

Title 22. Examining Boards

Part 37. Texas Board of Orthotics and Prosthetics

Chapter 821. Orthotics and Prosthetics

Amendments §§821.1, 821.2, 821.4, 821.5, 821.9, 821.10, 821.13, 821.16, 821.17, 821.20

New §821.30, §821.31

Proposed Preamble

The Texas Board of Orthotics and Prosthetics (board) proposes amendments to §§821.1, 821.2, 821.4, 821.5, 821.9, 821.10, 821.13, 821.16, 821.17, 821.20, and new §821.30 and §821.31, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

BACKGROUND AND PURPOSE

The proposal modifies the requirements for initial licensure for assistants and the scope of practice of licensed orthotic and prosthetic assistants. Additionally, the rules alter provisions regarding jurisprudence examinations, criminal history evaluations; the proposal also clarifies student residency requirements. The rules modify the board executive director's authority regarding closure of certain complaints.

In accordance with House Bill 2703, 82nd Legislature, Regular Session, 2011, the proposed amendments and new rules expand the type of individuals authorized to issue an order for orthotics and prosthetics.

The proposal also sets out new requirements and an associated fee for the issuance of criminal history evaluation letters, in accordance with Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, as required by House Bill 963, 81st Legislature, Regular Session, 2009.

The proposal also sets forth alternative licensure requirement procedures for military spouses, as mandated by Senate Bill 1733, 82nd Legislature, Regular Session, 2011, and codified in the Occupations Code, Chapter 55. The proposal includes rules mandated by Senate Bill 162 and House Bill 2254, 83rd Legislature, Regular Session, 2013 relating to the occupational licensing for military spouses. The proposal also allows verified military service members and military veterans credit of verified military service, training or education towards licensing, registration and apprenticeship requirements if the military service, training or education is relevant to the occupation.

The proposal results in part from statutory changes made during the 83rd Legislature, Regular Session, 2013, by the passage of Senate Bill 141 (SB 141), codified in the Occupations Code, Chapter 605. As a result of this legislation, this proposal sets forth a requirement of SB 141: clinical residency programs must be equivalent to or exceed National Commission on Orthotic and Prosthetic Education (NCOPE) standards. The passage of SB 141 also allows the issuance of a student registration certificate under additional circumstances than those contained in current rules, as reflected in this proposal.

The proposal is authorized by Occupations Code, Chapter 605, relating to the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities, Occupations Code, Chapter 53, regarding consequences of a criminal conviction and Occupations Code, Chapter 55, regarding license for a military service member or military spouse.

SECTION-BY-SECTION SUMMARY

The amendment to §821.1 expands the content covered by the Texas Board of Orthotics and Prosthetics rules, at 22 TAC Chapter 821, by adding criminal history evaluation letters, as required by House Bill 963, 81st Legislature, Regular Session, 2009; the amendment also adds alternative licensing requirements for military service members, military veterans and military spouses.

Amendments to §821.2 clarify and expand the definition of “assistant patient care service.” Additionally, pursuant to House Bill 2703, 82nd Legislature, 2011, Regular Session, the definitions of “orthotics” and “prosthetics” are amended to reflect the additional practitioners who can provide these services. Finally, the amendment to §821.2 adds “NCOPE” to this section and renumbers the remaining definitions accordingly.

The amendment to §821.4 establishes a \$50 fee for the issuance of a criminal history evaluation letter, as permitted by House Bill 963, 81st Legislature, 2009, Regular Session.

Amendments to §821.5 set forth requirements regarding the jurisprudence examination, a test all licensure applicants must complete as a requirement for licensure; this amendment also requires current licensees complete the jurisprudence examination once every other two-year license renewal period as a part of their licensure requirements.

The amendments to §821.9 reference the new requirements for academic degree and clinical residency to conform to statutory requirements of Senate Bill 141, made during the 83rd Legislature, Regular Session, 2013.

The amendment to §821.10 sets forth the circumstances under which licensed orthotic and prosthetic/orthotic assistants may perform critical care events as well as the settings in which they may practice. Furthermore, amendments to this subsection allow a licensed physician to serve as the assistant’s supervisor and allow the assistant to count completion of an allied health related associate’s degree or certificate towards qualification for licensure.

The amendment to §821.13 extends the circumstances under which students who are enrolled in orthotic and prosthetic graduate programs may be granted student registration.

The amendments to §821.16 specify that the board will only accept a professional clinical residency if the residency meets NCOPE standards, conforming to statutory requirements of Senate Bill 141, passed in the 83rd Legislature, Regular Session, 2013.

Amendments to §821.17 require each licensee complete the jurisprudence examination every other license renewal period.

The amendment to §821.20 modifies the authority of the board's executive director regarding the closure of complaints.

New §821.30 establishes the procedures for the issuance of criminal history evaluation letters as required by House Bill 963, 81st Legislature, 2009, which amended Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, relating to the eligibility of certain applicants for occupational licenses.

New §821.31 establishes alternative licensure requirement procedures for military service members, military veterans, and military spouses.

FISCAL NOTE

Yvonne Feinleib, Acting Executive Director, has determined that for each year of the first five years the sections are in effect, there will be a fiscal impact to state government as a result of enforcing or administering the rules as proposed. There will be an increase in general revenue from persons requesting criminal history letters each year of the first five years the sections are in effect. It is estimated that approximately four individuals each year will request criminal history letters at a fee of \$50 for each letter. The annual revenue is, therefore, projected to increase by \$200. There is no fiscal implication to local governments as a result of the proposed sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Feinleib has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the proposed rules. This determination was made because the economic costs imposed by the proposed amendments and new rules are to individual licensees and applicants but do not impose any new requirements on these businesses.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the rules as proposed with the exception of persons who choose to request a criminal history evaluation letters or take the jurisprudence exam. There is an anticipated economic cost of \$50 for each requested criminal history letter. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Feinleib has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing and administering the sections is increased number of individuals served by the practice of orthotics and prosthetics and effective regulation of the practice of orthotics and

prosthetics in Texas, which will protect and promote public health, safety, and welfare and ensure that statutory directives are carried out.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Acting Executive Director, Texas Board of Orthotics and Prosthetics, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, TX 78714-9347 or by email to op@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments and new rules are authorized by Occupations Code, §605.154, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The amendments and new rules affect Occupations Code, Chapters 53, 55 and 605.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

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

Regular Print = Current language

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

§821.1. Introduction.

(a) (No change.)

(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; **[and]** petition for rule making, criminal history evaluations letters, and alternative licensing requirements for military service members, military veterans, and military spouses.

§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) – (2) (No change.)

(3) Assistant patient care service--Includes comprehensive patient care involving pedorthics, [pedorthotics, shoe fitting,] breast prostheses, [prosthesis, and post-mastectomy services,] pressure gradient garments, [and orthotic fitting as defined in the scopes of practice established by the American Board for Certification in Orthotics, Prosthetics and Pedorthics.] 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) – (25) (No change.)

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

(29) [(28)] Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under a documented [an] order from a licensed physician, chiropractor, [or] 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) [(29)] 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) [(30)] Person--An individual, corporation, partnership, association, or other organization.

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

(33) [(32)] 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) [(33)] 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) [(34)] Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under a documented [an] order from a licensed physician, chiropractor, [or] 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) [(35)] Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.

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

(38) [(37)] 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) [(38)] 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) [(39)] 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) [(40)] 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) [(41)] 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) [(42)] Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.

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

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

§821.4. Fees.

(a) - (c) (No change.)

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

(1) - (24) (No change.)

(25) retired voluntary charity care prosthetist/orthotist license renewal--\$200;

[and]

(26) prosthetist with orthotist assistant or orthotist with prosthetist assistant license renewal--\$350; and[.]

(27) criminal history evaluation letter--\$50.

(e) - (f) (No change.)

§821.5. General Application Procedures.

(a) – (i) (No change.)

(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.

§821.9. Licensing by Examination.

(a) (No change.)

(b) General requirements. To qualify for a license an applicant must successfully complete:

(1) (No change.)

(2) the residency requirements for the requested license as set out in §821.16 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency); and

(3) (No change.)

(c) Academic requirements for an orthotist license. The applicant must hold **[at least]** a bachelor's or graduate degree in:

(1) – (2) (No change.)

(d) Academic requirements for a prosthetist license. The applicant must hold **[at least]** a bachelor's or graduate degree in:

(1) – (2) (No change.)

(e) Academic requirements for a prosthetist/orthotist license. The applicant must hold **[at least]** a bachelor's or graduate degree in:

(1) – (2) (No change.)

(f) Post-graduate requirements for the orthotist 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 **[not less than 1,900 hours of]** clinical orthotic residency as described in §821.16 of this title [(relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency)]. (referenced above in (2))

(2) (No change.)

(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 **[not less than 1,900 hours of]** clinical prosthetic residency as described in §821.16 of this title.

(2) (No change.)

(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 **[not less than 1,900 hours of]** clinical orthotic residency and **[not less than 1,900 hours]** of clinical prosthetic residency as described in §821.16 of this title.

(2) (No change.)

(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 **[not less than 1,900 hours of]** clinical prosthetic residency as described in §821.16 of this title.

(2) (No change.)

(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 **[not less than 1,900 hours of]** clinical orthotic residency as described in §821.16 of this title.

(2) (No change.)

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

(a) (No change.)

(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, or licensed physician. The supervising licensed orthotist, **[or]** supervising

licensed prosthetist/orthotist, or supervising licensed physician 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)], (omit - referenced in (1) above) while under the immediate supervision of a licensed orthotist, licensed prosthetist/orthotist, or a licensed physician [**practitioner licensed in the appropriate category**]. Other than as set forth in this subsection, the supervising licensed orthotist, [**or**] supervising licensed prosthetist/orthotist, or supervising licensed physician shall supervise and direct the licensed orthotist assistant as [**the supervisor**] each of these licensed practitioners determines. However, the responsibility of the supervising licensed orthotist, [**or**] supervising licensed prosthetist/orthotist, or supervising licensed physician [**supervisor**] always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist, [**or**]-supervising licensed prosthetist/orthotist, or supervising licensed physician for violations of the Act or this chapter committed by the licensed assistant.

(2) A licensed prosthetist assistant provides ancillary patient care services [**and assistant 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 (relating to Definitions), while under the immediate supervision of a [**practitioner**] licensed prosthetist or licensed prosthetist/orthotist [**in the appropriate category**]. 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 [**the supervisor**] each of these licensed practitioners determines. However, the responsibility of the supervising licensed prosthetist or licensed prosthetist/orthotist [**supervisor**] 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) – (4) (No change.)

(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 an allied health related associate’s degree, certificate, or coursework from a college or university accredited by a regional accrediting organization such as the Southern Association of [**Schools and**] Colleges and Schools that included at a minimum:

(A) – (C) (No change.)

(2) (No change.)

(d) (No change.)

§821.13. Student Registration.

(a) (No change.)

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

(1) – (2) (No change.)

(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); **[and]**

(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); **[or]**

(B) (No change.)

(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) – (i) (No change.)

§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 [the] standards and those set forth in this chapter.

(b) Clinical residency programs must be equivalent to current NCOPE standards.

[(b) Length of clinical residency. The residency shall consist of at least 1,900 hours in orthotics or prosthetics, including a research project. The 1,900 hours in each discipline must be completed in a period of not more than two consecutive years.]

(c) Residency Conditions. The resident's involvement in patient care must meet current NCOPE standards.

(d) [(c)] 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) [(d)] 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) [(e)] 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) [(f)] Responsibilities of the program director.

(1) Each program director must meet the current NCOPE requirements.

(2) [(1)] Prosthetic and orthotic supervising licensee-to-resident ratio shall not exceed one Texas licensed practitioner to two residents.

(3) [(2)] The program director shall maintain documentation of residents' agreements.

(4) [(3)] 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) [(4)] 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) [(g)] 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 [1,900 hours] professional clinical residency, as required by NCOPE.

(i) [(h)] 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.

§821.17. License Renewal.

(a) (No change.)

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

(1) – (6) (No change.)

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

(c) - (h) (No change.)

§821.20. Complaints.

(a) Complaint procedures.

(1) – (4) (No change.)

(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 **[complaints]** enforcement committee.

(6) – (7) (No change.)

(8) If the committee determines that there are insufficient grounds to support the complaint, the executive director **[committee]** 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) (No change.)

(b) – (e) (No change.)

§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.

§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.

