

PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.2, 821.4, 821.8, 821.10, 821.15, 821.30

The Texas Board of Orthotics and Prosthetics (board) proposes amendments to §§821.2, 821.4, 821.8, 821.10, and 821.15 and new §821.30, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

BACKGROUND AND PURPOSE

The proposed amendments modify the requirements for initial licensure for assistants and the scope of practice of licensed orthotic and prosthetic assistants. The proposed amendments also clarify prescriptions and their authorized sources in accordance with House Bill 2703, 82nd Legislature, 2011, Regular Session, which amended Occupations Code, Chapter 605, related to the regulation of orthotists and prosthetists, and specify the qualifications for uniquely qualified applicants.

The proposal also sets out new requirements and an associated fee for issuing criminal history evaluation letters, as required by House Bill 963, 81st Legislature, 2009, Regular Session, which amended Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, relating to the eligibility of certain applicants for occupational licenses.

SECTION-BY-SECTION SUMMARY

The amendment to §821.2 eliminates the definition of "assistant patient care service" from the orthotic and prosthetic assistant scope of practice; replaces the word "order" with "a written or electronic prescription" and modifies the authorized sources in accordance with House Bill 2703, 82nd Legislature, 2011, Regular Session, which amended Occupations Code, Chapter 605, related to the regulation of orthotists and prosthetists

The amendment to §821.4 establishes a \$50 fee for the issuance of a criminal history evaluation letter.

The amendment to §821.8 specifies the experience requirements for uniquely qualified applicants who lack certain degrees.

The amendment to §821.10 eliminates the definition of "assistant patient care services" from the scope of practice for orthotic and prosthetic assistants and requires an associate's degree for initial licensure as an orthotic and prosthetic assistant.

The amendment to §821.15 prohibits contact with or solicitation of patients by facility personnel.

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.

FISCAL NOTE

David Olvera, Executive Director, has determined that for each year of the first five years the proposed 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. Approximately four individuals are estimated to request criminal history letters at a fee of \$50 for each letter annually. The annual revenue is 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

Mr. Olvera has also determined that there will be no economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is an anticipated economic cost of \$50 to persons who are required to comply with the sections as proposed when requesting criminal history evaluation letters. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Olvera 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 to effectively regulate the practice of orthotics and prosthetics in Texas, which will protect and promote public health, safety, and welfare.

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 David Olvera, 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 rule 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 rule affect Occupations Code, Chapter 605.

§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 pedorthotics, shoe fitting, breast prosthesis and post-mastectomy services, and orthotic fitting as defined in the scopes of practice established by the American Board for Certification in Orthotics, Prosthetics and Pedorthics.]

(3) [(4)] Board--The Texas Board of Orthotics and Prosthetics.

(4) [(5)] CAAHEP--The Commission on Accreditation of Allied Health Education Programs.

(5) [(6)] Clinical residency for an assistant--An assistant-level experience of at least 1,000 hours directly supervised by a practitioner.

(6) [(7)] Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner in an accredited facility.

(7) [(8)] Clinical resident--A person who is completing a clinical residency for a professional or a clinical residency for an assistant.

(8) [(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.

(9) [(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.

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

(11) [(12)] Department--Department of State Health Services.

(12) [(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.

(13) [(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.

(14) [(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, upholstery, 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.

(15) [(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.

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

(17) [(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.

(18) [(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.

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

(20) [(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.

(21) [(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.

(22) [(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.

(23) [(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.

(24) [(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.

(25) [(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.

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

(27) [(28)] Orthotics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under a written or electronic prescription [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.

(28) [(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.

(29) [(30)] Person--An individual, corporation, partnership, association, or other organization.

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

(31) [(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.

(32) [(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.

(33) [(34)] Prosthetics--The science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under a written or electronic prescription [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.

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

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

(36) [(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.

(37) [(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.

(38) [(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.

(39) [(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.

(40) [(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.

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

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

(43) [(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.)

§821.8.Acquiring Licensure as a Uniquely Qualified Person.

(a) (No change.)

(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) - (2) (No change.)

(3) Applicants without a degree. A person applying for a single-profession license as a uniquely qualified person but who lacks [without] a degree for a single-profession license from a four-year [four year] college or university must possess 15 [obtain fifteen] years of extensive applicable orthotic and/or prosthetic critical care practice experience. The 15 years of experience shall be completed within 18 months of the application date, absent good cause for failure to meet the 18-month deadline. A person applying for a dual-profession license as a uniquely qualified person but who lacks a degree from a four-year college or university must possess 25 years of extensive applicable orthotic and prosthetic critical care practice experience. The 25 years of experience shall be completed within 18 months of the application date, absent good cause for failure to meet the 18-month deadline. Applicants for either a single or dual profession license shall [These applicants must] show proof of 45 [forty five] hours of relevant continuing education credit within the five years before the date of license application. The board shall [will] approve the experience and continuing education requirements

before an applicant for either a single or dual profession license is granted exam eligible status. These applicants shall [must] pass the appropriate state exam outlined in §821.9(c) of this title (relating to Licensing by Examination).

(4) - (5) (No change.)

(c) - (e) (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. 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 practitioner licensed in the appropriate category. 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 the supervisor determines. However, the responsibility of the supervisor 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 [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, while under the immediate supervision of a practitioner licensed 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 determines. However, the responsibility of the 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 associate's degree [coursework] from a college or university accredited by a regional accrediting organization such as the Southern Association of Schools and Colleges that included at a minimum:

(A) - (C) (No change.)

(2) (No change.)

(d) (No change.)

§821.15.Accreditation of Prosthetic and Orthotic Facilities.

(a) - (r) (No change.)

(s) Contact or solicitation by facility personnel. Individuals are prohibited from directly contacting or soliciting patients in regards to orthotic or prosthetic products, services, or other services provided by the facility of which they are employed

or affiliated without a documented order or request, obtained prior to contact, from a licensed member of the patient's current healthcare treatment team.

§821.30.Criminal History Evaluation Letter.

(a) In accordance with 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 (certificate, registration, permit, etc.) if the person:

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

(2) has reason to believe that the person is ineligible for the license (certificate, registration, permit, etc.) 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.

(c) 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.

(d) 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 letter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2013.

TRD-201300579

David Kercheval, Chair

Texas Board of Orthotics and Prosthetics

Earliest possible date of adoption: March 24, 2013