

The Texas Medical Board (Board) proposes the repeal of current Chapter 188, concerning Perfusionists, §§188.1 – 188.15, §§188.17 – 188.24, §188.26, §§188.28 – 188.30.

The Board also proposes new Chapter 188, concerning Perfusionists, §§188.1 – 188.14.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 188 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §188.1, Definitions, defines terms used in new Chapter 188.

New §188.2, Meetings, explains how Advisory Committee meetings are conducted.

New §188.3, General Requirements for Licensure, outlines the general licensure requirements for a Texas Perfusionist license.

New §188.4, Educational Requirements, explains the educational requirements recognized in §603.254 of the Act, and completion of an educational program accepted by the American Board of Cardiovascular Perfusion (ABCP) for examination purposes.

New §188.5, Competency Examinations, explains the perfusion examination and credentialing requirements for licensure.

New §188.6, Procedural Rules for Licensure Applicants, explains the procedure by which the Executive Director may offer an applicant in order for the applicant to obtain licensure.

New §188.7, Provisional Licenses, explains the requirements and process for provisional licensure.

New §188.8, Supervision Standards, describes the requirements of a supervising licensee.

New §188.9, License Registration and Renewal, outlines the general requirements of licensure registration and renewal.

New §188.10, Biennial Continuing Education (CE) Requirements, explains the license holder's course requirements regarding completion of CE and exemptions.

New §188.11, Relicensure, describes the requirements for a licensee who has retired or surrendered their license and seeks to be re-licensed.

New §188.12, Code of Ethics, explains the requirements that a Perfusionist must conform to regarding all state and federal laws, rules, and professional standards.

New §188.13, On-Going Reporting Requirements, states that perfusionists must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §188.14, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §603.401 of the Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link:

<https://forms.office.com/g/eEuTm0fpCg>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §603.151, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

§188.1. Purpose.

§188.2. Definitions.

§188.3. Meetings.

§188.4. Qualifications for Licensure.

§188.5. Procedural Rules for Licensure Applicants.

- §188.6. Licensure Documentation.
- §188.7. Provisional Licensed Perfusionists.
- §188.8. Temporary Licensure.
- §188.9. License Renewal.
- §188.10. Code of Ethics.
- §188.11. Perfusionist Scope of Practice.
- §188.12. Supervision.
- §188.13. Grounds for Denial of Licensure and for Disciplinary Action.
- §188.14. Discipline of Perfusionists.
- §188.15. Disciplinary Guidelines.
- §188.17. Complaint Procedure Notification.
- §188.18. Investigations.
- §188.19. Third Party Reports to the Board.
- §188.20. Impaired Perfusionists.
- §188.21. Procedure.
- §188.22. Compliance.
- §188.23. Construction.
- §188.24. Continuing Education.
- §188.26. Exemption from Registration Fee for Retired Perfusionists Providing Voluntary Charity Care.
- §188.28. Exemption from Registration Fee for Retired Perfusionists.
- §188.29. Voluntary Relinquishment or Surrender of a License.
- §188.30. Exemption from Licensure for Certain Military Spouses.

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The new rules are proposed under the authority of the Texas Occupations Code Annotated, §603.151, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

<rule>

§188.1. Definitions.

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

- (1) Act -- Texas Occupations Code, Chapter 603.
- (2) Medical Practice Act -- Texas Occupations Code, Title 3, Subtitle B, as amended.

§188.2. Meetings.

Advisory Committee meetings shall be conducted in compliance with §603.057 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

§188.3. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in Chapter 603, Subchapter F, of the Act, and submit:

- (1) the board required application form;
- (2) payment of the required fee of \$180.00, and applicable fees and surcharges, as applicable;
- (3) required documentation including, but not limited to:
 - (A) an educational transcript;
 - (B) a certified transcript of examination scores;
 - (C) a current national certification;
 - (D) a birth certificate or other similar proof of age;
 - (E) Professional or Work History Evaluation forms demonstrating or relating to the practice of perfusion for the preceding 5 years from the date of the application;
 - (F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);
 - (G) FBI/DPS Fingerprint Report;
 - (H) documentation of alternate name or name change, if applicable;
 - (I) arrest records, if applicable;
 - (J) malpractice records, if applicable.
 - (K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;
 - (L) military orders or DD214, if applicable;
 - (M) evidence of passage of Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

§188.4. Educational Requirements.

In addition to the education requirements recognized in §603.254 of the Act, completion of an educational program accepted by the American Board of Cardiovascular Perfusion (ABCP) for examination purposes is also acceptable.

§188.5. Competency Examinations.

(a) A perfusion examination administered by the American Board of Cardiovascular Perfusion (ABCP) with a passing score is acceptable.

(b) An applicant must demonstrate a credential as a Certified Clinical Perfusionist (CCP) within 3 years immediately preceding the date of application.

§188.6. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with Chapter 603 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§188.7. Provisional Licenses.

(a) A provisional license applicant must meet general standards in §603.257 of the Act.

(b) Applications for a provisional license will be processed in accordance with §§603.259 and 603.302 of the Act.

(c) Applicants must:

(1) submit board required application form;

(2) pay the required fee of \$180.00, and additional fees and surcharges, as applicable;

(3) meet the general requirements as set forth in this §188.3 of this title, with the exception of exam scores and national certification; and

(4) submit any other required documentation deemed necessary to process an application, including proof of a qualified supervisor.

(d) An applicant who fails the ABCP examination may retake the examination no more than four times.

§188.8. Supervision Standards.

In addition to the requirements in §603.259 of the Act, the supervising licensee must:

(a) have an unrestricted license in Texas;

(b) have no pending investigation;

- (c) not be a relative or family member;
- (d) have never had a license revoked, suspended, restricted or cancelled for cause; and
- (e) meet any other eligibility criteria established by the board.

§188.9. License Registration and Renewal.

- (a) Licensees must renew the registration of their license on a biennial basis by:
 - (1) completing a board renewal form;
 - (2) submitting payment of a biennial registration fee of \$362.00, and additional fees and surcharges, as applicable; and
 - (3) completing biennial continuing education (CE) required under §188.10 of this chapter; and
 - (4) providing other relevant information requested by board staff.
- (b) Failure to renew before a license's expiration date will result in increased charges as follows:
 - (1) 1-90 days late -- renewal fee plus one quarter of the renewal fee; and
 - (2) 91 days-1 year late -- renewal fee plus one half of the renewal fee.
- (c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§188.10. Biennial Continuing Education (CE) Requirements.

- (a) As part of registration renewal, a license holder must complete Continuing Education (CE) as follows:
 - (1) completion of a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission; and
 - (2) completion of the annual ABCP certification CE requirements; or
 - (3) complete 30 hours of CE as follows:
 - (A) fifteen hours designated as ABCP approved;
 - (B) completion of 40 cases as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(b) Documentation of CEs claimed must be maintained and produced upon request by the board.

(c) Military service members are subject to the same CE requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(d) Carry forward of CE credit is allowed as follows:

(1) excess hours earned in a biennium can only be applied to the immediately following biennial requirements; and

(2) no hours can be carried forward past a single renewal period.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the state;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§188.11. Relicensure.

(a) For a licensee who retired or surrendered their license (including cancellation for non-payment) and is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$180.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §188.3 of this title must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) Applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Texas Occupations Code.

§188.12. Code of Ethics.

In accordance with §603.151 of the Act, perfusionists must conform to all state and federal laws, rules, and professional standards.

§188.13. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

§188.14. Procedural Rules.

(a) In accordance with §603.401 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls, including, but not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.