.

(7) The following standing committees shall be appointed by the newly elected chairman each odd-numbered year to serve a term of two years.

(A) The rules committee shall be composed of at least two board members who are licensed

perfusionists and one public member of the board. The committee shall review all board rules at least once annually to ensure that the rules are current in relation to perfusionist practices, and may recommend and propose adoption of rules to the board. The committee shall consider all petitions for adoption of rules and shall recommend disposition of these petitions to the board in accordance with subsection (t) of this section.

(B) The complaint committee shall be composed of one board member who is a licensed perfusionist and one public member of the board. The committee may review complaints received by the board and shall recommend action to be taken on complaints in accordance with §761.16 of this title (relating to Violations, Complaints, and Subsequent Board Actions).

(p) Official seal. The official seal of the board shall consist of two concentric circles with the words "Texas State Board of Examiners of Perfusionists" circularly arranged about the inner edge of the outermost circle, and in the center of the innermost circle there shall be a five-pointed star, surrounded by the live oak and olive branches common to official state seals.

(q) Registry.

(1) Each year the executive secretary shall publish a registry of current licensees.

(2) The registry shall include, but not be limited to, the name of current licensees.

(3) An original copy of the registry will be available for inspection by licensees and members of the public in the office of the executive secretary. Upon receipt of a written request and payment of a fee, the executive secretary shall furnish at cost a copy to a licensee or member of the public. The cost of a copy of the registry or any portion thereof shall be in accordance with the cost guidelines of the department.

(r) Consumer information. The executive secretary with the approval of the board shall publish information of consumer interest which describes the regulatory functions of the board, board procedures to handle and resolve consumer complaints, and the profession of perfusion.

(s) Fees.

(1) The board has established reasonable and necessary fees to provide the funds to support the activities listed in paragraph (2) of this subsection and other activities required by the Act.

(2) Schedule of fees for licensure as a perfusionist and a provisional licensed perfusionist is as follows:

(A) application and initial license fees - \$150;

(B) license fee for upgrade of provisional licensed perfusionist - \$75;

(C) renewal fee - \$75;

(D) late renewal fee - \$50;
and

(E) license certificate and identification card replacement fee - \$10;
and

(F) child support reinstatement fee - \$40.

(3) An applicant whose check for the application fee is not honored by the financial institution may reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) A licensee whose check for the renewal fee is not honored by the financial institution may remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be subject to revocation.

(5) Fees paid to the board by applicants are not refundable.

(6) Any remittance submitted to the board in payment of a required fee must be in the form of a personal check, certified check, or money order.

(7) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through rule amendments.

(t) Petition for adoption of a rule.

(1) Purpose. The rule's purpose is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(2) Submission of the petition.

(A) Any person may petition the board to adopt a rule.

(B) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for it; however, if the executive secretary determines that further information is necessary to assist the board in reaching a decision, the executive secretary may require that the petitioner resubmit the petition and that it contain:

(i) a brief explanation of the proposed rule;

(ii) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(iii) a statement of the statutory or other authority under which the rule is to be promulgated; and

(iv) the public benefits anticipated as a result of adopting the rule or the anticipated injury or inequity which would result from the failure to adopt the proposed rule.

(C) The board may deny a petition which does not contain the information in subparagraph (B) of this paragraph if the executive secretary determines that it is necessary.

(D) The petition shall be mailed or delivered to the executive secretary, Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183.

(3) Consideration and disposition of the petition.

(A) The executive secretary shall submit a completed petition to the board for its consideration.

(B) Within 60 days after receipt of the petition by the executive secretary, or within 60 days after receipt of a resubmitted petition in accordance with paragraph (2)(B)(i)-(iv) of this subsection, the board shall either:

(i) deny the petition; or

(ii) initiate rule-making procedures by referring the petition to the rules committee for its recommendation. The committee shall report its recommendations to the board at its next regular meeting.

(C) The board may deny parts of the petition or institute rule making procedures on parts of the petition.

(D) If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's action, including the reason(s).

(E) If the board initiates rule-making procedures in accordance with the Administrative Procedure Act, §5, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(4) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of paragraphs (2) and (3) of this subsection. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

§761.3. The Profession of Perfusion.

(a) Purpose. The rules on the profession of perfusion shall establish the standards of professional and ethical conduct required of a licensee.

(b) Code of ethics. These rules shall constitute a code of ethics as authorized by the Act, §6 section (b)(1).

(1) Professional representation and responsibilities.

(A) A licensee shall not misrepresent any professional qualifications or credentials.

(B) A licensee shall not make any false or misleading claims pertaining to the indications and efficacy of the practice of perfusion.

(C) A licensee shall not permit the use of his or her name for the purpose of certifying that perfusion services have been rendered unless that licensee has provided those services.

(D) A licensee shall not promote or endorse products in a manner that is false or misleading.

(E) A licensee shall disclose to the reimbursing entity any personal gain or profit from any supply, procedure or service.

(F) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of board rules to the board's executive secretary.

(G) A licensee shall comply with any order relating to the licensee which is issued by the board.

(H) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(I) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation relating to the services of the licensee.

(J) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(K) A licensee shall conform to the Code of Ethics of the American Board of Cardiovascular Perfusion which is summarized as follows:

(i) The perfusionist who willfully misstates fact during the application, examination, or recertification processes is guilty of unethical conduct. Likewise the willful misstatement of fact regarding the title or membership in a professional community is considered unethical conduct.

(ii) The perfusionist who consciously fails to promote both the safety and protection of the public is guilty of unethical conduct.

(iii) The perfusionist who willfully disregards the patient for monetary gain is guilty of unethical conduct. Examples of such conduct are unjustified reimbursement for services performed or prejudicial compensation.

(iv) The perfusionist who shows willful disregard for sound patient care by acts of omission is guilty of unethical conduct.

(v) The ethical perfusionist shall subscribe to all other applicable ethical standards of the medical community.

(vi) The perfusionist accepts the responsibility for subscribing to the preceding Code of Ethics and for reporting unethical professional conduct.

(L) A licensed perfusionist shall supervise a provisional licensed perfusionist in accordance with §761.9 of this title (relating to Provisional Licensed Perfusionist).

(2) Professional relationships.

(A) A licensee shall make known to a prospective reimbursing entity the important aspects of the professional relationship including fees and arrangements for payment which might affect the reimbursing entity's decision to enter into the relationship.

(B) A licensee shall bill a reimbursing entity in the manner agreed to by the licensee and entity in accordance with 42 United States Code §1395nn, relating to the anti-kickback statute and the Health and Safety Code §161.091, relating to illegal remuneration.

(C) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of professional services.

(D) A licensee shall disclose to the reimbursing entity any interest in commercial enterprises relating to the practice of perfusion which the licensee promotes for the purpose of personal gain or profit.

(E) A licensee shall practice perfusion without discrimination based on race, creed, gender, religion, national origin, or age.

(F) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of patient communications and records.

(G) A licensee shall not engage in sexual contact with a patient. The term "sexual contact" means any type of sexual behavior described in the Texas Penal Code, Chapters 21, 22 or 43 and includes sexual intercourse.

(3) Billing information required; prohibited practices.

(A) On the written request of a patient, a patient's guardian, a patient's parent if the patient is a minor, or the billing entity, a licensee shall provide, in plain language, a written explanation of the charges for acts of perfusion previously made on a bill or statement for the patient. This requirement applies even if the charges are to be paid by a third party.

(B) A licensee may not persistently or flagrantly overcharge or overtreat a patient.

(4) Sanctions. A licensee shall be subject to disciplinary action by the board if under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1 the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.

(c) Disclosure. A licensee shall make a reasonable attempt to notify each patient of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification:

(1) on each written contract for services of a licensee; or

(2) on a sign prominently displayed in the primary place of business of each licensee; or

(3) in a bill for service provided by a licensee to a patient or reimbursing entity.

(d) Unlawful false, misleading, or deceptive advertising.

(1) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(2) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or licensure of a perfusionist;

(F) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(I) advertises or represents, in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

§781.4. Educational Requirements for Licensure.

(a) Purpose. The purpose of this section is to set out the educational requirements for examination and licensure as a perfusionist or a provisional licensed perfusionist.

(b) General.

(1) The board shall approve as meeting licensure requirements a perfusion education program that has educational standards that are as stringent as those established by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or their successors.

(2) Degrees and course work received in foreign countries shall be acceptable only if the degree or coursework has educational standards that are as stringent as those established by the AC-PE and approved by CAAHEP or their successors.

(3) A foreign training program shall be acceptable only if it has educational standards as stringent as those established by the AC-PE and approved by the CAAHEP or their successors.

(4) In the event that an educational deficiency is present, an applicant will have one year in which to complete the additional course work acceptable to the board before the application will be voided and the applicant will be required to reapply and to pay an additional application fee.

§781.5. Examination for Perfusionist Licensure.

(a) Purpose. The purpose of this section is to establish rules governing the procedures for examinations of applicants

for licensure as a perfusionist.

(b) Frequency. Examinations will be administered for the board at least once each year by a designee of the board.

(c) Requirements.

(1) The executive secretary shall notify an applicant when all requirements for licensure have been met except the taking and passing of the required examination. The board shall forward or cause to be forwarded an examination registration form to each approved applicant as soon as the application has been approved.

(2) An applicant who wishes to take a scheduled examination must complete the examination registration form which must be received by the board or designee by the deadline established by the board. The fee shall be paid to the designee of the board.

(3) The examination for licensure shall be an examination approved by the board. A designee of the board shall administer and grade examinations and report to the board if the applicant has passed or failed the examination.

(4) If an applicant has already successfully completed the required examination, the applicant shall not be required to be reexamined, provided the applicant furnishes the board a copy of the test results indicating that the applicant passed the examination and proof that he or she has been certified by the American Board of Cardiovascular Perfusion for some time period within three years immediately preceding date of application.

(5) An applicant who fails four examinations may not reapply.

(6) An applicant who has failed four examinations may choose as an alternative method for demonstrating competency to reaccomplish the educational and testing requirements.

§781.8. Exemptions. Exemptions are set out in Section 17 of the Act.

§781.7. Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for examination and licensure to establish qualifications of an applicant as one of the criteria for approval for licensure as provided for in the Act, §7(b)(2), and to set forth the criteria by which the board shall determine the qualifications of applicants for licensure.

(b) Fitness of applicants for perfusion licensure.

(1) In determining the qualifications of applicants for licensure the board may request and consider any of the following:

- (A) evaluations of supervisors or instructors;
- (B) evaluations of employers or professional associations;
- (C) allegations of clients;
- (D) transcripts or findings from official court, hearing or investigative proceedings; and
- (E) any other information which the board considers pertinent to determining the qualifications of an applicant.

(2) The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of licensure of the applicant:

- (A) lack of the necessary skills and abilities to provide adequate perfusion services;
- (B) misrepresentation of professional qualifications or associations;
- (C) misrepresentation of perfusion services and the efficacy of perfusion services to clients;
- (D) use of misleading advertising or false advertising;
- (E) violation of any provision of any federal or state statute relating to confidentiality of client communication and records;
- (F) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of perfusion services; and
- (G) any misrepresentation in application or other materials submitted to the board.

(c) General.

(1) An applicant must submit a sworn application and all required information and documentation of credentials on official board forms.

(2) The board will not consider an application as officially submitted until the applicant pays the application fee. The application and initial license fee of \$150 must accompany the application form.

(3) The executive secretary will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the board's notice may be void.

(d) Required application materials.

(1) The application form shall contain:

(A) specific information regarding personal data, social security number, date of birth, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and board rules and agrees to abide by them;

(C) the applicant's permission to the board to seek any information or references it deems fit to determine the applicant's qualifications and fitness;

(D) a statement that the applicant, if issued a license, shall return the license certificate and license identification card to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(F) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are nonreturnable; and

(G) the signature of the applicant which has been dated and notarized.

(2) Applicants must submit official transcript(s) from an approved perfusion education program or from a program with requirements as stringent as those established by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or their successors.

(3) If submitting an equivalent program, the burden is on an applicant to establish that program requirements are as stringent as those established by the AC-PE and approved by the CAAHEP or their successors.

(4) Applicants must submit a full-face photo, a minimum in size of 1 1/2 inches by 1 1/2 inches, signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two-year period prior to application.

(5) If an applicant is or has been licensed, certified, or registered in another state, territory, or jurisdiction, the applicant must submit information required by the board concerning that license, certificate or registration on official board forms.

(6) Curriculum vitae, resumes, and other documentation of the applicant's credentials may be submitted.

(7) An applicant applying for licensing by endorsement shall submit a copy of the license or certificate by

which the reciprocal license is requested and the name and address of the licensing or certifying agency.

(8) An applicant for provisional licensed perfusionist must have his or her supervising licensed perfusionist or an appropriately licensed physician sign the applicant form.

§761.8. Determination of Eligibility.

(a) The board may delegate approval of applications for licensing to a committee of the board or the executive secretary.

(b) The board may deny the application if the person has:

(1) not completed the requirements in §761.4 of this title (relating to Educational Requirements for Licensure);

(2) failed to pass the examination prescribed by the board as set out in §761.5 of this title (relating to Examination for Perfusionist Licensure), if applicable;

(3) failed to remit any applicable fees required in §761.2(s) of this title (relating to The Board's Operation);

(4) failed or refused to properly complete or submit any application form(s) or endorsement(s), or deliberately presented false information on the application form, or any other form or document required by the board to verify the applicant's qualifications for licensure;

(5) been in violation of the Act, the Code of Ethics, or any other provision of this title;

(6) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §761.15 of this title (relating to Licensing of Persons with Criminal Backgrounds to be A Perfusionist and Provisional Licensed Perfusionist),

(7) had a license, registration, certificate, or certification to practice perfusion in another state or jurisdiction which has been suspended, revoked, or otherwise restricted by the licensing entity or American Board of Cardiovascular Perfusion; or

(8) demonstrated lack of necessary skills and ability to provide adequate perfusion services.

(c) If after review, the committee under guidance provided by the board determines that the application should not be approved, the executive secretary shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice and hearing shall be in accordance with §761.16 of this title (relating to Violations, Complaints, and Subsequent Board Actions).

(d) An applicant whose application has been denied

under subsection (b)(4),(5),(6),(7), or (8) of this section shall be permitted to reapply after a period to be determined by the board. The applicant shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

(e) Processing procedures are as follows.

(1) Time periods. The board shall comply with the following procedures in processing application for licensure and renewal.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for licensure - 14 working days;

(ii) letter of application deficiency - 14 working days; and

(iii) issuance of license renewal after receipt of documentation of all renewal requirements - 30 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. For the purpose of this section an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval examination - 20 working days;

(ii) initial letter of approval for licensure (exam waived) - 20 working days;

(iii) letter of denial of licensure - 20 working days;

(iv) issuance of license renewal after receipt of documentation of all renewal requirements - 30 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been

violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if:

(i) the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; or

(ii) another public or private entity relied upon by the board in the application process caused the delay; or

(iii) any other condition exists giving the board good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the executive secretary, the applicant may appeal to the chairman of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairman at the address of the board that the applicant requests full reimbursement of all fees paid in that particular application process because the application was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the chairman of the board. The chairman shall provide written notice of the chairman's decision to the applicant and the executive secretary. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§761.9. Provisional Licensed Perfusionist.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for a provisional licensed perfusionist.

(1) To meet licensure and license renewal requirements, a provisional licensed perfusionist shall be under the supervision and direction of a currently licensed perfusionist who resides in Texas.

(2) Supervision and direction shall be defined as procedural guidance provided by a licensed perfusionist and

need not be on site.

(3) The supervising licensed perfusionist must sign the application for a provisional license and the application for renewal of the provisional license.

(b) Termination. The supervising licensed perfusionist must submit written notification of termination of supervision to the board and the supervisee within 14 days of when supervision has ceased. The provisional licensed perfusionist shall make a good faith effort to ensure that the supervising licensed perfusionist submits an appropriate notification.

(c) Changes. Any change in the supervision shall be submitted in writing. The signature of the supervising licensed perfusionist shall be included in the written notice.

(d) Required supervisor. A provisional licensed perfusionist must have a supervising licensed perfusionist at all times whether or not the provisional licensed perfusionist is actively employed.

(e) Time limits. A provisional license is valid for one year from the date it is issued and may be renewed annually for not more than five times by the procedures set out at §761.13 of this title (relating to License Renewal).

(f) Variance. An applicant or provisional licensee may request the board to approve that supervision and direction be performed by a licensed physician in lieu of a licensed perfusionist.

(1) The request for a variance must be in writing and must include the following:

(A) the individual's name and address;

(B) the reason(s) why a licensed perfusionist is not reasonably available to provide supervision and direction; and

(C) the name, address, and copies of the credentials for verification that the physician is licensed by the Texas State Board of Medical Examiners and certified by the American Board of Thoracic Surgeons, Inc., or certified in cardiovascular surgery by the American Osteopathic Board of Surgery.

(2) The application committee of the board shall consider the request at its next scheduled meeting. The applicant will be notified of approval or denial of the request in writing.

§761.10. Grandfather Period.

(a) The grandfather period begins on January 1, 1995, and expires December 31, 1995.

(b) The board may issue an annual license without an examination to a person actively engaged in the practice of perfusion, on or prior to January 1, 1993, so long as the person

submits proof satisfactory to the board that the person meets one of the following requirements:

(1) the person, as of January 1, 1994, was operating cardiopulmonary bypass systems during cardiopulmonary surgery in a health care facility(ies) licensed in the United States as the person's primary function and had been operating the systems since January 1, 1989; or

(2) the person, as of January 1, 1995, has had at least five years experience operating cardiopulmonary bypass systems during cardiopulmonary surgery in a health care facility(ies) licensed in the United States since January 1, 1986; or

(3) the person has successfully completed a perfusion education program accredited by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the Commission on Accreditation of Allied Health Education Programs, (CAAHEP) or its predecessors, after January 1, 1989, and holds as of the application date a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion (ABCP).

(c) The applicant must provide proof of such practice by submitting to the board the following:

(1) properly completed official forms as required in 5761.7 of this title (relating to Application Procedures); and

(2) applicants applying under subsection (b)(1) of this section must submit a clinical activity documentation report form(s) documenting his or her operation of cardiopulmonary bypass systems during cardiopulmonary surgery in a licensed health care facility on January 1, 1994, and the operation of said system as a primary function for each year since January 1, 1989. The applicant shall submit board forms which includes:

(A) documentation of the dates, medical record numbers, procedure, surgeon and facility recording 25 cases per calendar year; and

(B) a signed statement of verification of status as a perfusionist at a licensed health care facility on January 1, 1994;

(3) applicants applying under subsection (b)(2) of this section must submit a clinical activity(ies) documentation report form(s) documenting clinical activity(ies) in the field of perfusion for five years beginning January 1, 1986, through December 31, 1993. The applicant shall submit board forms showing the dates, medical record numbers, procedures, surgeon, and facility recording 25 cases per calendar year.

(4) applicants applying under subsection (b)(3) of this section must submit, an official board form documenting completion of a perfusion education program and current certification as a certified clinical perfusionist; and

(5) applicants applying under the paragraphs (b)(1) or (b)(2) of this section, may submit verification of

annual recertification by the ABCP in lieu of documentation of 25 cases per year.

(d) Primary function and experience shall be defined as the person performing as the primary perfusionist for at least 25 perfusion cases utilizing cardiopulmonary bypass procedures during cardiopulmonary surgery during each calendar year.

(e) All application materials and fees required under this section must be received by the board or bear a postmark on correspondence to the board prior to January 1, 1996.

(f) Time deadlines are established by statutory authority and are the responsibility of the applicant.

5761.11. Licensing After Examination.

(a) Purpose. The purpose of this section is to set out the licensing procedures after completion of the entire examination.

(b) Issuance of licenses.

(1) The board shall send each applicant who has been approved and who has passed the examinations, if applicable, a form to complete and return with the upgrade fee, if applicable.

(2) Upon receiving an applicant's form and fee, the board shall issue a license certificate and license identification card containing a license number.

(c) Replacement. The board shall replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or identification card or be accompanied by the damaged certificate or card.

(d) License certificates.

(1) The board shall prepare and provide to each licensee a license certificate and identification card which contains the licensee's name, license number, and expiration date.

(2) Official license certificates shall be signed by the executive secretary. Official identification cards shall be signed by the executive secretary and the licensee.

(3) Any certificate or identification card issued by the board remain the property of the board and must be surrendered to the board on demand.

(4) The license certificate must be displayed in an appropriate and public manner as follows:

(A) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(B) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(5) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original document. A photocopy shall be clearly marked as a copy across the face of the document.

(6) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.

(e) **Upgrading a provisional license.** The purpose of this subsection is to set out the procedure to upgrade from provisional licensed perfusionist to licensed perfusionist.

(1) The provisional licensed perfusionist shall submit to the board a photocopy of the examination results from the American Board of Cardiovascular Perfusion and a written request to upgrade.

(2) The provisional licensed perfusionist who successfully completes the licensing examination shall surrender to the board the provisional license certificate and provisional license identification card, and submit the license fee for upgrade of provisional licensed perfusionist to licensed perfusionist.

(3) If the provisional licensed perfusionist is not eligible for upgrade, the executive secretary shall notify the provisional licensed perfusionist in writing of the reasons for denial and the additional documentation needed to meet the minimum requirements for licensure as a licensed perfusionist.

§761.12. Changes of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(b) The licensee shall notify the board of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of address changes shall be made in writing including the name, mailing address, and zip codes, and be mailed to the executive secretary.

(d) Before another license certificate and identification card will be issued by the board, notification of name changes must be mailed to the executive secretary and shall include a duly executed affidavit and a copy of a marriage certificate, court decree evidencing such change, or a Social Security card reflecting the new name. The licensee shall return any previously issued license certificate and identification card and remit the appropriate replacement fee as set out in §761.2(s) of this title (relating to The Board's Operation).

§761.13. License Renewal.

(a) **Purpose.** The purpose of this section is to set out the rules governing license renewal.

(b) **General.**

(1) When issued, a license is valid until the licensee's next birth month.

(2) A licensee must renew the license annually.

(3) The renewal date of a license shall be the last day of the licensee's birth month.

(4) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the executive secretary prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(5) The board shall not renew the license of the licensee who is in violation of the Act or board rules at the time of application for renewal.

(6) The board shall deny renewal of the license of a licensee if renewal is prohibited by the Education Code, §57.491 relating to student loan default.

(7) The board shall deny renewal of the license of a licensee for whom a contested case is pending until resolution of the case, but such individual remains licensed pending resolution of the contested case, if timely application for renewal is made.

(c) **License renewal requirements.**

(1) At least 30 days prior to the expiration date of a person's license, the executive secretary shall send notice to the licensee at the address in the board's records of the expiration date of the license, the amount of the renewal fee due, and a license renewal form which the licensee must complete and return to the board with the required renewal fee. The return of the completed renewal form in accordance with the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for all licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The license renewal form for the provisional licensed perfusionist shall be signed by the supervising licensed perfusionist or approved licensed physician and indicate whether the supervisor and supervisee have complied with this chapter.

(3) A licensee has renewed the license when the licensee has mailed the renewal form and the required renewal fee to the executive secretary prior to the expiration date of the license. The postmark date shall be considered as the date of mailing.

(4) The board shall issue to a licensee who has met all requirements for renewal a license certificate and identification card.

(d) Late renewal requirements.

(1) The executive secretary shall inform a person who has not renewed a license after a period of more than 90 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(2) A person whose license has expired for not more than two years may renew the license by submitting the license renewal form and appropriate late renewal fees to the executive secretary. The renewal is effective if it is mailed to the executive secretary within two years after the expiration date of the license. The postmark date shall be considered as the date of mailing.

(3) A person whose license has been expired two years or more may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license.

(e) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he has the title of "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP", and may not use any facsimile of those titles in any manner.

(2) A person who fails to renew a license after two years is required to surrender the license certificate and license identification card to the board.

(f) Active duty. If a licensee fails to timely renew his or her license on or after August 1, 1990, and the licensee is or was on active duty with the armed forces of the United States of America, the licensee may renew the license in accordance with this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty shall be filed with the board along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the board along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee, but not the reinstatement fee or any penalty fee.

§781.14. Continuing Education.

(a) Purpose. The purpose of this section is to establish the minimum continuing education (CE) requirements a licensee shall meet to maintain licensure. These requirements are intended to maintain and improve the quality of services to the public by a licensed perfusionist and a provisional licensed perfusionist.

(b) Completion of CE requirements with current certification by the American Board of Cardiovascular Perfusion (ABCP) or its successor agency. Completion of continuing education requirements shall be documented by demonstrating current certification by the ABCP annual license renewal.

(c) Completion of CE requirements without current certification by the ABCP. Licensed perfusionists without current certification by the ABCP at the time of license renewal must meet the following criteria.

(1) Document a minimum of 150 relicensure points in a three-year period by submitting the professional activity report on the approved form every third year. The activity period covered in the professional activity report is from the date of licensure to the third licensure renewal date and every subsequent third licensure renewal date.

(2) Document a minimum of 40 clinical perfusions in a one-year period by submitting the clinical activity report on the approved form upon annual license renewal. The first clinical activity report from a newly licensed perfusionist is due on the second licensure renewal date.

(3) Relicensure points shall be based upon the following criteria.

(A) A relicensure point is equivalent to an ABCP recertification point. All relicensure points shall be approved by the ABCP using their criteria for recertification point assignment.

(B) Two relicensure points are equivalent to one contact hour. One contact hour is equivalent to 50 minutes spent in an organized learning experience. This is the unit of measure to be used for all meetings which shall be approved by the ABCP.

(C) Points are assigned on a per contact hour basis and programs not approved by the ABCP in advance will receive only 50% of the maximum allowable points. To receive these points, perfusionists must include a copy of the program with their request when filing with the ABCP. The summary of recertification points is listed in the following chart.

**Appendix 1
 Recertification Point
 Summary Assignment**

Points per Activity	Activities	Maximum Points per Activity 3 years	Points per Activity	Activities	Maximum Points per Activity in 3 years
2 points per hour	Attendance at a National Regional or Local Perfusion Meeting	120	5 points per hour	Presentation of a talk at a State Medical Meeting	15 points per hour
2 points per hour	Attendance at a National Medical Meeting	30	5 points per hour	Presentation of a talk at a local Medical Meeting, Hospital Medical Conference Perfusion Education Program or Seminar	15 points per hour
2 points	Attendance at a State, Local or Hospital Meeting	25	1 point per hour	Listening to or viewing a medical audio-visual aid	18 points
20 points	Publication of a Scientific paper in a Professional Journal (each author receives full credit)	60	2 points per hour	Perfusion Self-Study Modules/Clinical Simulations	18 points
5 points	Presentation of a Scientific Exhibit at a National Perfusion Meeting or a National Medical Meeting	10	1 point per hour	Reading a Scientific Journal pertaining to Cardiovascular Perfusion	18 points
15 points	Presentation of a talk at a National Perfusion Meeting	45	2 per course	In-Service Training College filed degree or relevant course	No limit
15 points	Presentation of a talk at a National Medical Meeting	45	15 points	Participation in an ABCP Oral Examiner Workshop	45 points
10 points	Presentation of a talk at a Regional Perfusion Meeting	30	15 points	Participation in a Site Visitors Workshop	45 points

(D) A minimum of 40 clinical perfusions per year is required for a maximum of 20 relicensure points per year (½ point per case). Clinical perfusion is defined as intra-operative cardiopulmonary bypass and cardiopulmonary support procedures.

(i) Clinical perfusions performed as an instructor in an accredited program have the same point value (½ point per case) as primary perfusions.

(ii) Of the 40 cases required each year, a maximum of 15 cases may be performed as either first assistant perfusionist for cardiopulmonary bypass cases, primary perfusionist for ECMO cases, or primary perfusionist for Ventricular Assist or VENO-VENO Bypass for Liver Transplantation procedures. All qualify for 1/4 point per case.

(4) Documentation of activities.

Licensed perfusionists are responsible for providing documentation of their professional activities. This documentation must be submitted along with the professional activity report. Credit will not be granted for activities that are not documented. The suitable documentation is outlined as follows:

(A) Meetings may be documented by copies of registration receipts or name tags that are appropriately labeled. To document content of meetings that do not have prior approval, a copy of the meeting program must be enclosed.

(B) Local meetings attendance must be documented by listing topics, dates, time and location of such meetings.

(C) Presentations must be documented by copies of the program (or portion thereof) that show the scheduling of presentation.

(D) Publications authored must be documented by a complete reference of that paper (list of authors, title of article, name of journal, volume, pages, year).

(E) Hospital medical conferences or seminars must be documented by listing the dates, titles and locations.

(F) When submitting documentation, condense name tags or receipts on photocopies and keep the originals for your records. One documentation per meeting is sufficient, provided it is properly labeled.

(d) Exceptions. Any deviation from the continuing education requirements will be reviewed on a case-by-case basis by the Board. A request for special consideration shall be submitted in writing a minimum of 60 days prior to expiration of the license.

§781.15. Licensing of Persons with Criminal Backgrounds to Be A Perfusionist and Provisional Licensed Perfusionist.

(a) Purpose. This section is designed to establish

guidelines and criteria on the eligibility of person(s) with criminal backgrounds to obtain licenses as perfusionists or provisional perfusionists.

(b) Criminal convictions which directly relate to the profession of perfusion.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee.

(2) In considering whether a criminal conviction directly relates to the occupation of a licensed perfusionist or provisional licensed perfusionist, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for licensure as a perfusionist or provisional perfusionist. The following felonies and misdemeanors listed in clause (i)-(iv) of this subparagraph relate to the license of a perfusionist or provisional perfusionist because these criminal offenses indicate an inability or a tendency to be unable to perform as a licensed perfusionist or a provisional licensed perfusionist:

(i) the misdemeanor of knowingly or intentionally acting as a licensed perfusionist or provisional licensed perfusionist without a license under the Act, §15;

(ii) a misdemeanor or a felony offense involving moral turpitude;

(iii) a conviction relating to Medicare or Medicaid fraud;

(iv) a misdemeanor or felony offense under the following titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10);

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); and

(VI) insurance claim fraud under the Penal Code, §32.55; and

(v) the misdemeanors and felonies listed in clauses (i)-(iii) of paragraph (2)(B) of this subsection are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and these sections;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensed perfusionist or provisional licensed perfusionist. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, 54(c)(1)-(7).

(c) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The board's executive secretary will give written notice to the person that the board intends to deny, suspend, or revoke the license in accordance with the provisions of the Administrative Procedure Act and Texas Government Code, Chapter 2001, and the board's formal hearing procedures, 5761.16 (relating to Violations, Complaints, and Subsequent Board Actions) and 5761.17 of this title (relating to Formal Hearings).

(2) If the board denies, suspends, or revokes an application for a license under this section, the executive secretary will give the person written notice:

(A) of the reasons for the decision; and

(B) that the person, after exhausting administrative appeals, may appeal in a district court of Travis County, Texas.

5761.16. Violations, Complaints, and Subsequent Board Actions.

(a) Purpose. The purpose of this section is to set out:

(1) violations and prohibited actions under the Act and the board rules;

(2) procedures for filing complaints alleging violations and prohibited actions under the Act or rules;

(3) the board's investigation of complaints; and

(4) board actions against a person or licensee when violations and prohibited actions have occurred.

(b) Types of violations and prohibited actions.

(1) A person may not knowingly or intentionally represent or imply that he or she has the title of "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP" or any facsimile of those titles in any manner unless the person holds an appropriate license issued under the Act.

(2) A person may not intentionally or knowingly represent or imply that he or she has the title of "certified clinical perfusionist" or use the letters "CCP" or any facsimile of that title in any manner unless the person is certified as a certified clinical perfusionist by the American Board of Cardiovascular Perfusion.

(3) A licensee may not issue an insufficient funds check and fail to redeem such instrument within 10 days after being given written notice by the board.

(4) A licensee may not violate any of the provisions of the Act or any rules adopted by the board.

(c) Filing of complaints.

(1) Anyone may complain to the board alleging that a person has committed an action prohibited under the Act or that a licensee has violated the Act or a board rule.

(2) A person wishing to complain about a prohibited act or alleged violation against a licensee or other person acting as a perfusionist shall notify the executive secretary. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. The mailing address is Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183, 1-800-942-5540.

(3) Upon receipt of a complaint, the executive secretary shall send to the complainant an acknowledgment letter and the board's complainant form, which the complainant will be requested to complete and return to the executive secretary before further action can be taken. If the complaint is made by a visit to the executive secretary's office, the form may be given to the complainant at that time; however, it must be completed and returned to the executive secretary before further action can be taken. Copies of the complaint form may be obtained from the Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183.

(4) Anonymous written complaints shall be investigated by the executive secretary provided that the complainant provides sufficient information.

(d) Investigation of complaints.

(1) The executive secretary on behalf of the board is responsible for handling complaints.

(2) If the executive secretary determines that the complaint does not come within the board's jurisdiction, the executive secretary shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints.

(3) The executive secretary, on behalf of the board, shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(4) If an investigation is initiated, the investigator shall always attempt to contact the complainant to discuss the complaint.

(5) The board shall use a private investigator only if the department's investigators available to the board have a conflict of interest or are not available to respond to a complaint in a timely manner.

(e) Actions by executive secretary.

(1) The executive secretary alone or with the concurrence of the Complaint Committee may take one or more of the following actions:

(A) determine that an allegation is groundless and dismiss the complaint; or

(B) determine that a nonlicensed person has committed a prohibited action under subsection (b) of this section. The complaint committee shall consider the seriousness and the effects of the violation and shall initiate one of the following actions:

(i) attempt to resolve the complaint by requesting the violator to stop the action immediately. If the violator complies, the executive secretary may close the complaint file; or

(ii) with the concurrence of the board chairman, ask the attorney general, district attorney, or county attorney to take appropriate legal action against the violator; or

(C) determine that a licensee has violated the Act or a board rule and propose denial of renewal, revocation, or suspension of the license, reprimand, or probation of the license suspension.

(2) Whenever the executive secretary dismisses a complaint or closes a complaint file, the executive secretary will give a summary report of the final action to the board, the complainant, and the accused party.

(f) Formal hearings.

(1) The formal hearing shall be conducted according to the hearing procedures in §761.17 of this title (relating to Formal Hearings) and §761.15 of this title (relating to Licensing of Persons with Criminal Backgrounds to Be A Perfusionist and Provisional Licensed Perfusionist), if the latter is applicable.

(2) To initiate formal hearing procedures, the executive secretary shall give the applicant or licensee written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within ten days after receipt of the

notice, the applicant or licensee may give written notice to the executive secretary that the applicant or licensee wants a hearing.

(A) If the person fails to respond within ten days after receipt of the notice of opportunity, the person is deemed to have waived the hearing. If the hearing has been waived, the executive secretary may recommend to the board that the license be suspended or revoked, the license suspension be probated, the licensee renewal be denied or the application be denied. The board may take the final action which the board deems appropriate.

(B) If the person requests a hearing within ten days after receiving the notice of opportunity for hearing, the executive secretary shall request the department's office of general counsel to initiate formal hearing procedures.

(3) After a formal hearing is conducted, the board, meeting in quorum and by a majority of those present and voting, will determine the necessary final action after receiving the hearing officer's recommendation. The complaint committee members shall not participate in the final action.

(g) Final action by the board.

(1) If the board suspends the license, the suspension remains in effect until the board determines that the reasons for the suspension no longer exist.

(2) During the time of suspension, the former license holder shall return the license certificate and license identification card to the board.

(3) Upon showing of good cause by the former license holder, the board may probate the license suspension.

(4) If a suspension overlaps a license renewal period, the former license holder must comply with the normal renewal procedures in these rules; however, the license will not be renewed until the board determines that the reasons for suspension have been removed.

(5) If the board revokes the license, the former license holder must reapply in order to obtain a new license. The board will not issue a new license until the board determines that the reasons for revocation have been removed. The board may require an investigation and a recommendation from the executive secretary to assist the board in making its decision.

(6) Upon revocation, the former license holder shall return the license certificate and license identification card to the board.

(h) Surrender of license.

(1) A licensee may offer his or her license for surrender to the board office. The executive secretary will notify the licensee that the license has been received.

(2) When a licensee has offered the surrender of his or her license after a complaint has been filed alleging

violations of the Act or this chapter, and the executive secretary has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(3) A license which has been surrendered may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

(d) **Monitoring of licensees.** The executive secretary shall monitor each licensee against whom a board order is issued to ascertain that the licensee performs the required acts.

5781.17. Formal Hearings.

(a) **Purpose.** This section covers the formal hearing procedures and practices that will be used by the board in handling suspensions, revocation of license, denial of licenses, probating a license suspension, and reprimanding a licensee. Such hearing will be conducted pursuant to the contested case provisions of the Administrative Procedure Act (APA), Chapter 2001, Texas Government Code, and will be held by the State Office of Administrative Hearings.

(b) **Notice requirements.**

(1) Notice of the hearing shall be given according to the notice requirements of APA.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the hearing examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(3) All parties shall timely notify the hearing examiner of any changes in their mailing addresses.

(c) **Parties to the hearing.**

(1) The parties to the hearing shall be the applicant or licensee and the complaints committee or executive secretary, as appropriate.

(2) A party may appear personally or be represented by counsel or both.

(d) **Prehearing conferences.**

(1) In a contested case, the hearing examiner, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending the pleading;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing;

(E) specifying the number of witnesses;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the designation of parties; and

(H) other matters which may expedite the hearing.

(2) The hearing examiner shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(3) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, and made a part of the record.

(e) **Assessing the cost of a court reporter and the record of the hearing.**

(1) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.

(2) The board may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.

(3) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.

(f) **Disposition of case.** Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(g) **Agreements in writing.** No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(h) **Final orders or decisions.**

(1) The final order or decision will be rendered by the board. The board is not required to adopt the recommendation of a hearing examiner and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the hearing examiner.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(i) Motion for rehearing. A motion for rehearing shall be governed by APA, §2001.146, Texas Government Code and shall be addressed to the board and filed with the executive secretary.

(j) Appeals. All appeals from final board orders or decisions shall be governed by APA, Subchapter G, Texas Government Code and communications regarding any appeal shall be to the executive secretary.

§701.18. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive secretary or the complaints committee of the board determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive secretary or the complaints committee.

(c) An informal conference shall be voluntary. It shall not be a prerequisite to a formal hearing.

(d) The executive secretary shall decide upon the time, date, and place of the settlement conference and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the ten-day notice requirement.

(1) The notice shall inform the licensee or applicant of the following:

(A) the nature of the alleged violation;

(B) that the licensee may be represented by legal counsel;

(C) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(D) that a representative of the Office of the Attorney General will be requested to attend the proceeding;

(E) that the licensee's or applicant's attendance and participation is voluntary;

(F) that the complainant may be present; and

(G) that the settlement conference shall be cancelled if the licensee or applicant notifies the executive secretary that he or she or his or her legal counsel will not attend.

(2) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.

(e) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is cancelled.

(f) Members of the complaints committee may be present at a settlement conference.

(g) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(h) The licensee, the licensee's attorney, and board staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(i) An attorney from the Office of the Attorney General will be requested to attend each settlement conference. The board members or executive secretary may call upon the board attorney at any time for assistance in the settlement conference.

(j) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(k) Access to the board's investigative file may be prohibited or limited in accordance with the Texas Government Code, Chapter 552 and the APA.

(l) At the discretion of the executive secretary or the committee members, a tape recording may be made of none or all of the settlement conference.

(m) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity

to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(n) At the conclusion of the settlement conference, the executive secretary may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The executive secretary may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(o) The licensee or applicant may either accept or reject at the conference the settlement recommendations. If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(p) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive secretary for appropriate action.

(q) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(r) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(s) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(t) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive secretary for other appropriate action.

(u) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Texas Government Code, Chapter 2001.054(c).

(1) If the executive secretary or complaints committee determines that an informal conference shall not be held, the executive secretary shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the

intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the board.

§761.19. Default Orders.

(a) If a right to a hearing is waived under §761.16(f)(2)(A) of this title (relating to Violations, Complaints, and Subsequent Board Actions) or §761.17(b)(2) of this title (relating to Formal Hearings), the board shall consider an order taking appropriate disciplinary action against the licensee as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an order taking appropriate action.

§761.20. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license to the obligator named on the order. If a license has been issued the executive secretary shall:

- (1) record the suspension of the license in the board's records;
- (2) report the suspension as appropriate; and
- (3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court order or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court order or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal procedures in the Act and this chapter; however, the license will not be renewed until subsection (g) and (h) of this section are met.

(f) An individual who continues to use the titles "licensed perfusionist", or "provisional licensed perfusionist" after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court order or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out at 5761.2 of this title (relating to The Board's Operation) prior to issuance of the license under subsection (g) of this section.