

**Department of State Health Services  
Agenda Item for State Health Services Council  
September 15, 2005**

<p><b>Agenda Item Title:</b> Amendments, Repeal, and New 25 TAC, Chapter 140 rules relating to the licensing and regulation of perfusionists  <b>Agenda Number:</b> 4d</p>	
<p><b>Recommended Council Action:</b>  <input type="checkbox"/> For Discussion Only  <input checked="" type="checkbox"/> For Discussion and Action by the Council</p>	
<p><b>Background:</b>  The Perfusionist Licensing Program is a regulatory program which issues and renews licenses for provisionally licensed perfusionists and licensed perfusionists. The program determines the eligibility and competency of perfusionists in the State of Texas in order to protect the public.</p>	
<p><b>Summary:</b>  The amendments, repeal and new rules implement Senate Bill 403, 79th Legislature, Regular Session (2005), Sunset legislation, relating to the continuation and functions of the Texas State Board of Examiners of Perfusionists (board); and House Bill 2680, 79th Legislature, Regular Session (2005), relating to reduced fees and continuing education requirements for retired health professionals, including licensed perfusionists, engaged in the provision of voluntary charity care.</p> <p>Senate Bill 403 abolished the independent, governor-appointed Texas State Board of Examiners of Perfusionists and replaced it with the Texas State Perfusionist Advisory Committee, a five-member body appointed by the Department of State Health Services Commissioner. Licensing authority was transferred to the department and rulemaking authority was transferred to the Executive Commissioner of Health and Human Services Commission. Amendments to the rules eliminate references to the Board and replace them with references to the department.</p> <p>The new rule sections set forth the functions and operation of the new Texas State Perfusionist Advisory Committee, and specify how DSHS will develop and administer a jurisprudence examination for new license applicants who apply on or after September 1, 2006.</p> <p>All other amendments and new language implement the legislation and clarify the existing rules. These rule revisions also constitute the review required by Government Code, §2001.039.</p>	
<p><b>Summary of Stakeholder Input to Date (including advisory committees):</b> na</p>	
<p><b>Proposed Motion:</b> Motion to recommend HHSC approval for publication of rules contained in agenda item # 4d.</p>	
<p><b>Agenda Item Approved by:</b> _____  <b>Presented by:</b> <u>Debbie Peterson</u> <b>Title:</b> <u>Unit Manager</u>  <b>Program/Division:</b> <u>PLC</u> <b>Contact Name/Phone:</b> <u>Debbie Peterson</u>  <u>834-2725</u></p>	<p><b>Date Submitted</b>   7/29/05</p>

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 140. Perfusionists  
Subchapter A. The Department  
Amendment §§140.1, 140.3-140.5, 140.7-140.21  
Repeal §§140.2, 140.6  
New §§140.2, 140.6, 140.22

#### Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission and on behalf of the Department of State Health Services (department) proposes amendments to §§140.1, 140.3-140.5, 140.7-140.21, repeal of §§140.2, and 140.6, and new §§140.2, 140.6, and 140.22, concerning the licensing and regulation of perfusionists.

#### BACKGROUND AND PURPOSE

Through the enactment of Senate Bill 403, 79th Legislature, Regular Session (2005), Sunset Legislation, relating to the continuation and functions of the Texas State Board of Examiners of Perfusionists (board), the Governor and Legislature have directed that the State Board of Examiners of Perfusionists (board) be abolished and has been replaced by the Texas State Perfusionist Advisory Committee. Also, revisions to the rules are due to House Bill 2680, 79th Legislature, Regular Session (2005), relating to reduced fees and continuing education requirements for retired health professionals, including licensed perfusionists, engaged in the provision of voluntary charity care. In addition, the legacy board and rules were located at Title 22, Part 33, Chapter 761, and were transferred to this chapter on September 1, 2005.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 140.1-140.21 have been reviewed and the need for the rules continues to exist; however revisions are necessary to implement recent legislation and to update and clarify the rules.

#### SECTION-BY-SECTION SUMMARY

Amendments to §§140.1, 140.3-140.5, and 140.7-140.21 also reflect changes to Texas Occupations Code, Chapter 603, relating to the abolishment of the board, the former licensing authority, and the transfer of the board's functions variously to the department, the Commissioner of the Department of State Health Services (commissioner), and the executive commissioner.

Repeal of §140.2 (relating to the board, which has been abolished) and §140.6 (relating to an exemption from licensure, which has been repealed) is being proposed in accordance with Senate Bill 403 of the 79th Regular Legislative Session.

New sections §140.2 (relating to Fees), §140.6 (relating to the new Jurisprudence Examination), and §140.22 (relating to new Texas State Perfusionist Advisory Committee (Committee)), are proposed to incorporate existing rule language from the sections being repealed which is still required, and to implement recent legislation.

Amendments to §140.1 reflect the abolishment of the board and the transfer of the board's functions to other governmental entities. The section has been renumbered to reflect deletions and insertions.

New section §140.2 includes the same rule language related to fees previously included in the section proposed for repeal. The only new language is found at §140.2 (1)(F), which reflects the new late renewal fees which become effective September 1, 2007, and §140.2(1)(K), which sets reduced renewal fees for a retired perfusionist performing voluntary charity care.

Amendments to §§140.3-140.5 reflect the transfer of the board's authority to the department.

New section §140.6 sets out the department's procedures for establishing and administering a new jurisprudence examination.

Amendments to §§140.7-140.11 reflect the transfer of the board's authority to the department.

Amendments to §140.12 reflect the transfer of the board's authority to the department, and contain non-substantive wording changes to clarify the rules. New §140.12(a)(8) reflects the department's authority to refuse to renew a license based on non-payment of an administrative penalty assessed by the department. Amendments to §140.12(c)-(d) reflect the reduction of the period in which a licensee may submit a late renewal from two years to one year. New §140.12(f) establishes reduced renewal fees and continuing education requirements for retired perfusionists providing voluntary charity care.

Amendments to §140.13 reflect the transfer of the board's authority to the department. New §140.13(d) establishes reduced continuing education requirements for retired perfusionists providing voluntary charity care equal to two thirds of the amount of hours required for license renewal by a licensed perfusionist.

Amendments to §140.14 reflect the transfer of the board's authority to the department, and include new language referencing additional disciplinary authority granted to the department to refuse to renew a license.

Amendments to §140.15 reflect the transfer of the board's authority to the department, and delete unnecessary references to the department's mailing address. New §140.15(h) reflects the department's authority to issue a cease and desist order, and to impose an administrative penalty for a violation of that order.

Amendments to §140.16 reflect the transfer of the board's authority to the department.

Amendments to §140.17 reflect the transfer of the board's authority to the department. New §140.17(s) reflects the department's authority to enter into an agreed order requiring a licensee to pay a refund to a consumer as provided in the agreement.

Amendments to §§140.18, 140.19, and 140.20 reflect the transfer of the board's authority to the department, and license sanctioning.

Amendments to §140.21 add an administrative penalty schedule to the existing severity levels and sanctions guide.

New section §140.22 sets out the department's policies and procedures for establishing and administering the new Texas State Perfusionist Advisory Committee. Specifically, §140.22(a) concerns officers, §140.22(b) concerns meetings, §140.22(c) concerns quorum, §140.22(d) concerns transaction of official business, §140.22(e) concerns policy against discrimination, §140.22(f) concerns conflict of interest, §140.22(g) concerns membership and employee restrictions, §140.22(h) concerns attendance, §140.22(i) concerns reimbursement for expenses, §140.22(j) concerns rules of order, §140.22(k) concerns agendas, §140.22(l) concerns minutes, §140.22(m) concerns official records, §140.22(n) concerns the official seal, §140.22(o) concerns a registry, §140.22(p) concerns public interest information, and §140.22(q) concerns powers and duties of the executive secretary.

#### FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of perfusionists.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Michael De La Cruz, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to michael.delacruz@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

## STATUTORY AUTHORITY

The proposed amendments, repeal and new rules are authorized by Texas Occupations Code, Chapter 603; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments, repeal, and new rules affect the Occupations Code, Chapter 603, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## Sections for Repeal

§140.2. The Board's Organization and Administration.

§140.6. Procedures and Criteria for Exemptions.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

**[Bold, Print, and Brackets]** = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

#### §140.1. Definitions.

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

(1) - (3) (No change.)

(4) Committee--The Texas State Perfusionist Advisory Committee **[Board--The Texas State Board of Examiners of Perfusionists]**.

**[(5) Board of Health-- The Texas Board of Health.]**

(5) [(6)] Cardiopulmonary Surgery-- Surgery pertaining to the heart, great vessels, or lungs.

(6) [(7)] Commissioner-- The Commissioner of State Health Services.

(7) [(8)] 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 Commissioner **[board]** after an opportunity for an adjudicative hearing.

(8) [(9)] Delegated authority-- As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157(d)(1), and the rules pertaining thereto adopted by the Texas State Board of Medical Examiners.

(9) [(10)] Department-- The Department of State Health Services **[Texas Department of Health]**.

(10) Executive Commissioner-- The Executive Commissioner of the Health and Human Services Commission.

(11) - (16) (No change.)

(17) Licensee-- A person who holds a current license as a perfusionist or provisional licensed perfusionist issued by the department **[board]**.

(18) – (21) (No change.)

(22) Presiding Officer-- Presides over the Committee and serves at the pleasure of the Commissioner **[Chairman of Board]**.

(23) Provisional licensed perfusionist-- A person provisionally licensed under the **[this]** Act.

Legend: (Proposed New Rule(s))

Regular Print = Proposed new language

#### §140.2. Fees.

(1) The schedule of fees for licensure as a perfusionist or a provisional licensed perfusionist is as follows:

- (A) application and initial license fees--\$175;
- (B) license fee for upgrade of provisional licensed perfusionist--\$75;
- (C) a license renewal issued for a one-year term--\$175;
- (D) a license renewal issued for a two-year term--\$350;
- (E) late renewal fee (prior to September 1, 2007)--\$100;
- (F) late renewal fee (on or after September 1, 2007):

(i) less than 90 days late--a fee that is equal to 1/4 times the amount of the renewal fee due;

(ii) more than 90 days and less than one year late--a fee that is equal to 1/2 times the amount of the renewal fee due.

- (G) license certificate and identification card replacement fee--\$10;
- (H) child support reinstatement fee--\$40;
- (I) student loan default reinstatement fee--\$40;
- (J) verification fee--\$10 per licensee; and

(K) retired perfusionist license renewal issued for a two-year term (in accordance with §140.12(f) related to License Renewal)--\$175

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

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

(4) Fees paid to the department by applicants are not refundable.

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

(6) The department 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.

(7) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(8) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

### §140.3. Professional and Ethical Conduct.

(a) Code of ethics. These rules shall constitute a code of ethics as authorized by the Act, §603.151(6).

(1) Professional representation and responsibilities.

(A) - (E) (No change.)

(F) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of department [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 department [board].

(H) – (I) (No change.)

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

(K) - (P) (No change.)

(Q) A licensee shall supervise a provisional licensed perfusionist in accordance with §140.9 [§761.9] of this title (relating to Provisional Licensed Perfusionists).

(2) – (3) (No change.)

(4) Sanctions. A licensee shall be subject to disciplinary action by the department [board] if under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31, 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.

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

(1) - (3) (No change.)

(c) (No change.)

### §140.4. Educational Requirements for Licensure.

#### General.

(1) The department [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.

(1) – (3) (No change.)

(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 department [board] before the application will be voided and the applicant will be required to reapply and to pay an additional application fee.

#### §140.5. Examination Procedures for Perfusionist Licensure.

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

(b) 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 department [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 department [board] or designee by the deadline established by the board. The fee shall be paid to the designee of the department [board].

(3) The examination for licensure shall be an examination approved by the department [board]. A designee of the department [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 or the examination administered by the American Board of Cardiovascular Perfusion (ABCP), the applicant shall not be required to be reexamined, provided the applicant furnishes the department [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 ABCP for some time period within three years immediately preceding date of application.

(5) (No change.)

#### §140.6. Jurisprudence Examination.

(a) The department shall develop and administer a jurisprudence examination to determine an applicant's knowledge of the Act, this section, and any other applicable laws of this state affecting the practice of perfusion.

(b) The examination shall be administered in a web-based format through an examination contract, which specifies that applicants for examination must be able to:

(1) pay the examination fee online by credit card; and

(2) receive their examination results electronically immediately upon completion of the examination.

(c) The department shall revise the jurisprudence examination as needed.

(d) All applicants for licensure must pass the jurisprudence examination prior to submitting an application for licensure. The jurisprudence examination must be taken and passed no more than two years prior to the date of the application for licensure.

§140.7. Application Procedures.

(a) Fitness of applicants for perfusion licensure.

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

(A) –(C) (No change.)

(D) any other information which the department **[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 department **[board]** determines, the basis for the denial of licensure of the applicant:

(A) – (F) (No change.)

(G) any misrepresentation in application or other materials submitted to the department **[board]**.

(b) General Procedures.

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

(2) The department **[board]** will not consider an application as officially submitted until the applicant pays the application fee and submits all required written documentation. The application and initial license fee 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 department's **[board's]** notice shall be void.

(c) Required application materials.

(1) The application form shall contain:

(A) (No change.)

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

(C) the applicant's permission for the department **[board]** to seek any information or references it deems appropriate 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 department **[board]** upon the revocation or suspension of the license;

(E) (No change.)

(F) a statement that the applicant has been informed that materials submitted in the licensure process become the property of the department [board] and are nonreturnable; and

(G) (No change.)

(2) Applicants must submit official transcript(s) from a perfusion education program approved by the department [board] 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) - (4) (No change.)

(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 department [board] concerning that license, certificate or registration on official department [board] forms.

(6) – (8) ( No change)

#### §140.8. Determination of Eligibility.

(a) The department shall notify an applicant in writing of the receipt of the applicant's application and any other relevant evidence relating to qualifications established by rule. The notice must state whether the applicant has qualified for examination or licensure based on the application and other submitted evidence. If the applicant is not qualified, the notice must state the reasons for the applicant's failure to qualify. [The board may delegate approval of applications for licensing to a committee of the board or the executive secretary.]

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

(1) (No change.)

(2) failed to pass the examination prescribed by the department [board] as set out in §140.5 of this title (relating to Examination for Perfusionist Licensure), if applicable;

(3) failed to remit any applicable fees required in §140.2 [§761.2(s)] of this title (relating to Fees [The Board's Operation]);

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

(5) (No change.)

(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 §140.14 [§761.14] of this title (relating to Licensing of Persons with Criminal Backgrounds To [to] Be a Licensed Perfusionist and Provisional Licensed Perfusionist), and in Texas Occupations Code, Chapter 53.

(7) - (8) (No change.)

(c) If after review, the department [**committee**] 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 and an informal settlement conference. The notice and hearing shall be in accordance with §140.15 [**§761.15**] of this title (relating to Violations, Complaints, and Subsequent Department Actions [**Violations, Complaints, Investigations, and Procedures**]).

(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 department [**board**]. The applicant shall submit with the reapplication, proof satisfactory to the department [**board**] of compliance with all rules of the department [**board**] and the provisions of the Act in effect at the time of reapplication.

(e) Processing procedures are as follows.

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

(A) - (B) (No change.)

(2) Reimbursement of fees.

(A) (No change.)

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

(i) (No change.)

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

(iii) any other condition exists giving the department [**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 in writing to the department [**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 [**cased**] 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 commissioner [**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.

§140.9. Provisional Licensed Perfusionists [**Perfusionist**].

(a) (No change.)

(b) Termination. The supervising licensed perfusionist must submit written notification of termination of supervision to the department [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 to the **[Board's]** Executive Secretary. The signature of the supervising licensed perfusionist shall be included in the written notice.

(d) (No change.)

(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 three times by the procedures set out at §140.12 [**§761.12**] of this title (relating to License Renewal).

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

(1) (No change.)

(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.

#### §140.10. Licensing After Examination.

(a) Issuance of licenses.

(1) Upon request the department [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 department [board] shall issue a license certificate and license identification card containing a license number.

(b) Replacement. The department [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.

(c) License certificates.

(1) The department [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) (No change.)

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

(4) (No change.)

(d) Upgrading a provisional license.

(1) The provisional licensed perfusionist shall submit to the department **[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 department **[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) (No change.)

#### §140.11. Change of Name or Address.

(a) The licensee shall notify the department **[board]** of changes in name or preferred mailing address within 30 days of such change(s).

(b) ( No change.)

(c) Before another license certificate and identification card will be issued by the department **[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 §140.2 **[\$761.2(r)]** of this title (relating to Fees **[The Board's Organization and Administration]**).

#### §140.12. License Renewal.

(a) General.

(1) (No change.)

(2) A licensee must renew the license annually or biannually, as determined by the department **[board]**.

(3) - (4) (No change.)

(5) The department **[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 department **[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 department **[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.

(8) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(9) **[(8)]** A licensee who has been notified of a student loan default shall surrender their license until the loan payment has been resolved to the satisfaction of the National Student Loan Center.

(10) [(9)] A licensee shall pay a late renewal [reinstatement] fee as set out in §140.2 [§761.2] of this title (relating to Fees [The Board's Organization and Administration]) prior to issuance of the license under this section.

(b) 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 department's [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 department [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) – (3) (No change.)

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

(c) Late renewal requirements.

(1) (No change.)

(2) A person whose license has expired for not more than one year [two years] may renew the license by submitting the license renewal form and the appropriate renewal and late renewal fees to the executive secretary. The renewal is effective if it is mailed to the executive secretary within one year [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 one year [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.

(d) Expiration of license.

(1) ( No change.)

(2) A person who fails to renew a license after one [two] years shall surrender the license certificate and license identification card to the department [board].

(e) 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) - (2) (No change.)

(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 department [board] along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the department [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 late renewal [reinstatement fee or any penalty] fee.

(f) Renewal for Retired Perfusionists Performing Voluntary Charity Care.

(1) A "retired perfusionist" is defined as a person who is:

(a) above the age of 55; and

(b) is not employed for compensation in the practice of perfusion; and

(c) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of perfusion by a retired perfusionist without compensation or expectation of compensation.

(3) A retired perfusionist providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired perfusionist renewal fee required by §140.2 of this title (relating to Fees); and the continuing education education hours required by §140.13 of this title (related to Minimum Continuing Education Requirements).

§140.13. Minimum Continuing Education Requirements.

(a) - (b) (No change.)

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

(d) Licensees who are approved by the department for renewal in accordance with §140.12(f) of this section (relating to Retired Perfusionists Performing Voluntary Charity Care) may complete reduced continuing education requirements equal to two-thirds of the number of continuing education hours required for renewal for a licensed perfusionist.

§140.14. Licensing of Persons with Criminal Backgrounds To Be a Licensed Perfusionist and Provisional Licensed Perfusionist.

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

(1) The department [board] may suspend or revoke an existing license, disqualify a person from receiving a license, refuse to renew 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 department [board] shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for licensure as a perfusionist or provisional perfusionist. The following felonies and misdemeanors listed in clauses [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) - (iv) (No change.)

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

(C) (No change.)

(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 department [**board**] will apply the criteria outlined in Texas Occupations Code, Chapter 53.

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

(1) The committee's [**board's**] executive secretary will give written notice to the person that the department [**board**] intends to deny, suspend, deny renewal of, or revoke the license in accordance with the provisions of the Administrative Procedure Act and Texas Government Code, Chapter 2001, and the department's [**board's**] formal hearing procedures, §140.15 of this title [**§761.15**] (relating to Violations, Complaints, and Subsequent Department Actions [**Investigations, and Procedures**]) and §140.16 of this title [**§761.16**] of this title (relating to Formal Hearings).

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

(A) - (B) (No change.)

§140.15. Violations, Complaints, and Subsequent Department Actions [**Violations, Complaints, Investigations, and Procedures**].

(a) Types of violations and prohibited actions.

(1) – (2) (No change.)

(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 department [**board**].

(4) A licensee may not violate any of the provisions of the Act or any rules in this section [**adopted by the board**].

(b) Filing of complaints.

(1) A person wishing to complain about a prohibited act or alleged violation 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.**]

(2) Upon receipt of a complaint, the executive secretary shall send to the complainant an acknowledgment letter and the department's [**board's**] complaint 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 department [**Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183**].

(3) (No change.)

(c) Investigation of complaints.

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

(2) If the executive secretary determines that the complaint does not come within the department's [**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.

(d) Actions by executive secretary.

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

(A) (No change)

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

(i) (No change.)

(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 in this section and propose denial of renewal, revocation, or suspension of the license, reprimand, or probation of the license suspension.

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

(e) Final action by the department [**board**].

(1) If the department [**board**] suspends a license, the suspension remains in effect until the department [**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 department [**board**].

(3) Upon showing of good cause by the former license holder, the department [**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 department [board] determines that the reasons for suspension have been removed.

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

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

(7) The department [board] may assess administrative penalties for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, §§603.501 - 603.511.

(f) Surrender of license.

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

(2)-(3) ( No change.)

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

(h) Cease and Desist Order. If it appears to the commissioner that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of perfusion, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the department.

#### §140.16 Formal Hearings

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

(b) Notice requirements.

(1) - (3) (No change.)

**[(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) 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.]**

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

**(d) [(f)] 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.

**(e) [(g)] Final orders or decisions.**

(1) The final order or decision will be rendered by the department **[board]**. The department **[board]** is not required to adopt the recommendation of an administrative law judge and may take action as it deems appropriate and lawful.

(2) (No change.)

(3) All final orders shall be signed by a representative of the department **[the executive secretary and the chairman of the board; however, interim orders may be issued by the administrative law judge]**.

(4) (No change.)

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

**[(i) 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.]

§140.17. Informal Conference.

(a) (No change.)

(b) If the department **[executive secretary or a member of the complaint 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 conference; however, the decision to hold a conference shall be made by the department **[executive secretary or the complaint committee]**.

(c) (No change.)

(d) The department [**executive secretary**] shall decide upon the time, date, and place of the informal 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 10 days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the 10 day notice requirement.

(1) (No change.)

(2) A copy of this subsection [**the board's rules**] concerning informal disposition shall be enclosed with the notice of the informal conference.

**[(e) The notice of the informal 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 informal conference. The complainant shall be notified if the conference is canceled.]**

**[(f) A member of the complaint committee may be present at an informal conference.]**

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

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

(g) [(i)] The department's [**board's**] legal counsel will be requested to attend each informal conference. The complaint committee member or executive secretary may call upon the department's [**board**] attorney at any time for assistance in the informal conference.

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

(i) [(k)] Access to the department's [**board's**] investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552, and the Texas Occupations Code, Chapter 603.

(j) [(l)] At the discretion of the department [**executive secretary or the committee members**], a tape recording may be made of none or all of the informal conference.

(k) [(m)] The complainant shall not be considered a party in the informal 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.

(l) [(n)] At the conclusion of the informal conference, the department [**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 department [**executive secretary**] may also conclude that the department [**board**] lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(m) [(o)] At the time of the informal conference, the licensee or applicant may either accept or reject the conference recommendations. If the recommendations are accepted, an agreed order shall be prepared by the

department **[board office]** or the department's **[board's]** legal counsel and forwarded to the licensee or applicant. The order shall contain agreed finding of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the department **[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 conference recommendations.

(n) **[(p)]** If the licensee or applicant rejects the proposed recommendations, the department shall take **[matter shall be referred to the executive secretary for]** appropriate action.

(o) **[(q)]** If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the legal counsel **[entire board]** for **[its]** approval. The order shall contain agreed findings of fact and conclusions of law.**[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.]**

(p) **[(s)]** After consultation with legal counsel, the department **[Upon an affirmative majority vote, the board]** shall enter an agreed order approving the accepted 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.]**

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

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

(1) If the department **[executive secretary or complaints committee]** determines that an informal conference shall not be held, the department **[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) A copy of this subsection **[the board's rules]** concerning informal disposition shall be enclosed with the notice of the informal conference.

**[(e) The notice of the informal 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 informal conference. The complainant shall be notified if the conference is canceled.]**

**[(f) A member of the complaint committee may be present at an informal conference.]**

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

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

(g) [(i)] The department's [board's] legal counsel will be requested to attend each informal conference. The complaint committee member or executive secretary may call upon the department's [board] attorney at any time for assistance in the informal conference.

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

(i) [(k)] Access to the department's [board's] investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552, and the Texas Occupations Code, Chapter 603.

(j) [(l)] At the discretion of the department [executive secretary or the committee members], a tape recording may be made of none or all of the informal conference.

(k) [(m)] The complainant shall not be considered a party in the informal 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.

(l) [(n)] At the conclusion of the informal conference, the department [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 department [executive secretary] may also conclude that the department [board] lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(m) [(o)] At the time of the informal conference, the licensee or applicant may either accept or reject the conference recommendations. If the recommendations are accepted, an agreed order shall be prepared by the department [board office] or the department's [board's] legal counsel and forwarded to the licensee or applicant. The order shall contain agreed finding of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the department [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 conference recommendations.

(n) [(p)] If the licensee or applicant rejects the proposed recommendations, the department shall take [matter shall be referred to the executive secretary for] appropriate action.

(o) [(q)] If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the legal counsel [entire board] for [its] approval. The order shall contain agreed findings of fact and conclusions of law.[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.]

(p) [(s)] After consultation with legal counsel, the department [Upon an affirmative majority vote, the board] shall enter an agreed order approving the accepted 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.]

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

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

(1) If the department [executive secretary or complaints committee] determines that an informal conference shall not be held, the department [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.

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

(2) Committee action shall require a majority vote of those members present and voting.

(e) Policy against discrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, color disability, gender, religion, national origin, geographical distribution, age, physical condition, economic status, sexual orientation, or genetic information.

(f) Conflict of interest. Any committee member who has a conflict of interest regarding any matter before the committee, such as a matter pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this and shall not participate in any committee proceedings involving that individual or matter.

(g) Membership and employee restrictions.

(1) Texas trade association. A cooperative and voluntarily joined statewide association of business or professional competitors in this state designated to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(2) A person may not be a committee member and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposed of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (U.S.C. §201 et seq.) if:

(A) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(B) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(3) A person may not be a member of the committee or act as the general counsel to the committee or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(h) Attendance.

(1) Members shall attend regular committee meetings as scheduled.

(2) Upon request, the executive secretary shall report to the commissioner governor and the Texas Sunset Advisory Commission the attendance records of members.

(3) Except in case of emergency, committee members shall notify the presiding officer or 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 presiding officer at least 48 hours prior to the scheduled meeting if unable to be present.

(5) It is grounds for removal from the committee if a member is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(i) Reimbursement for expense. A member is entitled to reimbursement for expenses as provided by the General Appropriations Act.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(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 committee rules.

(k) Agendas.

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

(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 committee for review and comments prior to approval by the committee.

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

(3) The official minutes of committee 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 committee 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) Official records may not be taken from committee 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) Official seal. The commissioner shall adopt an official seal for use in the course of official committee business as authorized by the Act. §603.151(5).

(o) Registry.

(1) The department shall prepare a registry of licensed perfusionists and provisionally licensed perfusionists that is available to the public, license holders, and appropriate state agencies.

(2) The registry shall include, but not be limited to, the names 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.

(p) Public interest information.

(1) The department shall prepare information of consumer interest describing the profession of perfusion, the regulatory functions of the department, and the procedures by which consumer complaints are filed with and resolved by the department.

(2) The department shall make the information available to the public and appropriate state agencies.

(q) Executive secretary powers and duties. In addition to performing other duties prescribed by this section and by the department, the executive secretary shall:

(1) administer licensing activity for the department;

(2) keep full and accurate minutes of the committee's transactions and proceedings;

(3) serve as custodian of the committee's files and other records;

(4) prepare and recommend to the department plans and procedures necessary to implement the objectives of this chapter, including rules and proposals on administrative procedure;

(5) exercise general supervision over persons employed by the department in the administration of this chapter;

(6) investigate complaints and present formal complaints;

(7) attend all committee meetings as a nonvoting participant;

(8) handle the committee's correspondence; and

(9) obtain, assemble, or prepare reports and other information as directed or authorized by the committee.