



Texas Board of Orthotics and Prosthetics

Board Rules, 22 Texas Administrative Code, Chapter 821

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§821.1

Introduction

(a) Purpose. This chapter implements the Texas Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605, concerning prosthetic and orthotic regulation.

(b) Content. This chapter covers definitions; powers and duties of the board; organization of the board; fees; application requirements and procedures for licensing prosthetists and orthotists; application requirements for temporary licensing prosthetists and orthotists; application requirements for licensing orthotist and prosthetist assistants; application requirements for registering orthotist and prosthetist technicians; application requirements for registering orthotist and prosthetist students; upgrading a student registration or temporary license; application requirements for accreditation of prosthetic and orthotic facilities; issuance of licenses, temporary licenses, registrations, and accreditations; exemptions to licensure, registration and accreditation; continuing education for license renewal; display of license, registration or accreditation; renewal of license, registration or accreditation; changes in name or address; professional and ethical standards; violations, complaints and disciplinary actions; licensing or registration of persons with criminal backgrounds; petition for rule making, criminal history evaluations letters, and alternative licensing requirements for military service members, military veterans, and military spouses.

Source Note: The provisions of this §821.1. adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.2

Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in this chapter:

- (1) Act--The Orthotics and Prosthetics Act, Texas Occupations Code, Chapter 605.
- (2) Ancillary patient care service--Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events.
- (3) Assistant patient care service--Includes comprehensive patient care involving pedorthics, breast prostheses, pressure gradient garments, non-custom fabricated orthoses (except those used to treat scoliosis or an unstable fracture or dislocation), and knee orthoses when provided under the supervision of a licensed orthotist, licensed orthotist/prosthetist, or a licensed physician.
- (4) Board--The Texas Board of Orthotics and Prosthetics.
- (5) CAAHEP--The Commission on Accreditation of Allied Health Education Programs.
- (6) Clinical residency for an assistant--An assistant-level experience of at least 1,000 hours directly supervised by a practitioner.
- (7) Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner in an accredited facility.
- (8) Clinical resident--A person who is completing a clinical residency for a professional or a clinical residency for an assistant.

(9) Critical care events--Initial patient assessment, prescription development and recommendation, and final evaluation and critique of fit and function of the prosthesis or orthosis.

(10) Custom-fabricated--A prosthesis or orthosis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual in accordance with sound biomechanical principles.

(11) Custom-fitted--A prosthesis or orthosis prescribed, adjusted, fitted, and aligned for a specific individual according to sound biomechanical principles.

(12) Department--Department of State Health Services.

(13) Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery. The supervising practitioner must review, and sign-off on patient care notes made by the clinical resident.

(14) Extensive orthotic practice--Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthosis including plastic forming, metal contouring, cosmetic covering, upholstering and assembling; the fitting and critique of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the instructing of patients in the use and care of the orthosis; the maintaining of current encounter notes and patient records. The practitioner with extensive orthotic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(15) Extensive prosthetic practice--Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, upholstering, assembly, and aligning; the fitting and critique of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with extensive prosthetic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(16) Indirect supervision--Supervision provided to a clinical resident by a practitioner or licensed assistant, if the clinical residency is for an assistant who is available to provide on-site supervision within 60 minutes during the fitting and delivery process, and who will sign-off the

resident's clinical records within ten working days. Indirect supervision is not appropriate for critical care events.

(17) License--Includes a license, registration, certificate, accreditation, or other authorization issued under this Act to engage in an activity regulated under this Act.

(18) Licensed orthotist (LO)--A person licensed under this Act who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthosis," "orthoses," "orthotic," or a similar title or description of services.

(19) Licensed orthotist assistant (LOA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed orthotist responsible for the assistant's acts.

(20) Licensed physician--A physician licensed and in good standing with the Texas Medical Board.

(21) Licensed prosthetist (LP)--A person licensed under this Act who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "prosthesis," "prostheses," "prosthetic," "artificial limbs," or a similar title or description of services.

(22) Licensed prosthetist assistant (LPA)--A person licensed under this Act who helps and is supervised at a prosthetic and/or orthotic facility by a licensed prosthetist responsible for the assistant's acts.

(23) Licensed prosthetist/orthotist (LPO)--A person licensed under this Act who practices both prosthetics and orthotics and represents the person to the public by a title or description of services that includes the terms "prosthetics/orthotics," "prosthetist/orthotist," "prosthetic/orthotic," "artificial limbs," "brace," "prosthesis," "prostheses," "orthosis," "orthoses," or a similar title or description of services.

(24) Licensed prosthetist/orthotist assistant (LPOA)--A person licensed under this Act who assists and is supervised at a prosthetic and orthotic facility by a licensed prosthetist/orthotist or a licensed prosthetist and licensed orthotist responsible for the assistant's acts.

(25) Licensee--Includes a person or facility holding a current license, registration or accreditation issued by the board, to engage in an activity regulated under this Act.

(26) NCOPE--The National Commission on Orthotic and Prosthetic Education. The NCOPE has the following responsibilities:

(A) Promote education in the field of orthotics and prosthetics and raise the standards of education in the field;

(B) Develop standards for, and accredit orthotics and prosthetics programs;

(C) Establish accreditation and evaluation procedures in orthotics and prosthetics education;

(D) Aid the development of new orthotics and prosthetics programs; and

(E) Publish an annual report on orthotics and prosthetics education.

(27) Orthosis--A custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, a truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(28) Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.

(29) Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under a documented order from a licensed physician, chiropractor, podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Occupations Code, Chapter 157, Subchapter B, and rules adopted by the Texas Medical Board for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(30) Orthotist in charge--An orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the orthotic practice in the facility.

(31) Person--An individual, corporation, partnership, association, or other organization.

(32) Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

(33) Profession of prosthetics or orthotics--Allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Prosthetic and orthotic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(34) Prosthesis--A custom-fabricated or fitted medical device that is not surgically implanted and is used to replace a missing limb, appendage, or other external human body part, including an artificial limb, hand, or foot. The term does not include an artificial eye, ear, finger, or toe, a dental appliance, a cosmetic device, including an artificial breast, eyelash, or wig, or other device that does not have a significant impact on the musculoskeletal functions of the body.

(35) Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under a documented order from a licensed physician, chiropractor, podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Occupations Code, Chapter 157, Subchapter B, and rules adopted by the Texas Medical Board.

(36) Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

(37) Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

(38) Prosthetist in charge--A prosthetist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics in the facility.

(39) Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the one who has the authority and responsibility for the facility's compliance with the Act and rules concerning the practice of prosthetics and orthotics in the facility.

(40) Registered orthotic technician--A person registered under this Act who fabricates, assembles, and services orthosis under the direction of a licensed orthotist, licensed prosthetist/orthotist, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(41) Registered prosthetic technician--A person registered under this Act who fabricates, assembles, and services prostheses under the direction of a licensed prosthetist, licensed

prosthetist/orthotist, licensed prosthetist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of a technician.

(42) Registered prosthetic/orthotic technician--A person registered under this Act who fabricates, assembles, and services prostheses and orthosis under the direction of a licensed prosthetist, a licensed orthotist, a licensed prosthetist/orthotist, or a licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

(43) Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

(44) Safety Manager--A licensee or registrant who is assigned to develop, carry out and monitor an accredited facility's safety program.

(45) Voluntary charity care--The practice of a licensed orthotist and/or prosthetist without compensation or expectation of compensation.

Source Note: The provisions of this §821.2 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.3 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) Presiding Officer.

(A) The presiding officer shall preside at board meetings where he or she is present and perform the duties prescribed by law or board rules.

(B) The board authorizes the presiding officer to make minor day-to-day decisions regarding board activities to aid the responsiveness and effectiveness of the board. All decisions made by the presiding officer are subject to review by the full board.

(2) Secretary.

(A) The secretary shall perform the duties of the presiding officer in case of the absence or inability of the presiding officer.

(B) In case the office of presiding officer becomes vacant, the secretary shall serve in that position until a successor is elected.

(c) Meetings.

(1) The board shall hold at least one regular meeting and additional meetings as necessary during each year ending on August 31, at those designated dates, places, and times as the presiding officer may determine.

(2) The presiding officer may call special meetings at those times, dates, and places as become necessary for board business.

(3) A majority of board members may call special board meetings upon separate or combined notice to the executive director.

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

(d) Quorum. A quorum is necessary to conduct official business.

(e) Transaction of official business.

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

(2) Statements or actions of board or staff members shall not bind the board unless a statement or action is in the 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 discharge its statutory authority without discrimination based on a person's race, color, disability, gender, genetic information, religion, age, or national origin.

(g) Impartiality. A board member who is unable to be impartial in board proceedings, such as that concerning 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 board proceedings involving that individual.

(h) Attendance.

(1) Board members shall attend all regularly scheduled board and committee meetings.

(2) A board member may be removed from the board if the member is absent for more than 50% of the regularly scheduled board meetings the member is eligible to attend during a calendar year.

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

(i) Reimbursement for expense.

(1) A board member is entitled to compensation for lodging, meals and transportation expenses, at the rate designated by the latest General Appropriations Act passed by the Texas Legislature.

(2) Payment to board members of per diem and transportation expenses shall be requested on official state travel vouchers that the executive director has approved.

(3) A board member is entitled to a compensatory per diem as authorized by Government Code, §659.032.

(4) The associate commissioner for health care quality and standards of the department, or his or her designee, shall approve board-approved requests prepared on appropriate forms from staff for out-of-state travel for board activities.

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

(j) Rules of order. The latest edition of Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(k) Agendas.

(1) The executive director shall prepare and submit to the board members, before each meeting, an agenda that includes items requested by members, items required by law, unfinished business, and other matters of board business that the presiding officer has approved for discussion.

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

(l) Minutes.

(1) Drafts of the meeting minutes shall be forwarded to the board members for review and comments before board approval.

(2) After approval by the board, the minutes of board meetings are official only when affixed with the original signatures of the presiding officer and the executive director.

(3) The official minutes of board meetings shall be kept in the board office and shall be available to anyone wanting to examine them during regular office hours.

(m) Elections.

(1) At the meeting held after August 31 of the odd-numbered years, the board shall elect by a majority vote of those members present and voting, a presiding officer and a secretary.

(2) A vacancy that occurs in the offices of presiding officer and secretary 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 presiding officer or secretary.

(n) Committees.

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

(2) The presiding officer will appoint the members of the board to serve on committees and will designate the committee chair.

(3) Committee chairs shall make regular reports to the board in interim written reports and/or at regular meetings, as needed.

(4) Committees shall direct reports or other materials to the executive director for distribution.

(5) Committees shall meet when called by the committee chair or when so directed by the board or the board chair.

(6) Each committee shall consist of at least one public member and one professional member, unless the board authorizes otherwise. At least one public member of the board shall be appointed to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

(o) Official seal. The board shall adopt an official seal. Only the board may use the official board seal.

(p) Public information. Public records of the board may be obtained to the extent allowed by law through a written request pursuant to the Public Information Act, Government Code, Chapter 552, submitted to the attention of the executive director at the board's current mailing address.

Source Note: The provisions of this §821.3 adopted to be effective February 10, 2011, 36 TexReg 548

§821.4

Fees

(a) General. Unless otherwise specified, the fees established in this section must be paid to the board before a license, registration, or accreditation is issued.

(b) For all applications and renewal applications, the board 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 www.texas.gov

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

(d) Schedule of fees. The board has established the schedule of fees as follows:

(1) prosthetist or orthotist license or license renewal--\$300;

(2) prosthetist/orthotist license or license renewal--\$400;

(3) prosthetist or orthotist assistant license or license renewal--\$200;

(4) prosthetist/orthotist assistant license or license renewal--\$250;

- (5) prosthetic or orthotic technician registration or registration renewal--\$100;
 - (6) prosthetic/orthotic technician registration or registration renewal--\$150;
 - (7) prosthetic or orthotic student registration or registration renewal--\$75;
 - (8) prosthetic/orthotic student registration or registration renewal--\$100;
 - (9) prosthetist or orthotist temporary license or temporary license renewal--\$150;
 - (10) prosthetist/orthotist temporary license or temporary license renewal--\$200;
 - (11) prosthetic or orthotic facility accreditation or accreditation renewal--\$400;
 - (12) prosthetic/orthotic facility accreditation or accreditation renewal--\$500;
 - (13) license, registration, or accreditation duplicate or replacement--\$25;
 - (14) orthotic or prosthetic examination--shall be determined by the department and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee;
 - (15) upgrade for student registrant and temporary licensees after passing the examination:
 - (A) one category--\$200;
 - (B) two categories--\$300;
 - (16) license reinstatement following suspension of a license under the Family Code--the renewal fee for the license or registration and an additional \$100;
 - (17) returned check--\$25;
 - (18) written license/certification verification--\$25 each;
 - (19) adding orthotics or prosthetics to a facility accreditation issued in one category, including the designation of a practitioner in charge for the new category--\$400;
 - (20) changing the location or name of an accredited facility--\$400;
 - (21) changing the ownership of an accredited facility--\$400;
 - (22) changing the name of the on-site practitioner in charge of an accredited facility--\$100;
 - (23) changing the name of the safety manager of an accredited facility--\$100;
 - (24) retired voluntary charity care prosthetist or orthotist license renewal--\$150;
 - (25) retired voluntary charity care prosthetist/orthotist license renewal--\$200;
 - (26) prosthetist with orthotist assistant or orthotist with prosthetist assistant license renewal--\$350; and
 - (27) criminal history evaluation letter--\$50.
- (e) Returned checks. Returned checks will be subject to the following procedures.
- (1) A licensee, registrant, or accredited facilities, whose check is returned due to insufficient funds, account closed, payment stopped, or other reason, shall remit a money order or check for guaranteed funds to the board within 30 days of the date of the board's notice.
 - (2) The application or renewal shall be considered incomplete until the replacement fee has been received and cleared through the appropriate financial institutions.
 - (3) If a license, registration, accreditation, or renewal has already been issued, it shall be invalid until the replacement fee is received.
 - (4) If a money order or check for guaranteed funds is not received within 30 days of the date of the board's notice, the board shall notify the applicant and the applicant's employer that the application is incomplete or the license, registration, or accreditation has been invalidated due to a returned check.
- (f) Review of the fee schedule. The executive director shall make periodic reviews of the fee schedule and recommend adjustments necessary to provide sufficient funds to meet the expenses of the board without creating an unnecessary surplus. Adjustments shall be made through rule amendments approved by the board.

(H) a statement that the applicant, if issued a license, shall return the license to the board upon the surrender, revocation or suspension of the license;

(I) a statement that the applicant understands that fees submitted in the licensure process are not refundable, unless the processing time is exceeded without good cause as set out in subsection (i)(1)(A) - (B) of this section;

(J) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are not returnable; and

(K) the signature of the applicant, dated and notarized.

(2) The board will accept as proof of completion of a degree or course work an official transcript from a regionally accredited college or university.

(3) Applicants shall be responsible for submitting board reference forms from a total of two licensed physicians, practitioners, or person's licensed or certified by another state or national organization in orthotics and/or prosthetics who can attest to the applicant's skills and professional standards of extensive prosthetic and/or orthotic practice.

(4) Information concerning licenses, certificates or registrations issued to the applicant by other organizations, states, territories, or jurisdictions on official board forms.

(5) The assistant applicant must sign a statement acknowledging that he or she may only practice within their scope of practice, under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the assistant is subject to disciplinary action as set forth in §821.20 of this title (relating to Complaints). This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(6) The technician applicant must sign a statement acknowledging that he or she may only practice in accordance with the definition for registered orthotic technician, registered prosthetic technician, or registered prosthetic/orthotic technician, as set out in §821.2(39) - (41) of this title, under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the technician is subject to disciplinary action as set forth in §821.20 of this title. This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

(7) At the time of application, an applicant for a license as a prosthetist, orthotist, or prosthetist/orthotist must submit with the application the names of assistants, technicians and clinical residents who provide prosthetic and/or orthotic services under the applicant's supervision or direction. The licensee shall notify the board, in writing within 30 days of the event, if one or more assistants, technicians or clinical residents are no longer under the licensee's supervision or direction, or if the licensee supervises or directs one or more additional assistants, technicians, or clinical residents.

(d) Determination of eligibility. The board shall make the final determination on the eligibility of all applicants. The board may delegate approval of applications for licensing or registration to the executive director or a committee of the board. All applications approved by a committee or the executive director are subject to ratification at the next regular meeting of the board.

(e) Disapproved applications. Should the board disapprove an application; the reasons for disapproval will be stated in writing. The applicant may file further information for the board's consideration regarding the applicant's qualifications for the license. The board may disapprove an application if the applicant:

- (1) has not met the eligibility and application requirements for the license for which application was made;
 - (2) has failed to pass the examination prescribed in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist), if required to qualify for the license for which application was made;
 - (3) has failed to remit required fees;
 - (4) has failed or refused to properly complete or submit application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form, or other form or documentation required by the board to verify the applicant's qualifications for a license;
 - (5) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;
 - (6) has made or filed a false report or record made in the person's capacity as a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, prosthetist/orthotist assistant, prosthetic technician, orthotic technician, prosthetic/orthotic technician;
 - (7) has intentionally or negligently failed to file a report or record required by law;
 - (8) has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law;
 - (9) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice as established by the board in §821.21 of this title (relating to Professional Standards and Disciplinary Provisions);
 - (10) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of:
 - (A) an illness;
 - (B) drug or alcohol dependency; or
 - (C) another physical or mental condition or illness.
 - (11) has failed to report a known violation of the Act by another person to the department;
 - (12) has violated a provision of the Act, a rule adopted under the Act, an order of the board previously entered in disciplinary proceedings, or an order to comply with a subpoena issued by the board;
 - (13) has had a license revoked, suspended, or otherwise subjected to adverse action or been denied a license by another licensing authority in another state, territory, or country;
 - (14) has been convicted of or pled nolo contendere to a crime directly related to prosthetic and/or orthotic practices;
 - (15) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs due to fraudulent activities;
 - (16) has committed a prohibited act under the Act, §§605.351 - 605.353; or
 - (17) has been convicted of a felony or misdemeanor pursuant to Texas Occupations Code, Chapter 53, concerning felony or misdemeanor convictions.
- (f) Applications proposed for disapproval. If the board determines that the application should not be approved, the executive director shall give the applicant written notice of the reason for the proposed disapproval and of the opportunity for a formal hearing as set out in §821.20 of this title. Within 14 days after receipt of the written notice, the applicant shall give written notice to the executive director to waive or request a hearing. If the applicant fails to respond within 14 days after receipt of the notice of opportunity or if the applicant notifies the executive director that the hearing be waived, the board shall finally deny the application.
- (g) Reapplication after denial. An applicant whose application has been disapproved under subsection (e)(4) - (16) of this section may reapply after one year from the disapproval date and

shall submit a current application, the application fee and proof, satisfactory to the board, of compliance with the requirements of this chapter and the provisions of the Act in effect at the time of reapplication.

(h) Defaulters on Texas guaranteed student loans. The board will issue an initial license to a qualified applicant who has defaulted on a Texas guaranteed student loan. The board will not renew the license until a repayment plan has been reached with the Texas Guaranteed Student Loan Corporation (TGSLC) and a copy of the certification of the repayment agreement from TGSLC is filed with the board office.

(i) Application processing.

(1) The board shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from receipt of a completed application and acceptance date for filing or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

- (i) letter of acceptance of application for renewal--30 days; and
- (ii) letter of application deficiency--30 days.

(B) The following times 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. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

- (i) letter of approval--42 days; and
- (ii) letter of denial of license or registration--90 days.

(2) Times for contested cases related to the denial of licensure, registration or renewal are not included with the times listed in paragraph (1) of this subsection. The time for conducting a contested case hearing runs from the date the board receives a written hearing request until the board's decision is final and appealable. A hearing may be completed within three to nine months, but may be shorter or longer depending on the particular circumstances of the hearing, the workload of the department and the scheduling of board meetings.

(j) Jurisprudence Examination.

(1) All applicants for initial licensure and for every other renewal cycle must submit proof of successful completion of the jurisprudence examination at the time of application. The jurisprudence examination is a learning experience for which completion is the acceptable threshold for demonstration of compliance with minimum requirements as opposed to passage which would be demonstration of a specific cut score of number of correct answers.

(2) The jurisprudence examination must have been completed no more than six months prior to the licensure or renewal application date.

(3) Applicable fees are paid directly to the vendor.

(4) The jurisprudence examination content is based on the Act, the rules of the board, and other state and federal laws and rules that relate to the practice of orthotics and prosthetics.

Source Note: The provisions of this §821.5 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.6

General Licensing Procedures

(a) Purpose. The purpose of this section is to establish the licensing procedures of the board. Unless the context clearly shows otherwise, use of the terms license or licenses, shall apply to both licenses and registration, and the term licensee shall apply to both licensees and registrants.

(b) Issuance of licenses.

(1) A license shall be issued for one year plus an additional period ending on the last day of the licensee's birth month. A license shall not be issued for less than 13 months, nor more than two years. A license may be renewed on or before the expiration date in accordance with §821.17 of this title (relating to License Renewal). The renewal period shall be for a two-year period, unless otherwise specified.

(2) A temporary license shall be issued for a one-year period, and may be renewed for an additional one-year period.

(3) A student registration shall be issued or renewed for a two-year period, unless issued or renewed under §821.13(e) or (f) of this title (relating to Student Registration).

(c) License and license display.

(1) The signature of the presiding officer shall be on the license.

(2) Licenses issued by the board remain the property of the board and must be surrendered to the board on demand.

(3) Licenses must be displayed appropriately and publicly as follows.

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

(B) Lacking a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry the license, or obtain duplicate licenses to display at each location.

(4) Neither the licensee nor anyone else shall display or carry a copy of a license instead of the original document.

(d) Copying or verifying the license.

(1) The licensee has the responsibility to protect his or her license from loss and potentially fraudulent or unlawful use.

(2) A licensee shall only allow his or her license to be copied for licensure verification by employers, licensing boards, professional organizations and third party payers for credentialing and reimbursement purposes. The licensee shall sign, date and clearly mark copies with the word "COPY" across the face of the document. Any persons may verify a license by accessing the board's web page or contacting the board's office in writing or by phone to verify licensure. The license verification fee as set out in §821.4 of this title (relating to Fees) must be paid before any written verification is provided.

(e) Lost or destroyed license. The board shall replace lost, damaged, or destroyed licenses upon receipt of 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 by the damaged certificate or card.

(f) Duplicate license. The board shall issue a duplicate license upon receipt of a written request from the licensee and payment of the duplicate license fee.

(g) License alterations. Neither the licensee nor anyone else shall make alterations to a license or a copy of a license.

Source Note: The provisions of this §821.6 adopted to be effective February 10, 2011, 36 TexReg 548

§821.7 Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist

(a) Purpose. The section on licensure examination sets out the board's rules governing the administration, content, grading, and other procedures for examination for licensure.

(b) Required examination. To qualify for a license, an applicant must pass a competency examination, unless the applicant holds a license in a state that has licensing requirements that are equal to or exceed the requirements of §821.9 of this title (relating to Licensing by Examination).

(c) Form of examinations. The examinations shall be offered in prosthetics or orthotics. The examinations may be prepared by the board or prepared by another entity and administered by the board or its designee.

(d) Applications for examination.

(1) The board shall notify an applicant whose license application has been approved for the examination. Approval to take the examination shall be limited to the three-year period after the date of the board's notification to the applicant, unless specifically extended by action of the board.

(2) The board or its designee shall forward an examination registration form to the approved applicants at least 30 days before a scheduled examination. An applicant who wishes to take a scheduled examination must complete the registration form and return it to the board or its designee by the established deadline. The applicant shall submit the examination fees as set out in §821.4 of this title (relating to Fees) at the time specified by the board or its designee.

(e) Locations. Examinations administered by the board or its designee will be held at locations to be announced by the board or its designee.

(f) Frequency. The examinations shall be administered to qualified applicants at least twice per year.

(g) Grading. The board or its designee shall establish cut scores and grade examinations administered by the board or its designee.

(h) Results.

(1) If the examination is graded or reviewed by a national or state testing service, the board shall notify the examinees of the examination results within 14 days of the date the board receives the results from the testing service.

(2) If examination results will be delayed for more than 90 days after the examination, the board shall notify the applicants of the reason for the delay before the ninetieth day.

(3) The official notice of results to applicants shall be stated as "pass" or "fail" regardless of whatever numerical or other scoring system the national or state testing service may use in arriving at examination results.

(i) Failures.

(1) An applicant who fails the initial examination prescribed by the board may take two subsequent examinations after paying the examination fees.

(2) If requested in writing, the board shall furnish an applicant who fails an examination an analysis of performance.

(3) An applicant who fails the examination six times must wait for a period of three years before they may file a new application for examination. The three-year period begins when the applicant is notified of the sixth failure.

(j) Qualifications for initial examination. The applicant must:

- (1) be issued a student license; or
- (2) approved to take the examination by the Board.

Source Note: The provisions of this §821.7 adopted to be effective February 10, 2011, 36 TexReg 548

§821.8 Acquiring Licensure as a Uniquely Qualified Person

(a) Purpose. The purpose of this section is to describe the unique qualifications a person must possess to qualify for licensure as a prosthetist, orthotist or prosthetist/orthotist under the Orthotics and Prosthetics Act (Act), §605.254(a)(2).

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is as qualified to perform prosthetic and/or orthotic care as those persons who obtain licensure pursuant to the Act, §605.252.

(1) The board will determine whether a person is uniquely qualified on a case-by-case basis based on the information supplied by the applicant and other information deemed relevant by the board.

(2) The board presumes a person possessing unique qualifications will have engaged in extensive orthotic and/or prosthetic practice.

(3) Applicants without a degree. A person applying as a uniquely qualified person without a degree from a four year college or university must obtain fifteen years of applicable orthotic and/or prosthetic experience. These applicants must show proof of forty five hours of relevant continuing education credit within the five years before application. The board will approve the experience and continuing education requirements before an applicant is granted exam eligible status. These applicants must pass the appropriate state exam outlined in §821.9(c) of this title (relating to Licensing by Examination).

(4) Applicants with application deficiencies. A person applying as a uniquely qualified person, that does not meet the residency criteria outlined in §821.9 of this title, must complete at least one year of board approved orthotic and/or prosthetic work experience under indirect supervision before becoming exam eligible. These applicants must also pass the appropriate state exam outlined in §821.9 of this title.

(5) Applicants with sufficient education and experience. Applicants with board approved education and experience requirements must complete six months of directly supervised work experience. These applicants must also pass the appropriate state exam outlined in §821.9 of this title.

(c) Application procedures. A person possessing unique qualifications shall comply with §821.5 of this title (relating to General Application Procedures).

(d) Issuance of license. A license issued under this section is valid for one year plus an additional period ending on the last day of the licensee's birth month.

(e) Renewal of license. A license issued under this section may be renewed on or before the expiration date, provided the licensee complies with §821.17 of this title (relating to License

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical orthotic residency as described in §821.16 of this title.

(2) If any of the clinical requirements are completed in Texas, the supervising orthotist(s) or prosthetist/orthotist(s) must be licensed in accordance with this section.

(g) Post-graduate requirements for the prosthetist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical prosthetic residency as described in §821.16 of this title.

(2) If any of the clinical requirements are completed in Texas, the supervising prosthetist(s) or prosthetist/orthotist(s) must be licensed in accordance with this section.

(h) Post-graduate requirements for the prosthetist/orthotist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical orthotic residency and of clinical prosthetic residency as described in §821.16 of this title.

(2) If any of the clinical requirements are completed in Texas, the supervising prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) must be licensed in accordance with this section.

(i) Additional post-graduate requirements in prosthetics for an applicant licensed as an orthotist.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical prosthetic residency as described in §821.16 of this title.

(2) If any of the clinical requirements are completed in Texas, the supervising prosthetist(s) or prosthetist/orthotist(s) must be licensed in accordance with this section.

(j) Additional post-graduate requirements in orthotics for an applicant licensed as a prosthetist.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of clinical orthotic residency as described in §821.16 of this title.

(2) If any of the clinical requirements are completed in Texas, the supervising orthotist(s) or prosthetist/orthotist(s) must be licensed in accordance with this section.

Source Note: The provisions of this §821.9 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.10 Licensed Prosthetist Assistant, Licensed Orthotist Assistant, or Licensed Prosthetist/Orthotist Assistant

(a) Purpose. The purpose of this section is to establish the scope of practice and the qualifications for licensure for a licensed assistant under the Orthotics and Prosthetics Act (Act), §605.255.

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services and assistant patient care services under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title (relating to Definitions), while under the immediate supervision of a licensed orthotist or a licensed

prosthetist/orthotist. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed orthotist assistant as each of these licensed practitioners determines. However, the responsibility of the supervising licensed orthotist or supervising licensed prosthetist/orthotist always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services under the supervision of a licensed prosthetist or licensed prosthetist/orthotist. The supervising licensed prosthetist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed prosthetist assistant. A licensed assistant may only perform critical care events, as defined in §821.2 of this title, while under the immediate supervision of a licensed prosthetist or licensed prosthetist/orthotist. Other than as set forth in this subsection, the supervising licensed prosthetist or supervising licensed prosthetist/orthotist shall supervise and direct the licensed prosthetist assistant as each of these licensed practitioners determines. However, the responsibility of the supervising licensed prosthetist or licensed prosthetist/orthotist always specifically extends to having disciplinary action taken against the license of the supervising licensed prosthetist or supervising licensed prosthetist/orthotist for violations of the Act or this chapter committed by the licensed assistant.

(3) A licensed prosthetist/orthotist assistant performs the type of work described in both paragraphs (1) and (2) of this subsection and is subject to the supervision requirements described there.

(4) Assistants may only practice in a facility accredited under §821.15 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities), or a facility that is exempt under the Act, §605.260(e).

(c) Qualifications for licensure as an assistant. The applicant must submit evidence satisfactory to the board of having completed the following:

(1) successful completion of coursework from a college or university accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools that included at a minimum:

- (A) six credit hours of anatomy and physiology;
- (B) three credit hours of algebra or higher mathematics;
- (C) three credit hours of physics or chemistry; and

(2) a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, completed in a period of not more than six consecutive months, in a facility that is accredited under §821.15 of this title or a facility that is exempt under the Act, §605.260(e). The resident shall practice under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. The supervisor's license must be in the same discipline being completed by the clinical resident.

(A) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic and/or orthotic facility or its patients or clients.

(B) The clinical residency shall include observation of assistant level work covering assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, depending on the type of residency.

(C) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist.

(D) The clinical resident shall not independently provide ancillary patient care services of the type performed by a licensed assistant and may not independently engage in prosthetic and orthotic care directly to the patient.

(E) The clinical resident may only be incidentally involved in other duties including, but not limited to, scheduling, medical records, clerical, payroll and accounting, janitorial/housekeeping, transportation, or delivery.

(d) Beginning and ending a clinical residency for an assistant. Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the board by filing a completed supervision agreement with the board on a form prescribed by the board. The supervisor shall provide the clinical resident and the board with written documentation upon beginning, terminating or completing a clinical residency. If terminating or completing a residency, the written documentation shall indicate the number of hours, which comply with this section that were completed by the clinical resident.

Source Note: The provisions of this §821.10 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.11 Technician Registration

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a registration as a prosthetic technician or an orthotic technician issued under the Orthotics and Prosthetics Act (Act), Texas Occupations Code, §605.259.

(b) Supervision requirements. A technician must be supervised by a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant licensed by the board.

(c) General requirements for technician registration. To qualify for a registration as a technician, an applicant must submit:

(1) a supervisory agreement form to show proof of a current supervisory relationship or tentative supervisory relationship, as described in subsection (b) of this section;

(2) a photocopy notarized as a true and exact copy of an unaltered:

(A) official diploma or official transcript indicating graduation from high school;

(B) certificate of high school equivalency issued by the Texas Education Agency or the appropriate educational agency in another state, territory, or country; or

(C) official transcripts from a regionally accredited college or university, showing that the applicant earned at least three semester hours of credit; and

(3) documentation, acceptable to the board, showing that the applicant has not less than 1,000 hours of laboratory experience as:

(A) a prosthetic technician. The experience claimed must meet the definition of the "registered prosthetic technician" as described in §821.2 of this title (relating to Definitions); or

(B) an orthotic technician. The experience claimed must meet the definition of the "registered orthotic technician" as described in §821.2 of this title.

Source Note: The provisions of this §821.11 adopted to be effective February 10, 2011, 36 TexReg 548

§821.12 Temporary License

(a) Purpose. The purpose of this section is to describe the eligibility requirements for a temporary license as a prosthetist, orthotist, or prosthetist/orthotist issued under the Orthotics and Prosthetics Act (Act), Texas Occupations Code, §605.257.

(b) General requirements. To qualify for a temporary license, a person must:

(1) have become a Texas resident as defined in §821.2 of this title (relating to Definitions), within the 12 month period preceding application for a temporary license;

(2) apply for a license as a prosthetist, orthotist or prosthetist/orthotist under §821.8 of this title (relating to Acquiring Licensure as a Uniquely Qualified Person) or §821.9 of this title (relating to Licensing by Examination); and

(3) have either:

(A) practiced orthotics and/or prosthetics regularly since January 1, 1996; or

(B) been licensed as a prosthetist, orthotist, or prosthetist/orthotist by the state governmental licensing agency in the state in which the applicant resided immediately preceding the applicant's move to Texas. The licensing requirements in that state must be equal to or exceed the requirements of this section.

(c) Requirements for continued practice in Texas. To continue practicing prosthetics and/or orthotics the temporary license holder must meet the requirements of either §821.8 or §821.9 of this title and pass the appropriate board examination as set out in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist). The examination must be passed while the temporary license is current and not expired.

(d) Issuance of a temporary license. A temporary license is valid for one year from the date issued unless the applicant is not approved by the board for licensure by examination or unique qualifications. If the applicant is not approved by the board, the temporary license is no longer valid and must be surrendered to the board within 15 days of the notice of denial.

(e) Renewal requirements. A temporary license may be renewed once for one additional one-year period if the applicant:

(1) has not failed an examination administered by the board; and

(2) applies for renewal on or before the expiration date of the initial temporary license; and either

(3) is registered to take the next scheduled examination; or

(4) presents evidence, satisfactory to the executive director of good cause for renewal. The executive director may consult with a board member in order to determine if sufficient evidence has been presented.

Source Note: The provisions of this §821.12 adopted to be effective February 10, 2011, 36 TexReg 548

§821.13

Student Registration

(a) Purpose. Student registration provides the person practicing the prosthetic and/or orthotic profession with legal authorization while fulfilling the postgraduate requirements for licensure by examination.

(b) Eligibility. The board shall issue or renew a student registration certificate to a person who:

(1) has applied for student registration on forms prescribed by the board;

(2) has paid the student registration fee as described in §821.4 of this title (relating to Fees);

(3) has completed the academic requirements for a license as a prosthetist, an orthotist, or prosthetist/orthotist, as described in §821.9 of this title (relating to Licensing by Examination);

(4) is actively engaged in either:

(A) completing a clinical prosthetic, orthotic, or prosthetic/orthotic residency, as described in §821.16 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency);

(B) completing the clinical experience described in §821.9(f)(1), (g)(1) or (h)(1) of this title; or

(C) applying for or awaiting the results of the appropriate examination, as set out in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) and has completed the clinical residency or clinical experience; or

(5) is currently enrolled in a graduate program in this state in orthotics and prosthetics that:

(A) is recognized and accredited by the Commission on Accreditation of Allied Health Education Programs;

(B) incorporates a professional clinical residency that meets the requirements of rules adopted under §605.252(c) of the Act; and

(C) submits to the board a written certification from the graduate program in which the student is enrolled that the student has successfully completed the academic prerequisites to enter a professional clinical residency.

(c) The board shall refuse to issue or renew a student registration if the person is not actively engaged in completing the professional clinical residency, the clinical experience, or the examination.

(d) Issuance.

(1) An applicant may be issued one initial student registration in each area: prosthetics, orthotics, or both, depending on the type of clinical residency or clinical experience. The applicant shall note on the application form if the residency is in prosthetics, orthotics, or both.

(2) A student registration certificate expires two years from the date issued, unless issued under subsection (f) of this section.

(3) An applicant may not reapply for a subsequent initial student registration in the same area(s).

(e) Renewal. A student registration may be renewed once for an additional two years. A student registration may not be renewed more than once in each area: prosthetics, orthotics, or both. The continuing education requirements as set out in §821.18 of this title (relating to Continuing Education) do not apply to renewal of a student registration.

(f) Application before residency. The applicant shall apply for a student registration before beginning the clinical residency, but not more than 30 days before the beginning date of the clinical residency. A person who is actively engaged in a clinical residency who does not apply for a student registration may not receive credit for the hours completed before application

toward qualifying for a license by examination. The applicant shall provide on the application form the:

(1) name and address of the facility(ies) where the applicant will accomplish the clinical residency;

(2) name(s) and license number(s) of the practitioner(s) who will provide direct and indirect supervision to the applicant; and

(3) beginning date and the anticipated ending date of the clinical residency.

(g) Reporting of changes. The applicant shall inform the board within 30 days of changes in the information provided on the application form.

(h) Compliance with board rules. The student registrant shall comply with the rules of the board, including §821.16 of this title.

(i) Exam eligibility. A person becomes eligible to take the state exam when the board issues them a student registration.

Source Note: The provisions of this §821.13 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.14 Upgrading a Student Registration or Temporary License

(a) Application of section. Unless the content clearly indicates otherwise, the term licensee, when used in this section shall include a student registrant and a temporary licensee. The term license shall include a student registration or temporary license.

(b) Requirements. A license may be upgraded to the regular renewable practitioner license after the licensee:

(1) meets the requirements of §821.9 of this title (relating to Licensing by Examination);

(2) passes the appropriate examination, as set out in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist); and

(3) submits the license upgrade form and fee, as set out in §821.4 of this title (relating to Fees).

(c) Notice to eligible licensees. The board shall send a notice to a licensee who passes the exam of the procedure and the fee required for upgrading a license.

Source Note: The provisions of this §821.14 adopted to be effective February 10, 2011, 36 TexReg 548

§821.15 Accreditation of Prosthetic and Orthotic Facilities

(a) Requirement for practice setting of licensees.

(1) A person licensed under the Orthotics and Prosthetics Act (Act), Texas Occupations Code, Chapter 605, who practices in Texas shall practice only in facilities accredited under the Act, unless the type of practice is exempted by the Act, §§605.301 - 605.305, or the facility is exempted by the Act, §605.260(e).

(2) A facility shall not be required to achieve accreditation under this section if the facility or person(s) providing health care services at the facility do not perform or hold itself or themselves out as performing or offering to perform prosthetics and/or orthotics as defined in the Act, §605.002, or §821.2 of this title (relating to Definitions).

(b) Purpose of facility accreditation. The purpose of accreditation is to identify for prospective patients, referral sources, and third-party payers which prosthetic and/or orthotic facilities meet the board's requirements. This section is adopted under the Act, §605.260. All facilities where orthotics and prosthetics are provided by persons licensed or registered under this title must be accredited under this chapter, unless the facility is exempted under the Act, §605.260(e).

(c) Accreditation application.

(1) Accreditation applications must include the following information:

(A) name of the facility;

(B) street address of the facility (must be in Texas);

(C) mailing address, if different from the street address;

(D) if a corporation:

(i) the name, address, social security number and percentage of ownership of persons who directly or indirectly own or control 5.0% or more of the outstanding shares of stock in the facility in a privately held corporation; or

(ii) the name and address of the director(s); or

(E) the name, address, telephone number, and social security number of the sole proprietor or partners;

(F) if another type of organization, the type of organization, the name, address, and telephone number of the owner(s);

(G) a scaled floor plan indicating the total square feet in the facility and clearly showing the location of parallel bars;

(H) the name and Texas license number of the prosthetist, orthotist, or prosthetist/orthotist who is designated as the on-site practitioner in charge and his or her notarized signature. If the on-site practitioner in charge is in charge of more than one facility, a list of all facilities at which the practitioner is in charge and a work schedule for the practitioner in charge must be included. A person who holds a temporary or provisional license or a student registration may not serve as the on-site practitioner in charge;

(I) the name and Texas license number of the licensee or registrant that is designated as the safety manager;

(J) the name and Texas license number of other licensees of this Act who practice in the facility;

(K) the signature of the on-site practitioner(s) in charge of the facility;

(L) labeled photographs of each room and hallway clearly showing wheelchair accessibility and privacy for patients;

(M) labeled photographs of the facility entrance clearly showing wheelchair accessibility; and

(N) labeled photographs of all lab and fabrication areas.

(2) The board will not consider an application as officially submitted until the applicant pays the accreditation fee as set out in §821.4 of this title (relating to Fees). The fee must accompany the application form.

(3) If an individual, partnership, corporation or other entity owns one or more facilities, the board requires one primary application and separate addendum pages for additional sites to be accredited.

(4) The executive director, acting for the board, shall determine whether the facility complies with the Act and this chapter.

(5) If the board does not grant accreditation to the entity that applies to be an accredited facility, the accreditation fee will not be returned.

(6) The executive director shall give the applicant written notice of the reason(s) for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the board's formal hearing procedures in §821.20 of this title (relating to Complaints). Procedures relating to the notice and request for hearing shall be governed by the same section.

(d) Denial of accreditation. An application may be denied for one or more of the following reasons:

- (1) nonpayment of an accreditation fee;
- (2) failure to submit the required information on the application form;
- (3) falsification of information on the application form; or
- (4) violation of the Act or rules.

(e) Requirements for accredited facilities.

(1) The entire facility building and property must meet applicable federal, state, and local laws, codes, and other applicable requirements.

(2) Prosthetic and/or orthotic facilities must apply for accreditation with the board and pay an accreditation fee within 60 days of the first patient treatment date, whichever is later.

(3) An accredited facility must display the accreditation certificate in a prominent location in the facility where it is available for inspection by the public. An accreditation certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(4) An accredited facility is subject to random inspection to verify compliance with the Act and this chapter at any time by authorized personnel of the board. The board may also conduct inspections if a complaint is received regarding the facility.

(5) An accredited facility must be under the clinical on-site direction of a prosthetist, orthotist, or prosthetist/orthotist licensed by the board in the discipline in which the facility sought accreditation. The person shall supervise the provision of prosthetics or orthotics in accordance with the Act and rules and shall be considered the person in charge. To change the designation of the on-site practitioner(s) in charge, the facility shall notify the board in writing of the name and license number of the new on-site practitioner(s) and the date the effective date of the change. The written notice shall be accompanied by the appropriate fee as set out in §821.4 of this title. The notice and fee shall be submitted to the board before the change is effective.

(6) A facility accredited under the Act is required to comply with the Act and rules of the board at all times.

(7) A facility accredited under the Act shall always prominently display a sign in letters equal to or larger in size or font as the sign provided by the board to each accredited facility, containing the name, mailing address and telephone number of the board, a statement informing consumers that complaints against licensees of the facility may be directed to the board, and the toll-free telephone number for presenting complaints to the board about a person or facility regulated or requiring regulation under the Act.

(8) An accredited facility is required to report to the board any change regarding the on-site prosthetist, orthotist, or prosthetist/orthotist who is clinically directing the facility before the change is effective. The information provided to the board shall be accompanied by the appropriate fee as set out in §821.4 of this title.

(9) An accredited facility may advertise as a "Prosthetic and/or Orthotic Facility Accredited by the Texas Board of Orthotics and Prosthetics." A facility which is exempt or which the board does not accredit may not advertise or hold itself out as a facility accredited by the Texas Board of Orthotics and Prosthetics.

(10) An accreditation issued under this chapter shall not be transferred or sold to another facility or owner. An accreditation issued under this chapter may not be transferred to a different location.

(11) An accredited facility must designate at least one licensee or registrant as the safety manager. The safety manager is responsible for developing, carrying out, and monitoring the safety program for the accredited facility. To change the designation of the safety manager(s), the facility shall notify the board in writing of the name and license number of the safety manager(s) and the effective date of the change. The written notice shall be accompanied by the appropriate fee as set out in §821.4 of this title. The notice and fee shall be submitted to the board before the change is effective.

(12) An accredited facility must display the license certificates of its practitioners in a prominent location in the facility where it is available for inspection by the public.

(f) Change in ownership. A change of ownership of a facility occurs when there is a change in the person(s) legally responsible for the operation of the facility, whether by lease or by ownership.

(1) The new owner of a prosthetic and/or orthotic facility must receive accreditation within 90 days of the change in ownership.

(2) The former owner of the facility must return the accreditation certificate to the board within 90 days of the sale or transfer of the facility to a new owner.

(g) Exemptions to accreditation. A facility licensed under the Health and Safety Code, Title 4, is exempt from this accreditation. This includes hospitals, convalescent and nursing homes, ambulatory surgical centers, birthing centers, abortion centers, continuing care facilities, personal care facilities, special care facilities, maternity homes, and end-stage renal disease facilities. These types of facilities are automatically exempt and are not required to obtain a formal exemption from the board.

(h) Renewal of accreditation.

(1) When issued, an accreditation is valid for two years from the date the initial accreditation was issued.

(2) An accredited facility must renew an accreditation every two years by completing a renewal application and submitting the required fee.

(3) The renewal date of an accreditation shall be the last day of the month in which the accreditation was originally issued.

(4) The board shall not renew the accreditation of a facility that is violating or has violated the Act or this chapter until the facility has corrected the violation(s) to the satisfaction of the board.

(5) At least 30 days before the expiration of a facility's accreditation, the board will send notice to the facility of the accreditation expiration date and the amount of the renewal fee due and an accreditation renewal form. Failure to receive a renewal application from the board does not exempt the facility from renewing its accreditation. A facility that fails to receive a renewal application by the first day of its renewal month should contact the board immediately.

(6) The board shall issue an accreditation renewal to a facility that has met the requirements for renewal. It shall be affixed to or displayed with the original accreditation and is the property of the board.

(i) Failure to achieve accreditation. Facilities that fail to achieve accreditation as required by the Act and the rules are noncompliant with the Act and rules and are subject to disciplinary actions proposed by the executive director on behalf of the board. Additionally, the licensed prosthetist,

orthotist, or prosthetist/orthotist in charge of the facility may be violating the Act and rules and subject to disciplinary action.

(j) Reinstatement of accreditation. When a facility fails to renew its accreditation by the expiration date, the facility is subject to the procedures and fees as follows:

(1) If the facility accreditation has been expired for 90 days or less, the facility may renew by paying the required renewal fee and a restoration fee that is one-half of the renewal fee.

(2) If the facility accreditation has been expired for more than 90 days but less than one year, the facility may renew by paying the unpaid renewal fees and a restoration fee that is equal to the renewal fee.

(3) If the facility accreditation has been expired for more than one year, the facility may not renew the accreditation. The facility must submit an application for accreditation as described in subsection (c) of this section in order to obtain board accreditation.

(k) Disciplinary actions.

(1) The complaints committee may propose disciplinary action against a facility for violation of the Act or rules. The disciplinary action may include imposition of an administrative penalty, letter of reprimand, revocation or suspension of the accreditation, probation, or other appropriate disciplinary action.

(2) The processing of complaints against accredited facilities or applicants for accredited facilities is accomplished in accordance with §821.20 of this title.

(3) A revocation or suspension of an accreditation may affect all facilities accredited under the same name, the same owners, or the same corporation.

(4) The executive director shall give the facility written notice of the proposed disciplinary action and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the board's formal hearing procedures in §821.20 of this title. Procedures relating to the notice and request for hearing shall be governed by the same section.

(l) Facility cleanliness. The facility shall be constructed and maintained appropriately to provide safe and sanitary conditions for the protection of the patient and the personnel providing prosthetic and orthotic care.

(1) Patient examination and treatment rooms shall be cleaned after each patient is seen.

(2) Hand soap, hand towels or hand dryers must be available at the sinks used by employees and patients.

(3) Exam tables must have disposable covers or disinfected surfaces.

(4) Appropriate gloves and disinfectants for disease control must be available in examination rooms and treatment areas.

(m) Patient waiting area.

(1) Patient waiting area must be separate from the other areas.

(2) Chairs with armrests must be provided in waiting room.

(3) A telephone must be made available for patient use.

(n) Examination/treatment rooms.

(1) Rooms in which patients are seen must maintain privacy and have permanent, floor-to-ceiling walls or dividers and rigid doors. Windows must assure privacy.

(2) At least one set of parallel bars and a mirror that is affixed to the wall or a mirror with a free standing base for patient ambulation trials must be provided in each facility.

(3) Chairs with armrests must be provided in examination/treatment rooms. Chairs without armrests or wheels must be provided upon patient request.

(o) Safety.

- (1) Safety equipment (safety glasses or goggles and dust masks) must be available to persons working in an accredited facility.
 - (2) Proper machine use and training must be provided.
 - (3) Safety guards on machines must be in place.
 - (4) Lab/Fabrication area must be separated from other areas by walls and/or rigid doors and have adequate ventilation and lighting.
 - (5) If smoking is permitted, appropriate policies and procedures are required to control smoking materials.
 - (6) A minimum of one licensee or registrant must be assigned to each facility to act as safety manager. The safety manager is responsible for developing, carrying out, and monitoring the safety program.
- (p) Business office area.
- (1) Patient records must include accurate and current progress notes.
 - (2) Patient records must be kept private.
 - (3) Patient records shall not be made available to anyone outside the facility without the patient's signed consent or as required by law.
 - (4) Records must be kept a minimum of five years.
- (q) General.
- (1) Americans with Disabilities Act compliant restroom and hand washing facilities must be safe and accessible to the patient.
 - (2) Facility must have the equipment, tools, and materials to provide casting, measuring, fitting, and major repairs and adjustments.
- (r) Adding a category to a facility accreditation. To add the prosthetic or orthotic category to a facility accreditation, which is not expired, suspended or revoked, an application shall be completed and submitted to the board on a form provided by the board. The application shall be accompanied by the appropriate fee as set out in §821.4 of this title.

Source Note: The provisions of this §821.15 adopted to be effective February 10, 2011, 36 TexReg 548

§821.16 Standards, Guidelines, and Procedures for a Professional Clinical Residency

- (a) General. The board will accept a professional clinical residency having standards that are equivalent to or exceed NCOPE standards and those set forth in this chapter.
- (b) Clinical residency programs must be equivalent to current NCOPE standards.
- (c) Residency Conditions. The resident's involvement in patient care must meet current NCOPE standards.
- (d) Supervision of clinical resident. A clinical resident must be directly involved in providing patient care, under the supervision of a Texas licensed practitioner whose license is in the same discipline in which residency is being completed.
- (e) Written description of program. A professional clinical residency must provide the residents with a written description of the educational program, including the scope and duration of assignments to other facilities, if part of the clinical residency. The written description of the program must be equivalent to NCOPE requirements and must be addressed in the written description:

- (1) the term of residency;
 - (2) written job description;
 - (3) pertinent policies and procedures;
 - (4) safety requirements;
 - (5) patient confidentiality;
 - (6) liability and malpractice insurance;
 - (7) expectations;
 - (8) limitations and restrictions of residency; and
 - (9) the name of the Texas licensed practitioner who is designated as the program director.
- (f) Facility requirements. A facility must:
- (1) be accredited by the board or be exempt as described in §821.15 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities);
 - (2) have the resources and adequate facilities for residents to fulfill their education and patient care responsibilities; and
 - (3) have resources and adequate facilities for residents to develop proficiency in laboratory skills in prosthetic and orthotic fabrication; and
 - (4) meet current NCOPE requirements.
- (g) Responsibilities of the program director.
- (1) Each program director must meet the current NCOPE requirements.
 - (2) Prosthetic and orthotic supervising licensee-to-resident ratio shall not exceed one Texas licensed practitioner to two residents.
 - (3) The program director shall maintain documentation of residents' agreements.
 - (4) The program director shall supervise residents during patient care. Direct supervision of critical care events is required. Indirect supervision of clinical procedures, except critical care events, is allowed throughout the residency. The supervision must be provided by a practitioner licensed in Texas in the discipline being taught. Overall assurance of quality patient care is the ultimate responsibility of the supervising practitioner.
 - (5) Evaluation of a resident's ability to assume graded and increasing responsibility for patient care must be completed quarterly. This determination is the program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the director and staff, each program:
 - (A) evaluates the knowledge, skills and professional growth of its residents, at least quarterly;
 - (B) provides to residents a written assessment of their performance quarterly;
 - (C) maintains written evaluations on forms prescribed by the board, as part of the performance record for each resident. The performance record of each resident shall be available to that resident; and
 - (D) provides documentation to the resident, at least quarterly, and to the board upon request and at the termination or completion of the residency, regarding the number of hours of residency that comply with the requirements established in this section that have been completed by the resident.
- (h) Resident responsibilities and qualifications.
- (1) The resident shall be responsible for participating in safe, effective and compassionate patient care under supervision commensurate with his or her level of advancement and responsibility.
 - (2) The resident must meet the qualifications for licensure by examination as described in §821.7 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or

Prosthetist/Orthotist) except for having completed the professional clinical residency, as required by NCOPE.

(i) Residency objectives.

(1) Clinical assessment. Upon completion of a residency, a person must be proficient in current NCOPE requirements, including clinical assessment skills for an individual requiring prosthetic and/or orthotic services as displayed by the ability to:

(A) obtain a history of the patient to determine the need for a specific device by:

(i) interviewing the patient;

(ii) interviewing others, if necessary; and/or

(iii) reviewing available records;

(B) observe gait, coordination, present device if available and other physical characteristics to supplement patient history and physical examination;

(C) examine the patient to determine skin condition, joint range of motion and muscle strength;

(D) assess the specific needs of individual patients by integrating the information obtained from history, examination and observation;

(E) discuss with the patient his or her needs and expectations;

(F) provide information to the patient, family and involved health professionals regarding a device's potential advantages and disadvantages to assure understanding of the treatment plan and cooperation of the individuals involved;

(G) develop a treatment protocol for the specific patient by review of data obtained to determine a specific device recommendation and plan for its use; and

(H) obtain and accurately record appropriate measurements and other data from the patient to design the recommended device.

(2) Patient management. Upon completion of a residency, a person must be proficient in patient management skills under current NCOPE requirements for prosthetic and/or orthotic patients as displayed by the ability to:

(A) measure a patient by using proper instruments and tests. Compile data to be used in device design and fabrication;

(B) manipulate the patient's limbs to provide correction, position or deformation to obtain the most appropriate information;

(C) replicate the patient's body or limbs to obtain an accurate anatomical impression to be used in fabricating a prosthesis and orthosis;

(D) achieve optimum comfort, function and cosmesis by using proper fitting techniques;

(E) visually evaluate if a patient's gait has achieved optimum prosthetic and/or orthotic function;

(F) achieve optimum alignment and function of a patient's prosthesis and/or orthosis by evaluating the sagittal, transverse and coronal planes;

(G) maintain proper documentation of the patient's treatment history through established records keeping techniques; and

(H) provide ongoing patient care to assure continued proper fit and function of the prosthesis and orthosis.

Source Note: The provisions of this §821.16 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.17**License Renewal**

(a) Application. This section applies to licensees and registrants of the board. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses and registrations.

(b) General. Paragraph (1) of this subsection does not apply to renewal of a temporary license or a student registration.

(1) When issued, an initial license is valid for the time period described in §821.6 of this title (relating to General Licensing Procedures). After the initial license period, a licensee must renew the license biennially (every other year).

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The supervising licensed prosthetist or orthotist shall sign the license renewal form for the licensed assistant or registered student and show on the form whether the supervisor and supervisee have complied with this chapter.

(3) Licensees are 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 director before the expiration date of the licensee shall not excuse failure to file for renewal or late renewal.

(4) The board shall not renew the license of the licensee who is violating the Act or board rules at the time of application for renewal. The renewal of a license shall not be granted to a licensee for whom a contested case is pending, but shall be governed by the Government Code, §2001.054.

(5) The board shall not renew a license or registration if Education Code, §57.491 (Loan Default Ground for Nonrenewal of Professional or Occupational License) prohibits renewal.

(6) The board shall deny renewal of the license or registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, §232.002 (Suspension of License).

(7) Each licensee is responsible for meeting the requirements of §821.5 of this title (relating to General Application Procedures).

(c) License renewal requirements.

(1) At least 45 days before the expiration date of a person's license, the executive director 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 that the licensee must complete and return to the board with the required renewal fee. The return of the completed renewal form following the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The supervising licensed prosthetist or orthotist shall sign the license renewal form for the licensed assistant and show on the form 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, the required renewal fee, and the statement of continuing education, if required, to the executive director before the expiration date of the license. The postmark date shall be considered as the

date of mailing. The current license will be considered active until the renewal is issued or finally denied.

(4) A licensee must comply with applicable continuing education requirements to renew a license including the audit process described in §821.18 of this title (relating to Continuing Education). Continuing education shall not be required if the applicant is renewing a temporary license or a student registration.

(5) The board shall issue a license certificate to a licensee who has met the renewal requirements.

(d) Renewal for a retired orthotist and/or prosthetist performing voluntary charity care.

(1) A "retired orthotist and/or prosthetist is defined as a person who is:

(A) at least 55 years old;

(B) is not employed for compensation in the practice of orthotics and/or prosthetics; and

(C) has notified the board in writing of their intention to retire and provide only voluntary charity care.

(2) A retired orthotist and/or prosthetist who is only providing voluntary charity care may renew their license by submitting a renewal form; the fee required by §821.4 of this title (relating to Fees); and the continuing education hours required by §821.18 of this title.

(3) A retired orthotist and/or prosthetist may not change their retired status until their next renewal period. If a retiree wishes to change their status upon renewal, they must notify the board in writing; submit a renewal form; the fee for a prosthetist and/or orthotist license renewal required by §821.4 of this title; and the continuing education hours required by §821.18 of this title.

(e) Late renewal requirements.

(1) The executive director shall inform a person or facility that has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for late renewal and the date the license expired.

(2) A person or facility whose license has expired may renew the license before the first anniversary date of the license expiration by submitting the license renewal form, the person's proof of completion of continuing education as set out in §821.18 of this title, a statement describing how the person or facility complied with the Orthotics and Prosthetics Act after the license expired, and the appropriate late renewal fee to the executive director. The renewal is effective if mailed to the executive director on or before the first anniversary of the license expiration date. The postmark date shall be considered as the date of mailing.

(A) If paid less than 91 days after the expiration date, the fee due is equal to one and one-half times the renewal fee as set out in §821.4 of this title.

(B) If paid 91 days or more after the expiration date but before the first anniversary of the expiration date, the fee due is equal to two times the renewal fee as set out in §821.4 of this title.

(C) After the license is renewed the next continuing education reporting period starts on the date the certificate is renewed and continues until the next expiration date.

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

(4) After a license is expired and until a person has renewed the certificate, a person may not practice orthotics or prosthetics in violation of the Act.

(5) After an accreditation is expired and until the facility has renewed the accreditation, the facility may not provide orthotic or prosthetic patient care in violation of the Act.

(f) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed orthotist," "licensed prosthetist," "licensed prosthetist/orthotist," "licensed orthotist assistant," "licensed prosthetist assistant," "licensed prosthetist/orthotist assistant," or use the letters "LO," "LP," "LPO," "LOA," "LPA," or "LPOA," and may not use facsimiles of those titles.

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

(3) A facility that fails to renew its accreditation shall not represent or imply that the facility is accredited by the board.

(4) A facility that fails to renew its accreditation after one year is required to surrender the accreditation certificate to the board.

(g) Active duty. If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America on the license expiration date, the licensee may renew the license in accordance with this subsection.

(1) The licensee, the licensee's spouse, or an individual having power of attorney from the licensee may request renewal of the license. 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 was on active duty when their license expired 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 documents required in this subsection.

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

(6) A licensee renewing under this subsection shall be required to submit the same amount of continuing education hours as required for regular renewal unless the licensee shows to the satisfaction of the board that a hardship existed which prevented the licensee from obtaining the continuing education hours. Hardships may include medical reasons, combat duty, or assignment to a location where continuing education activities were not available.

(h) Defaulters on Texas guaranteed student loans. The board will not renew the license until a repayment agreement has been reached with the Texas Guaranteed Student Loan Corporation (TGSLC) and a copy of the certification of the repayment agreement from TGSLC is filed with the board office.

Source Note: The provisions of this §821.17 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.18 Continuing Education

(a) Purpose. The purpose of this section is to establish the continuing education requirements a licensee shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensees and registrants. Continuing education credit includes programs beyond the basic preparation. These programs are designed to promote

and enrich knowledge, improve skills, and develop attitudes for the enhancement of the profession, thus improving prosthetic and orthotic care provided to the public.

(b) Application. This section applies to licensees and registrants of the board. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations. This section does not apply to a temporary license or a student registration.

(c) Effective date. The first continuing education period shall begin after the licensee has renewed his or her license for the first time. Continuing education will not be required during the initial license period. After that, a licensee is required to attend continuing education activities as a condition of renewal of a license.

(d) Continuing education periods.

(1) The continuing education period shall begin the first day of the month following the month in which the licensee's birthday occurs.

(2) Continuing education periods shall be two years in length. The period coincides with the license renewal period.

(e) Determination of continuing education credits.

(1) For seminars, lectures, presentations, symposia, workshops, conferences and similar activities, 50 minutes shall be considered as one credit and increments of five minutes shall be considered as one-tenth of a credit.

(2) Course work completed at or through an accredited college or university shall be credited based on eight credits for each semester hour completed for credit. Continuing education credit will be granted for a grade of C or better for the continuing education period in which the course is completed.

(f) Requirements. Licensees shall attend and complete continuing education each renewal period unless the licensee is exempted under subsection (m) of this section.

(1) Licensees shall be responsible for obtaining continuing education credit that meets the requirements of this section, based on subsection (i) of this section.

(2) Licensees shall be responsible for maintaining a log or other list of continuing education credits earned by the licensee and proof of completion of his or her own continuing education credits, which might include certificates, transcripts from certifying agencies or associations, letters from program sponsors concerning the licensee's attendance and participation, or other documentation satisfactory to the board verifying the licensee's attendance or participation.

(3) Attendance and completion of the following number of continuing education credits are required:

(A) prosthetist or orthotist license--24;

(B) prosthetist and orthotist license--40;

(C) prosthetist or orthotist assistant--12;

(D) prosthetist and orthotist assistant--20;

(E) prosthetic or orthotic technician--6;

(F) prosthetic and orthotic technician--10; and

(G) prosthetist with orthotist assistant or orthotist with prosthetist assistant license--32.

(g) Acceptable activities. Of the total hours required, at least 50% must be live, instructor-directed activities. Fifty percent or less may be self-directed study.

(h) Acceptable topics. The hours must be directly related to prosthetics, orthotics, physical or occupational therapy, orthopedic, podiatric, pedorthic, physical medicine or other subjects approved by the board which benefit patient care or service delivery.

(i) Acceptable types of continuing education.

(1) Credits must be offered or approved by a state, regional or national prosthetic and/or orthotic, or allied health organization or offered by a regional accredited college or university.

(2) Continuing education undertaken by a licensee shall be acceptable if the licensee attends and participates in an activity which falls in one or more of the following categories:

(A) academic courses;

(B) clinical courses;

(C) in service educational programs, training programs, institutes, seminars, workshops, and conferences; or

(D) self-study modules, with or without audio cassettes, and video cassettes of presentations, provided:

(i) a post-test is required; and

(ii) provided the number of hours completed do not exceed 50% of the credits required;

(E) distance learning activities, audiovisual teleconferences, and interactive computer generated learning activities provided a documented post-test is completed and passed;

(F) instructing or presenting in activities listed in subparagraphs (A) - (C) of this paragraph. Multiple presentations of the same program or equivalent programs may only be counted once during a continuing education period; and

(G) writing a book or article applicable to the practice of prosthetics and/or orthotics, four credits for an article and eight credits for a book will be granted for a publication in the continuing education period in which the book or article was published. Multiple publications of the same article or an equivalent article may only be counted once during a continuing education period. Publications may account for 25% or less of the required credit.

(j) Reporting of continuing education credit.

(1) At the time of license renewal, licensees shall file a continuing education report on a form provided by the board.

(2) All licensees may be audited or a representative sample of the licensees renewing during each month may be selected at random for auditing continuing education credits. The following procedures shall apply to the audit.

(A) At the time the renewal notice is sent to the licensee, the board shall notify the licensees selected for an audit.

(B) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the board, verifying the licensee's attendance, participation and completion of the continuing education credits claimed on the report form.

(C) The documentation shall be furnished at the time the renewal form is returned to the board.

(3) Failure to timely furnish the required information, or knowingly providing false information during the renewal or audit process shall be grounds for disciplinary action against the licensee.

(k) Failure to complete the required continuing education at renewal time.

(1) The board shall notify a licensee applying for renewal who failed to complete the requirements for continuing education that if the licensee does not obtain the credits before the expiration of three months after the date the notice was given, the board may take action to suspend or revoke the license. Notice shall be sent to the last address on file with the board. The date the notice was given shall be five calendar days after the date of the board's notice to the licensee.

(2) The licensee shall be responsible for completing and reporting to the board the additional continuing education credits required within the three-month period after notice was given.

(3) Credits earned to complete the continuing education requirements for renewal during the additional three months shall only be applied to that continuing education period. Credit may not be carried over to the next period. The next continuing education reporting period starts on the day after the continuing education requirements were fulfilled and continues until the next expiration date.

(l) Failure to complete the continuing education credits after three months.

(1) The board shall notify the licensee that the board intends to suspend or revoke the license for failure to complete and report the required continuing education. The licensee shall be offered the opportunity to show compliance with the continuing education requirements.

(2) The licensee may request a formal hearing on the proposed suspension or revocation. The times and procedures for the showing of compliance and the formal hearing shall be those set out in §821.20 of this title (relating to Complaints). Failure to timely request a hearing will result in the waiver of the opportunity for a formal hearing.

(m) Qualifying exemptions from the continuing education requirements.

(1) The following licensees are exempt from the requirements of this section if the qualifying event occurred during the 24 months immediate preceding the license expiration date. The licensee is responsible for submitting an affidavit stating the licensee meets the criteria for the exemption accompanied by proof satisfactory to the board:

(A) a licensee who served in the regular armed forces of the United States of America or who served in the armed forces reserves and was called to active duty for a period of more than 60 days during a continuing education period;

(B) a licensee who suffered a mental or physical illness or disability that prevented the licensee from complying with the requirements of this section; or

(C) a licensee who suffered a catastrophic event such as a flood, fire, tornado, hurricane that prevented the licensee from complying with the requirements of this section.

(2) Licensees employed as faculty in Commission on Accreditation of Allied Health Education Programs (CAAHEP) accredited programs or programs having educational standards equal to or greater than CAAHEP in prosthetics and orthotics shall be exempt from 50% of the continuing education requirements described in subsection (f) of this section.

(3) Licensed orthotists and/or prosthetists who are renewing under retired voluntary charity care status shall be exempt from 50% of the continuing education requirements described in subsection (f) of this section.

(4) Failure to submit documentation satisfactory to the board as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of this section.

(n) Untrue documentation. Untrue documentation or information submitted to the board shall subject the licensee to disciplinary action as set out in §821.20 of this title.

(o) Unacceptable activities. Activities unacceptable as continuing education for which the board may not grant continuing education credit are:

(1) education incidental to the licensee's regular professional activities such as learning occurring from experience or research;

(2) professional organization activity such as serving on boards, committees or councils or as an officer;

(3) continuing education activities completed before the renewal period;

- (4) activities described in subsections (h) and (i) of this section completed more than once during the continuing education period;
- (5) activities in which the licensee did not attend, participate, or complete;
- (6) performance of duties that are routine job duties or requirements;
- (7) self-directed study activities that did not include a post test; or
- (8) self-directed study activities that exceed the 50% limit as set out in subsection (g) of this section; and
- (9) activities not offered or approved by a state, regional or national prosthetics and/or orthotics organization, allied health organization, or not offered by a regional accredited college or university.

Source Note: The provisions of this §821.18 adopted to be effective February 10, 2011, 36 TexReg 548

§821.19 Change of Name and Address

- (a) Notification required. Applicants, licensees, registrants and accredited facilities are responsible for notifying the board of any change(s) of name or preferred mailing address. Accredited facilities are responsible for notifying the board of any change(s) in facility name, preferred mailing address or physical address. Written notification to the board shall be made within 30 days of any change(s). All facility changes that involve physical location, name, or ownership will require a new application for accreditation.
- (b) Address changes. Address changes shall include the name, mailing address, and zip code.
- (c) Name changes. Before the board will issue another license certificate and identification card, notification of name changes must be mailed to the board. Notification shall include a copy of a marriage certificate, court decree evidencing the change, or a Social Security card reflecting the licensee's or registrant's new name. The licensee or registrant shall remit the appropriate license or registration certificate replacement fee as set out in §821.4 of this title (relating to Fees).

Source Note: The provisions of this §821.19 adopted to be effective February 10, 2011, 36 TexReg 548

§821.20 Complaints

- (a) Complaint procedures.
 - (1) Anyone may complain to the department alleging that a person has violated the Orthotics and Prosthetics Act, (Act), Texas Occupations Code, Chapter 605, or this chapter.
 - (2) A person wishing to file a complaint against a person or entity shall notify the board. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive director's office.
 - (3) Upon receipt of a complaint, the executive director shall send the complainant an acknowledgment letter and, if additional information is needed, the board's complaint form, for the complainant to complete and return to the executive director. If the complaint is made by a visit to the executive director's office, the form may be given to the complainant then. The executive director may accept an anonymous complaint if there is sufficient information for an investigation.

(4) The executive director or his or her designee may request a response from the licensee, registrant or person against whom an alleged violation has been filed to gather information required by the complaints committee of the board. The licensee, registrant or person against whom an alleged violation has been filed must respond within 15 working days of the executive director's request.

(5) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director in consultation with the presiding officer or his/her designee may dismiss the complaint and give written notice of dismissal to the licensee, registrant or person against whom the complaint has been filed, the complainant, and the enforcement committee.

(6) The executive director, on behalf of the board, shall, at least as frequently as quarterly, notify the complainant and the respondent of the status of the complaint until its final disposition unless the notice would jeopardize an undercover investigation.

(7) If it is determined that there are sufficient grounds to support the complaint, the matters in question shall be investigated. The executive director or the committee may initiate the investigation.

(8) If the committee determines that there are insufficient grounds to support the complaint, the executive director shall dismiss the complaint and give written notice of the dismissal to the licensee, registrant or person against whom the complaint has been filed and the complainant.

(9) If after due investigation a complaint or allegation is not resolved by the complaints committee of the board, the committee may recommend that an application be denied or that a license or registration be revoked, suspended, or denied or that other appropriate actions as authorized by law be taken.

(b) Board oversight of processing complaints.

(1) The executive director will prepare a report reflecting the actions of the complaints committee. The chair of the complaints committee will present the report to the board at each board meeting.

(2) The report will include the number of complaints reviewed by the complaints committee, the nature of the complaints made, and action taken on the complaint.

(c) Formal disciplinary actions.

(1) The board may take the following formal disciplinary actions for a violation of the Act or this chapter: deny a license, registration, or facility accreditation; suspend or revoke a license, registration, or facility accreditation; probate the suspension of a license, registration, or facility accreditation; issue a reprimand to a licensee, registrant, or accredited facility, impose a civil penalty pursuant to the Act, §605.354, impose an administrative penalty pursuant to the Act, §605.401, or suspend a license on an emergency basis in accordance with the procedures established in the Act, §605.3535.

(2) The board shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

(A) severity of the offense, as follows.

(i) Severity Level III violations are those that have or had no significance or a minor significance on health or safety.

(ii) Severity Level II violations are those that have or had the potential to cause an adverse impact on the health or safety of a patient or client, but did not actually have an adverse impact.

(iii) Severity Level I violations are those that have or had an adverse impact on the health and safety of a patient or client.

- (B) the danger to the public;
- (C) the number of repetitions of offenses;
- (D) the length of time since the date of the violation;
- (E) the number and type of disciplinary actions taken against the licensee, registrant or accredited facility;
- (F) the length of time the licensee has practiced orthotics or prosthetics;
- (G) the length of time the registrant has practiced orthotics or prosthetics or worked as a technician;
- (H) the length of time the facility has provided orthotics or prosthetics;
- (I) the actual damage, physical or otherwise to the patient, client or other person in the workplace;
- (J) the deterrent effect of the penalty imposed;
- (K) the effect of the penalty upon the livelihood of the licensee, registrant or accredited facility;
- (L) any efforts for rehabilitation by the licensee or registrant;
- (M) any corrections or changes in the operation of or the staffing of the facility;
- (N) any other mitigating or aggravating circumstances.

(3) Before institution of formal disciplinary action the board shall give written notice by certified mail, return receipt requested, and regular mail, of the facts or conduct alleged to warrant the proposed action, and the licensee, registrant, or accredited facility shall be given an opportunity to show compliance with the requirements of the Act and this chapter.

(4) The written notice will be sent to the last reported address on record for the licensee, registrant, or accredited facility, and state that a request for a formal hearing must be received, in writing, within 14 days of the date of the notice, or the right to a hearing shall be waived and the action shall be taken by default. Notice sent to the last reported address is deemed received by the licensee, registrant, or accredited facility, and a default order may be entered upon failure to timely request a hearing whether or not the notice was received.

(d) Informal hearings.

(1) A licensee, registrant, or accredited facility may request an informal hearing. The decision to hold an informal hearing shall be within the discretion of the executive director or a member of the complaints committee. Informal disposition of any complaint or contested case involving a licensee, registrant, or applicant for licensure may be made through an informal hearing held to determine whether the matters in controversy can be resolved without further proceedings.

(2) An informal hearing shall be voluntary and shall not be a prerequisite to a formal hearing. The executive director shall establish the time, date and place of the informal hearing, and provide written notice to the licensee, registrant or applicant. Notice shall be provided no less than 10 working days prior to the date of the informal hearing by certified mail, return receipt requested to the last known address of the licensee or applicant. The licensee, registrant or applicant may waive the 10-day notice requirement.

(3) The complainant and other interested parties with knowledge of relevant facts will be notified if an informal hearing is to be held, and may attend. The notice shall inform the licensee, registrant or applicant of the nature of the alleged violation or the reason for application denial; that the licensee, registrant or applicant may be represented by legal counsel; that the licensee, registrant or applicant may offer the testimony of witnesses and present other evidence as may be appropriate; that a complaints committee member shall be present; that the board's legal counsel shall be present; that the licensee's, registrant's or applicant's attendance and participation is

voluntary; that the complainant and any client involved in the alleged violations may be present; and that the informal hearing shall be canceled if the licensee, registrant or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(4) The informal hearing will be conducted in the manner established by the executive director and consistent with department procedures. Parties will be afforded a reasonable opportunity to present their position regarding the matter at issue.

(5) The licensee, the licensee's attorney, the board's attorney, the executive director and the complaints committee member may make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate. Committee chair may limit the length of presentations.

(6) The complaints committee member or the executive director may exclude from the informal hearing all persons except witnesses during their testimony, the licensee, registrant or applicant, the licensee's, registrant's, or applicant's attorney, and board staff.

(7) Any written statement submitted by the complainant shall be reviewed at the hearing.

(8) At the conclusion of the informal hearing, the complaints committee member or the executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act or this chapter. The complaints committee member or executive director may also conclude that the board lacks jurisdiction; conclude that a violation of the Act or this chapter has not been established; order that the investigation be closed; or refer the matter for further investigation.

(9) The licensee, registrant or applicant may either accept or reject the recommendations at the informal hearing. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee, registrant or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee, registrant or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee, registrant or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(10) If the licensee, registrant or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.

(11) The identity of the licensee, registrant or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee, registrant or applicant chooses to attend the board meeting. The licensee, registrant 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, registrant or applicant is voluntary.

(12) 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, registrant or applicant is present at the board meeting and agrees to other terms proposed by the board.

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

(14) A proposed agreed order is not effective until the board has approved the agreed order and the order is signed by the board chair.

(15) A licensee's, registrant's or applicant's opportunity for an informal hearing under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(16) If a licensee, registrant or applicant who has requested an informal hearing fails to appear at the hearing and fails to provide notice of their inability to attend the hearing at least 24 hours in advance of the time the hearing is scheduled such action may constitute a withdrawal of the request for a formal hearing.

(e) Formal hearings.

(1) If requested in accordance with subsection (c) of this section, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, 25 Texas Administrative Code, Chapter 1 (relating to Texas Board of Health), and the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003).

(2) Copies of the formal hearing procedures are indexed and filed in the executive director's office and are available for public inspection during regular working hours.

Source Note: The provisions of this §821.20 adopted to be effective February 10, 2011, 36 TexReg 548; amended to be effective October 5, 2014, 39 TexReg 7738

§821.21 Professional Standard and Disciplinary Provisions

(a) General. This section is adopted under the Orthotics and Prosthetics Act (Act), §605.353.

(b) Fraud, misrepresentation, or concealment of a material fact. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed when a license is obtained by fraud, misrepresentation, or concealment of a material fact, which includes, but is not limited to, the following:

(1) committing fraud, misrepresentation, or concealment of a material fact submitted with an application or renewal for licensure, registration, or facility accreditation;

(2) committing fraud, misrepresentation, or concealment of a material fact submitted with continuing education requirements;

(3) impersonating or acting as a proxy for an examination candidate;

(4) impersonating or acting as a proxy for a licensee or registrant at a continuing education activity;

(5) providing false or misleading information to the board regarding an inquiry by the board; or

(6) committing other fraud, misrepresentation, or concealment of a material fact submitted to the board or department.

(c) Fraud or deceit concerning services provided. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

(1) placing or causing to be placed, false, misleading, or deceptive advertising;

(2) making or allowing false, misleading, or deceptive representations concerning the services or products provided or which have been provided;

(3) making or allowing false, misleading, or deceptive representations on an application for employment;

(4) using or allowing a person to use a license or registration for any fraudulent, misleading, or deceptive purpose;

(5) knowingly employing or professionally associating with a person or entity, who is providing prosthetic or orthotic services, and is not licensed or accredited as required by the Act or this chapter;

(6) forging, altering, or falsifying a physician's order;

(7) delivering prosthetic and/or orthotic services or products through means of misrepresentation, deception, or subterfuge;

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Health and Safety Code, §161.091;

(9) making or filing, or causing another person to make or file, a report or record that the licensee knows to be inaccurate, incomplete, false, or illegal;

(10) practicing with an expired, suspended, or revoked license or registration, or in a nonexempt facility with an expired, suspended, or revoked accreditation;

(11) persistently or flagrantly overcharging a client or third party;

(12) persistently or flagrantly over treating a client;

(13) willful violation of a board order;

(14) taking without authorization medication, supplies, equipment, or personal items belonging to a patient; and

(15) other fraud or deceit concerning services provided.

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c) of this section. Other action which may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or an administrative or civil penalty to be imposed include, but are not limited to:

(1) discriminating based on race, color, disability, sex, religion, age, or national origin in the practice of prosthetics or orthotics;

(2) having surrendered a license to the board or the licensing authority of another state, territory, or country to avoid disciplinary action or prosecution;

(3) having a license revoked or suspended, having had other disciplinary action taken against the applicant, or having had the application for a license refused, revoked, or suspended by the board or the licensing authority of another state, territory, or country;

(4) engaging in conduct that state, federal, or local law prohibits;

(5) failing to maintain acceptable standards of prosthetics or orthotics practices as set forth by the board in rules adopted pursuant to this chapter;

(6) being unable to practice prosthetics or orthotics with reasonable skill, and safety to patients, due to illness or use of alcohol, drugs, narcotics, chemicals or other types of material or from mental or physical conditions;

(7) having treated or undertook to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope permitted by law of the issued license, as defined in §821.2 of this title (relating to Definitions);

(8) intentionally or negligently failing to supervise and maintain supervision of clinical or technical personnel, licensed or unlicensed, in compliance with the Act and this chapter, or negligently failing to provide on-site supervision for an accredited facility, if designated as the practitioner in charge of the facility;

- (9) providing prosthetic and orthotic services or products in a way that the person knows, or with the exercise of reasonable diligence should know violates the Act or this chapter;
 - (10) failing to assess and evaluate a patient's status;
 - (11) providing or attempting to provide services in which the licensee is untrained by education or experience;
 - (12) delegating functions or responsibilities to an individual lacking the ability, knowledge, or license/registration to perform the function or responsibility;
 - (13) revealing confidential information concerning a patient or client except where required or allowed by law;
 - (14) failing to obtain accreditation for a facility that is not exempt or failing to renew the accreditation of a facility that is not exempt;
 - (15) practicing in an unaccredited facility that is not exempt;
 - (16) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;
 - (17) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;
 - (18) engaging in sexual contact as defined by the Penal Code, §21.01, with a patient or client as the result of the patient or client relationship;
 - (19) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;
 - (20) submitting false documentation or information to the board relating to continuing education;
 - (21) failing or refusing to provide acceptable documentation of continuing education reported to the board for renewal if selected for an audit, or if specifically requested by the board;
 - (22) failing to cooperate with the board or the department during an investigation of a complaint filed under the provisions set out in §821.20 of this title (relating to Complaints) by not furnishing required documentation or responding to a request for information or a subpoena issued by the board, its authorized representative, the department, or the department's authorized representative;
 - (23) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats, retaliation or harassment against anyone;
 - (24) fitting a prosthesis or orthosis without prescription;
 - (25) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician;
 - (26) providing orthotic care in a non-exempt facility that is not accredited in orthotics by the board;
 - (27) providing prosthetic care in a non-exempt facility that is not accredited in prosthetics by the board;
 - (28) failing to truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the board;
 - (29) failing to comply with an order issued by the board; and
 - (30) other unprofessional or unethical conduct.
- (e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) Performing an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of the rights of others.

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products for which compensation has been received or failing to perform services or provide products with reasonable care, skill, expedience, and faithfulness;

(B) failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

(f) Interference with an investigation. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for interference with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(g) Frivolous complaints. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or have an administrative or civil penalty imposed for filing a complaint with the board that is frivolous or made in bad faith.

(h) Disciplinary actions. A license, registration, or facility accreditation may be denied, not renewed, revoked, suspended, or have an administrative or civil penalty imposed for violations of this Act or this chapter. The Complaints Committee may direct the executive director to issue a reprimand, a letter of concern, an advisory letter, or a cease and desist letter.

Source Note: The provisions of this §821.21 adopted to be effective February 10, 2011, 36 TexReg 548

§821.22 Licensing Persons with Criminal Backgrounds

(a) Purpose. The purpose of this section is to comply with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Texas Occupations Code, Chapter 53. This section is designed to establish guidelines and criteria for the licensing and registration of persons with criminal backgrounds. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses and registrations.

(b) Guidelines. The board may deny an application or revoke, suspend, place on probation, or impose an administrative penalty against an existing license or registration if an applicant, licensee, or registration holder has been convicted of a crime (felony or misdemeanor) according to the following guidelines.

(1) Licensees and registrants are required to conduct the profession of prosthetics and orthotics with honesty, trustworthiness, and integrity. Those criminal convictions that show unwillingness or inability to follow these requirements may be a basis to deny a license or begin disciplinary action against an existing license.

(2) The factors and evidence listed in the Texas Occupations Code, Chapter 53, shall be considered in determining eligibility for a license or registration.

(3) The executive director will review the criminal convictions and determine what disciplinary action should be taken, and may ask that an appointed board member help in making the decision. The executive director shall give written notice to the person that the board intends to

deny, suspend, revoke, or impose an administrative penalty against the license in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Texas Occupations Code, Chapter 53. The written notice must include:

(A) the reasons for the decision;

(B) notice that the person, after exhausting administrative appeals, may file an action in district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(C) notice that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) notice of the earliest date the person may appeal.

(c) Applicant responsibilities. It is the responsibility of the applicant to obtain and send the board the recommendations of the prosecution, law enforcement, and correctional authorities regarding offenses. The applicant shall also furnish proof, in documentation acceptable to the board, that he or she has maintained a record of steady employment, supported his or her dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which he or she has been convicted.

Source Note: The provisions of this §821.22 adopted to be effective February 10, 2011, 36 TexReg 548

§821.23 Default Orders

(a) If a person waives their right to a hearing under §821.20 of this title (relating to Complaints), the board shall consider approving an order taking appropriate disciplinary action against the licensee, registrant or applicant as described in the written notice to the licensee, registrant or applicant.

(b) The licensee, registrant 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 imposing appropriate disciplinary action or an order of application denial.

(d) Should a licensee not appear for their appeal to the State Office of Administrative Hearings the Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the board to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the board to remove the case from the contested hearing docket and allow for informal disposition by the board.

Source Note: The provisions of this §821.23 adopted to be effective February 10, 2011, 36 TexReg 548

§821.24 Surrender of License

(a) Voluntary surrender.

(1) A licensee or registrant may voluntarily offer to surrender his or her license any time for any reason, without compulsion.

(2) The license or registration must be returned to the board by hand or certified mail.

license is liable for the same civil penalties provided for engaging in the prohibited activity without a license or while a license is suspended.

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

(i) The individual must pay a reinstatement fee set out at §821.4 of this title (relating to Fees) before issuance of the license under subsection (h) of this section.

Source Note: The provisions of this §821.25 adopted to be effective February 10, 2011, 36 TexReg 548

§821.26 Civil Penalty

(a) A person who violates the Texas Orthotics and Prosthetics Act (Act), Texas Occupations Code, Chapter 605, is subject to a civil penalty not to exceed \$200 for the first violation and \$500 for each subsequent violation. At the request of the board, the attorney general shall bring an action in the name of the state to collect a civil penalty under this section.

(b) Each day a violation of the Act, §§605.251 and 605.351 - 605.353 continues is a separate violation for the purpose of this section.

(c) A person, who attempts, offers, or contracts to practice the prosthetic or orthotic profession, is subject to a civil penalty for each person to whom prosthetic or orthotic services are or would be provided pursuant to the attempt, offer, or contract.

Source Note: The provisions of this §821.26 adopted to be effective February 10, 2011, 36 TexReg 548

§821.27 Program Accessibility

Board programs will be available in the English language. Any individual may access the board's programs including board meetings and examinations in a language other than English if the individual provides an interpreter or translator at the individual's expense.

Source Note: The provisions of this §821.27 adopted to be effective February 10, 2011, 36 TexReg 548

§821.28 Consumer Notification

Display of notice of licensure shall be as follows.

(1) All licensees, registrants and accredited facilities shall prominently display a notice in a waiting room or other area where it shall be visible to all patients. This notice shall be posted at all facilities where the licensee(s) practices and all board accredited facilities. This does not

include facilities that the licensee visits to treat patients, such as hospitals, nursing homes or patients' homes.

(2) The notice shall be printed on a sign in letters equal to or larger in size or font as the sign provided by the board to each accredited facility. Script or calligraphy prints are not allowed. The notice shall be worded according to specifications.

Source Note: The provisions of this §821.28 adopted to be effective February 10, 2011, 36 TexReg 548

§821.29 Petition for the Adoption of a Rule

(a) General. The following procedures shall apply to the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

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

(2) The petition shall be in writing, shall contain the petitioner's name, address and phone number, and shall describe the rule and the reason for it. However, if the executive director determines that more information is necessary to help the board in reaching a decision, the executive director may require that the petitioner resubmit the petition and that it contain:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule showing the words to be added or deleted from the current text, if any;

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

(D) the anticipated public benefits from adopting the rule or the anticipated injury or inequity that could result from the failure to adopt the proposed rule.

(3) The board may deny a petition that does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A) - (D) of this subsection if the executive director determines that the latter information is necessary.

(4) The executive director shall submit the petition to the board for its consideration and disposition at the first regular board meeting scheduled after receipt of the petition. If the next meeting is within 10 days of the date the petition is received, the executive director shall submit the petition to the board at the next regular meeting of the board.

(c) Denial or acceptance of the petition. The board may deny or accept the petition in whole or in part.

(1) If the board denies the petition, the executive director will notify the petitioner in writing of the board's action to deny and state the reason(s) for the denial.

(2) If the board accepts the petition the board will initiate the rule making process within 120 days from the date of submission of the petition under the Administrative Procedures Act, Government Code, Chapter 2001, Subchapter B.

(d) Subsequent petitions to adopt the same or similar rule. The executive director may refuse to forward subsequent petitions for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

Source Note: The provisions of this §821.29 adopted to be effective February 10, 2011, 36 TexReg 548

§821.30

Criminal History Evaluation Letter

(a) In accordance with Texas Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license, as that term is defined under Texas Occupations Code, §53.101, if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall complete and submit the request on a form prescribed by the department, accompanied by the criminal history evaluation fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The letter shall be issued not later than the 90th day after the date the department received the request.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the Criminal History Evaluation Letter.

Source Note: The provisions of this §821.30 adopted to be effective October 5, 2014, 39 TexReg 7738

§821.31

Licensing of Military Service Members, Military Veterans, and Military Spouses

(a) This section sets out licensing and registration procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing and registration of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(3) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

- (b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.
- (c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.
- (d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.
- (e) For an application for a license or registration submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing and registration or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.
- (f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The board shall issue a license or registration to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.
- (g) In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.
- (h) A military spouse who within the five years preceding the application date held the license or registration in this state that expired while the applicant lived in another state for at least six months is qualified for licensure or registration based on the previously held license or registration, if there are no unresolved complaints against the applicant and if there is no other bar to licensure or registration, such as criminal background or non-compliance with a board order.
- (i) If the board issues an initial license or registration to an applicant who is a military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing and registration requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license or registration is issued. If the applicant has not met all licensing and registration requirements of this state, the applicant must provide proof of completion at the time of the first application for license or registration renewal. A license or registration shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure or registration renewal.

Source Note: The provisions of this §821.31 adopted to be effective October 5, 2014, 39 TexReg 7738