Air Conditioning and Refrigeration Contractors Law
Occupations Code, Title 8, Chapter 1302
Effective 6/14/2013

Subchapter E. Air Conditioning and Refrigeration Contractors Advisory Board

§ 1302.201. Advisory Board Membership

The air conditioning and refrigeration contractors advisory board consists of nine members appointed by the presiding officer of the commission, with the commission's approval, and two ex officio nonvoting members. One member of the advisory board must be a public member.

§ 1302.202. Appointed Members

(a) Except for the public member and the building contractor member, each appointed advisory board member must be experienced in the design, installation, construction, maintenance, service, repair, or modification of equipment used for environmental air conditioning, commercial refrigeration, or process cooling or heating. Other than the appointed member, of the appointed members:
  (1) one must be an official of a municipality with a population of more than 250,000;
  (2) one must be an official of a municipality with a population of not more than 250,000;
  (3) five must be full-time licensed air conditioning and refrigeration contractors, as follows:
    (A) one member who holds a Class A license and practices in a municipality with a population of more than 250,000;
    (B) one member who holds a Class B license and practices in a municipality with a population of more than 250,000;
    (C) one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; and
    (D) one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; and
    (E) one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality; and
  (4) one must be a building contractor who is principally engaged in home construction and is a member of a statewide building trade association.

(b) At least one advisory board member appointed under Subsection (a)(3) must be an air conditioning and refrigeration contractor who employs organized labor.

§ 1302.203. Ex Officio Members

The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board.

§ 1302.204. Advisory Board Duties

(a) The advisory board shall advise the commission in adopting rules and in administering and enforcing this chapter.

(b) The advisory board shall advise the commission in setting fees under this chapter.

§ 1302.205. Terms; Vacancy

(a) Appointed advisory board members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year.
(b) If a vacancy occurs during an appointed member's term, the presiding officer of the commission, with the commission's approval, shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

§ 1302.206. Presiding Officer

The presiding officer of the commission, with the commission's approval, shall designate one member of the advisory board to serve as presiding officer of the board for two years.

§ 1302.207. Compensation; Reimbursement

An appointed advisory board member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as an advisory board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

§ 1302.208. Meetings

(a) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer.
(b) The advisory board shall meet in this state at a place designated by the board.

AIR CONDITIONING AND REFRIGERATION
Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 75

Advisory Board

(a) The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the commission on adopting rules, enforcing and administering the Act, and setting fees.

(b) Expense reimbursements to board members:

(1) are limited to authorized expenses incurred while traveling to and from board meetings; and

(2) must be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADVISORY BOARD MEETING

Meeting of September 8, 2015
North Campus Meeting Room, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer David Logan called the meeting to order at 9:00 a.m.

Members present were David Logan, Dolores Compean, Pat Kiley, Mark Wood, Michael Rosenberg, Trebor Brown, and David Morris. A roll call verified that a quorum was present. Absent members were David Yelovich and Neal Baker.

Presiding Officer David Logan moved to agenda item C, Training for Board Members – Wendy Pellow, Assistant General Council gave training on the Open Meeting Act, Public Information Act and Administrative Procedures Act.

Presiding Officer David Logan moved to agenda item D, Approval of Minutes – June 11, 2014. Motion by Board Member Dolores Compean, seconded by Board Member Mark Wood, to approve the minutes as presented. The motion was passed by unanimous vote.

Presiding Officer David Logan moved to agenda item E, TDLR Video Presentation on Public Comment Process – Bill Kuntz. Executive Director informed the Board Members that the video was not available at this time.

Public Comment. Todd McAlister spoke during public comments regarding licensed presiding officers for certain programs.

Presiding Officer David Logan moved to agenda item G, Staff Reports. Bill Kuntz, Executive Director, and agency staff gave reports and answered questions from the Board. Bill Kuntz gave a Legislative update, military services training was recognized for licensing and Supreme Court ruling. John Lain, Compliance Division, reported on recent inspection activities, speaking engagements and training including outreach presentations, examination review team activities and recent developments. John Lain also introduced Stan Johnson as the new Program Specialist. Kim Whitt, Education Team Leader of Education and Examination Division presented the staff report update for the agency and introduced new staff members Marco Rodriguez and Cari Hodges. Kim Whitt also informed the Board Members that exam fees have been lowered under the new contract with PSI. Trevor Theilen, Prosecutor with the Enforcement Division reported on outreach efforts, case highlights, sting operations, statistics and recent developments. Lisa Houdek, Program Supervisor with Licensing Division reported on licensing statistics, new and renewal licenses and military review.

Presiding Officer David Logan moved to agenda item H, Discussion and possible action to recommend changes to the Penalty Matrix for Air Conditioning and Refrigeration Contractors. – Christina Kaiser, Enforcement Director made a presentation of the background of the penalty matrix and explained the changes and an outline of the proposed changes to the Penalty Matrix. She explained the penalties and sanctions given to licensees for violating the laws and rules of the state. Motion by Board Member Pat Kiley, seconded by Board Member Mark Brown, to recommend the proposed changes of the Penalty Matrix

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for Air Conditioning and Refrigeration Contractors to the Commission and to post with the Registry. The motion was passed by unanimous vote.

Presiding Officer David Logan moved to agenda item I, Recommendations for agenda items for next Board meeting. Agenda Items for next meeting will be addressed at a later date. The "Citizens Comment" video will be placed on the next agenda.

Presiding Officer David Logan moved to agenda item J, Discussion of date, time and location of next Board meeting. The next meeting date will be determined at a later date.

Presiding Officer David Logan moved to agenda item K, Adjournment. The meeting adjourned at 10:31 a.m.

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David Logan, Presiding Officer
Air Conditioning and Refrigeration Contractors Advisory Board

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AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADVISORY BOARD MEETING

Meeting of June 11, 2014
North Campus Meeting Room, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer David Munoz called the meeting to order at 9:30 a.m.

Members present were David Munoz, Dolores Compean, Pat Kiley, David Logan, Michael Rosenberg, Richard Vrana, and Dave Yelovich. A roll call verified that a quorum was present.

Presiding Officer David Munoz moved to agenda item C, Approval of Minutes – February 26, 2014. David Logan, seconded by Pat Kiley, moved to approve the minutes as presented. The motion was passed by unanimous vote.

Presiding Officer David Munoz moved to agenda item D, Public Comment. There were no public comments.

Presiding Officer David Munoz moved to agenda item E, Staff Reports. Brian Francis, Deputy Executive Director, and agency staff gave reports and answered questions from the Board. Brian Francis discussed the agency's Strategic Planning process and its theme of "Smaller, Smarter Government"; also a possible 3rd tier regarding ACR licenses; and the agency's upcoming LAR process. David Gonzales, Compliance Division, reminded everyone of the Summit taking place in the afternoon; and reported that staff has reviewed the request for a reciprocity agreement with Alabama and is against approving it at this time; and that staff gave a presentation at the Greater Houston Building Association. Ray Pizarro, Education & Examination Division, thanked John Lain, TDLR's ACR Program Specialist, for his assistance with exam related questions; and reported on exam and continuing education statistics, and new fees and application process for Continuing Education providers. Trevor Theilen, Enforcement Division, reported on outreach efforts by the Division; sting activities; and on case statistics and highlights. Lisa Houdek, Licensing Division, reported on licensing statistics.

Presiding Officer David Munoz moved to agenda item F, Discussion and possible recommendation on the proposed amendments to an existing rule at 16 Texas Administrative Code, Chapter 75, Section 75.110, regarding applicable codes, and adoption of the 2012 editions of the Uniform Mechanical Code (UMC), International Residential Code, International Mechanical Code (IMC), International Fuel Gas Code, and other applicable codes, including public comments received on the proposed amendments, and work group report and recommendations on the proposed amendments presented at the February 26, 2104, advisor board meeting. David Logan, seconded by Dave Yelovich, moved to approve the proposed amendments including the recommendations from Texas Association of Builders and the edits discussed, with the effective date of January 1, 2015. The motion was passed by unanimous vote.

Presiding Officer David Munoz moved to agenda item G, Recommendations for agenda items for next Board meeting. Agenda items included discussing: tiered licensing; Open Forum/Summit; education on newly adopted codes.

Presiding Officer David Munoz moved to agenda item H, Discussion of date, time and location of next Board meeting. The next meeting date will be determined at a later date.

Presiding Officer David Munoz moved to agenda item I, Adjournment. The meeting adjourned at 10:28 a.m.

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David Munoz, Presiding Officer
Air Conditioning and Refrigeration Contractors Advisory Board

AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADVISORY BOARD MEETING

Meeting of February 26, 2014
North Campus Meeting Room, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer David Munoz called the meeting to order at 9:30 a.m.

Members present were David Munoz, David Logan, Michael Rosenberg, Richard Vrana, Dave Yelovich, and Mark Wood. A roll call verified that a quorum was present.

Presiding Officer David Munoz moved to agenda item D, Approval of Minutes – November 14, 2013. Richard Vrana, seconded by Michael Rosenberg, moved to approve the minutes as presented. The motion was passed by unanimous vote.

Presiding Officer David Munoz moved to agenda item E, Public Comment. Comments were heard from John Mata with the International Association of Plumbing & Mechanical Officials, and Doug Garrett with Home Performance and Comfort.

Presiding Officer David Munoz moved to agenda item F, Staff Reports. Bill Kuntz, Executive Director, and agency staff gave reports and answered questions from the Board. Bill Kuntz discussed the agency's ambitious and comprehensive Strategic Planning process, and the legislative Interim Charges report. David Gonzales, Compliance Division, reported on the request for a reciprocity agreement with Alabama, the postponement of the Energy Efficiency Forum, and public outreach efforts by the Division. Kim Whitt and Ray Pizarro, Education & Examination Division, reported on exam and continuing education statistics, exam reviews with Subject Matters Experts (SMEs), and an increase in the exam pass rate for the Air Conditioning and Refrigeration program. Trevor Theilen, Enforcement Division, reported on case statistics and highlights, and outreach efforts by the Division. Lisa Houdek, Licensing Division, reported on licensing statistics.

Presiding Officer David Munoz moved to agenda item G, Work group report and possible recommendation on future proposed amendments to 16 Texas Administrative Code, Chapter 75, Section 75.110, regarding applicable codes, and adoption of the 2012 editions of the Uniform Mechanical Code (UMC), International Residential Code, International Mechanical Code (IMC), International Fuel Gas Code, and other applicable codes. Richard Vrana reported that the work group met and reviewed the 2012 IMC and UMC Codes and determined that there are not a lot of significant changes that would create any hardships or financial burdens on contractors or homeowners. David Gonzales, reporting for Dolores Compean, noted that his findings are similar to Mr. Vrana's, and with this effort the state is trying to establish a baseline going forward, recognizing that cities have the authority to amend or alter the codes. David Logan reported that some cities across the state have already adopted these codes without any huge financial burdens on anyone. Bill Kuntz thanked the work group members for their participation and efforts.

Presiding Officer David Munoz moved to agenda item H, Discussion and possible recommendation by the Advisory Board regarding the work group report and recommendation on future proposed amendments to 16 Texas Administrative Code, Chapter 75, Section 75.110, regarding applicable codes, and adoption of the 2012 editions of the Uniform Mechanical Code, International Residential Code,

International Mechanical Code, International Fuel Gas Code, and applicable codes (see Agenda Item G). No action was taken on this item. David Munoz thanked the work group members again for their participation. David Munoz requested that this agenda item be brought back at the next meeting for action.

Presiding Officer David Munoz moved to agenda item I, Recommendations for agenda items for next Board meeting. Agenda items included discussing: the UMC Code; the proposed rules and the public comments received on the proposed rules; and the updated licensing statistics and graphs.

Presiding Officer David Munoz moved to agenda item J, Discussion of date, time and location of next Board meeting. The next meeting date will be determined at a later date.

Presiding Officer David Munoz moved to agenda item K, Adjournment. The meeting adjourned at 10:29 a.m.

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David Munoz, Presiding Officer
Air Conditioning and Refrigeration Contractors Advisory Board

Air Conditioning & Refrigeration Contractors
(ACR)

Texas Occupations Code, Chapter 1302 **16 Texas Administration Code, Chapter 75**

Class A:

1st Violation	2nd Violation	3rd Violation
Reprimand to $1,000	$500 to $2,000	$1,000 to $4,000 per day not corrected and/or 6-month probated suspension to 1-year full suspension

• ~~Failed to provide registration and picture identification to the seller when purchasing refrigerant~~	~~75.26(b)~~

Administrative Violations

• Engaged in air conditioning contracting in city without notifying city of license	1302.262(a)
• Failed to provide a revised insurance certificate to the Department within 30 days of change in business affiliation	75.40(d), 75.70(h)(2)
• Failed to notify Department of change of address, company location, company telephone number, or business affiliation within 30 days of the change	75.70(a)(4), 75.70(h)(1), ~~75.71(a),~~ 75.73(d)
• Failed to notify Department of assignment of license to company	75.71(a)(1)
• Failed to notify Department that a licensee has left within 30 days	75.71(a)(1)
• Failed to provide copy of assumed name certificate to the Department	75.71(a)(2)

Advertising Violations

• Failed to include license number in advertisement which requires the license number	75.71(h)
• Used the designation "certified technician" when did not meet the requirements of certification	1302.508, 75.28(b), 75.73(a)(5)

Public Notice Violations

• Failed to include Department information on proposal, invoice, contract, or sign displayed in place of business	75.71(i)
• Failed to include license number on proposal or invoice	75.71(i)
• Failed to include company name, address and phone number on proposal or invoice	75.71(i)

• Failed to display or incorrectly displayed the company name and license number on vehicles which require it	75.71(g)
• Failed to display company name and license number on sign at job site visible from street	75.71(g)

Class B:

1st Violation	2nd Violation	3rd Violation
$1,000 to $4,000 and/or up to 6-month probated suspension	$3,000 to $5,000 plus 1-year probated suspension to 1-year full suspension	$3,000 to $5,000 per day not corrected plus 1-year full suspension to revocation

• ~~Failure to provide direct personal supervision~~	~~75.70(a)(5), 75.71(e)~~

Administrative Violations

• Failed to furnish to municipalities a list of authorized agents who may pull permits under the license	75.70(a)(6), 75.71(a)(5)
• ~~Failure~~ Failed to provide invoice to consumer	75.71(i)

Records Violations

• ~~Failure by company~~ Failed to maintain records showing employment status of assigned licensee	75.71(a)(3)
• Failed to make records available to the Department for at least three years after completion of a job	75.71(a)(6)
• ~~Failure by company~~ Failed to furnish a copy of licensee employment records at the request of the Department	75.71(a)(4)

Insurance Violations

• Failed to maintain insurance	75.40(a), 75.40(b), 75.70(i)
• Obtained insurance from a company not authorized to sell liability insurance in Texas	75.40(c)
• Failed to provide proof of insurance upon request of the Department	75.40(d), 75.70(i)
• Failed to provide insurance information to a consumer upon request	75.40(g)
• Performed or offered to perform air conditioning or refrigeration contracting to the general public while having insurance waiver	75.40(f)

Mechanical Integrity Violation

• Failed to obtain permit ~~or call for inspection~~	1302.401(a)(2), 1302.401(b)(1),-75.100(e)(1)

Unlicensed Activity

• ~~Performing~~ Performed or offered to perform air conditioning or refrigeration contracting not authorized by the license classification	1302.253, 1302.251(a)
• ~~Performing~~ Performed or offered to perform air conditioning or refrigeration contracting not authorized by the license endorsement	1302.254(d), 1302.251(a)
• ~~Performing~~ Performed or offered to perform while license expired or renewal denied	1302.251(a), 60.31(g), ~~75.24(b)~~
• ~~Performing~~ Performed or offered to perform biomedical remediation without a license	1302.251(a), 75.100(c)(3)~~(2)~~
• Performed non-exempt duct work	75.100(c)(1)

Improper Use of a License

• ~~Permitting~~ Allowed someone else to use license – not an employee or subcontractor	75.70(f),(g), 75.73(b),(c)
• Assigned a contracting license to more than one permanent office or more than one company	1302.251(c), 75.70(a)(1)(3)
• ~~Assigning license where not full-time employee~~ • Assigned license but not an employee or owner or not working full time at the company or permanent office	75.70(a)(2)
• Company ~~using~~ used a license ~~number~~ not assigned to company	75.71(j)
• ~~Using~~ Used a location other than the permanent office for contracting air conditioning sales or service	75.71(f)

Class C:

1st Violation	2nd Violation	3rd Violation
$1000 to $5,000 plus 1-year probated suspension up to revocation	$3,000 to $5,000 per day not corrected plus 1-year probated suspension to revocation	$4,000 to $5,000 per day not corrected plus revocation

• ~~Purchased refrigerant without license or registration~~	~~1302.353, 75.26(a)~~

Administrative Violations

• Altered a license or registration in any way	75.70(j), 75.73(e)

Mechanical Integrity Violations

• Failed to provide proper installation, service, or mechanical integrity	1302.401(b)(1), 75.70(a)(7), 75.70(b)(3), 75.70(d), 75.70(e), 75.71(b)(1), 75.71(c)(3), 75.73(a)(1), 75.100(e)(1),
• Failed to comply with municipal code or ordinance	1302.401(a)(2), 75.100(e)(1)
• Failed to perform all electrical work in accordance with National Electrical Code and the International Residential Code, as applicable	75.100(a)(4)
• Installed fuel gas piping other than as permitted	75.100(b)(1)
• ~~Altering~~ Altered an existing fuel gas piping system, stop, or shut-off valve	75.100(b)(1)
• ~~Installing~~ Installed drain piping other than as permitted	75.100(b)(2)
• Failed to supervise an air conditioning and refrigeration technician	1302.503
• Failed to provide direct supervision of all work requiring a license or registration	75.70(a)(5),75.71(e)

Misrepresentation

• Intentionally or knowingly misrepresented services or services to be provided	1302.401(b)(2), 75.70(a)(8), 75.71(b)(2), 75.73(a)(2)
• Made a fraudulent promise or false statement to induce a person to contract for services	1302.401(b)(3), 75.70(a)(9), ~~75.70(b)(3)~~ 75.71(b)(3)

Unlicensed Activity

• Performed or offered to perform air conditioning or refrigeration contracting without a license	1302.251(a), 1302.252(a)
• ~~Collecting~~ Collected a fee for air conditioning or refrigeration work performed without a license	1302.252(b)

• Used the services of a person who was not a registered technician or a licensed air conditioning and refrigeration contractor to assist in the performance of air conditioning and refrigeration maintenance work	1302.263(2), 75.70(a)(11), 75.71(k)
• Acted or offered to act as an air conditioning and refrigeration technician without a registration ~~license~~	1302.501(a)
• Technician assisted a person who was not licensed as a contractor	1302.509(2)
• Knowingly ~~performing~~ performed work on behalf of an unlicensed company	75.70(a)(10), 75.73(a)(4)
• Used an unlicensed subcontractor without actively providing work or services requiring a license	75.70(b)(1),(2), 75.71(c)(1),(2)
• ~~Subcontracting~~ Subcontracted an entire job to an unlicensed person	75.70(b)(1)(2), 75.71(c)(1),(2)
• ~~Subcontracting~~ Subcontracted design to an unlicensed person	75.70(c), 75.71(d)
• Technician performed non-exempt air conditioning and refrigeration maintenance work without being under the supervision of a licensed air conditioning and refrigeration contractor	1302.503, 75.73(a)(3)

Class D:

1st Violation	2nd Violation	3rd Violation
$5,000 plus revocation	$5,000 plus revocation	$5,000 plus revocation

• Failed to comply with previous order of Commission/Executive Director	1302.401(a)(1), 51.353(a), 75.90
• Obtained or attempted to obtain a license or registration by fraud or false representation	60.23(a)(1)
• Cheated on an examination	75.21(c)(d), 60.52(a)
• Failed to pay the Department for a dishonored ~~check~~ payment	60.82

ELIMINATION OF ARCHITECTURAL BARRIERS
Government Code, Chapter 469
Effective 9/1/2005

Sec. 469.053. Advisory Committee; Review of and Comment on Rules.

(a) The presiding officer of the commission, with the commission's approval, shall appoint an advisory committee for the architectural barriers program. The committee shall consist of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall consist of at least eight members. A majority of the members of the committee must be persons with disabilities.

(b) A committee member serves at the will of the presiding officer of the commission.

(c) A committee member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

(d) The presiding officer of the commission, with the commission's approval, shall appoint a committee member as presiding officer for two years.

(e) The committee shall meet at least twice each calendar year at the call of the presiding officer or the commission.

(f) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission.

(g) The commission must submit all proposed changes to any rule or procedure that relates to the architectural barriers program to the committee for review and comment before adopting or implementing the new or amended rule or procedure.

ELIMINATION OF ARCHITECTURAL BARRIERS
Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 68

68.65. Advisory Committee.

(a) The Elimination of Architectural Barriers Advisory Committee shall review rules relating to the Elimination of Architectural Barriers program and recommend changes to the Commission.

(b) The Elimination of Architectural Barriers Advisory Committee may review Technical Memoranda relating to the Elimination of Architectural Barriers program and recommend changes.

(c) Recommendations of the committee will be transmitted to the Commission by the Executive Director through the Director of the Compliance Division.

(d) Committee meetings are called by the committee chair or the Commission.

(e) Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and traveling to and from committee meetings. The least expensive method of travel should be used.

(f) Expenses paid to committee members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.

(g) The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barriers problems and solutions. The committee shall be composed of nine members. Persons with disabilities must make up a majority of the membership. Committee members will serve staggered three-year terms.

Architectural Barriers Advisory Committee

Meeting of October 13, 2011
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Philip Pearce called the meeting to order at 10:04 a.m.

Presiding Officer, Philip Pearce moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Committee members, Philip Pearce, Todd Gritch, Andrew Combs, Rob Roy Parnell, Charles Hunter, Jim Durham, and Kathy-Ann Riley were present. Brion Sargent and Ron Menard were absent. A quorum was present. Committee member Andrew Combs, seconded by Todd Gritch, made a motion to excuse the absence of Ron Menard.

Presiding Officer, Philip Pearce moved to agenda item C. Approval of Minutes – Meeting of August 11, 2011. Committee member Todd Gritch, seconded by Jim Durham, made a motion to approve the minutes. The motion passed with a unanimous vote.

Presiding Officer, Philip Pearce moved to agenda item D. Public Comment. There was no public comment at this time.

Presiding Officer, Philip Pearce moved to agenda item E. Staff Reports. Bill Kuntz, Executive Director, provided a report from the Executive Office. Robert Posey, Program Manager, provided the Compliance Division report. Ray Pizarro, Program Specialist, provided the Education and Examination Division report. Karen Cox, Prosecutor, provided the Enforcement Division report. Chloe Whalon, Licensing Supervisor, provided the Licensing Division report.

Presiding Officer, Philip Pearce moved to agenda item F. Workgroup Reports. Robert Posey gave an update on Workgroup A (Standards) and Workgroup B (Rules), both of which have completed their tasks. Mr. Posey also reported that Workgroup C (Education) will begin its tasks prior to November 1, 2011.

Presiding Officer, Philip Pearce moved to agenda item G. Discussion and possible recommendations regarding adoption of rules at 16 Texas Administrative Code, Chapter 68, §68.100(a) regarding the 2012 Texas Accessibility Standards. Robert Posey, Program Manager, reported that staff had received comments and conducted a town hall meeting to address the concerns raised regarding the adoption of new state standards. Staff incorporated CFR's in the scoping section for; safe harbor; and technical sections 3, 4, 6, and 9. Mr. Posey and staff answered questions from the Committee. Committee member Todd Gritch, seconded by Andrew Combs, made a motion to recommend adoption of the 2012 Texas Accessibility Standards with the proposed amendments. The motion passed by unanimous vote.

Presiding Officer, Philip Pearce moved to agenda item H. Discussion and possible recommendations regarding adoption of amendments to existing rules at 16 Texas Administrative Code, Chapter 68, §§ 68.10, 68.30, 68.31, 68.50, 68.65, 68.74, 68.76, 68.80, 68.101, and 68.102 and the proposed repeal of rules at §§68.103 and 68.104. Robert Posey, Program Manager, presented the proposed rules and public comments, as well as staff response to the public comments. Mr. Posey and staff responded to questions from the Committee regarding the responsibilities of the Registered Accessibility Specialists. The Committee heard public comment from David Lancaster with the Texas Society of Architects. Committee member Rob Roy Parnell, seconded by Andrew Combs, made a motion to recommend adoption of the proposed rules as presented with a suggestion offered by Committee member Todd Gritch to have staff develop some FAQ's on the requirements of a RAS. The motion passed by unanimous vote.

Presiding Officer, Philip Pearce moved to agenda item J. Recommendations for agenda items for next meeting. The Committee decided to place the following items on the next agenda: an update from Work Group C; and an update on the Commission action on the proposed rules.

Presiding Officer, Philip Pearce moved to agenda item K. Discussion of date, time and location of next meeting. The Committee did not set a date for the next meeting.

Presiding Officer, Philip Pearce moved to agenda item O. Adjournment. The meeting adjourned at 11:05 a.m.

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Philip G. Pearce, Presiding Officer
Architectural Barriers Advisory Committee

Architectural Barriers Advisory Committee

Meeting of August 11, 2011
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Ron Menard called the meeting to order at 10:02 a.m.

Presiding Officer, Ron Menard moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Committee members, Ron Menard, Todd Gritch, Brion Sargent, Rob Roy Parnell, and Kathy-Ann Riley were present. Andrew Combs, Philip Pearce, and Charles Hunter were absent. A quorum was present.

Presiding Officer, Ron Menard moved to agenda item C. Approval of Minutes – Meeting of May 20, 2011. Committee member, Todd Gritch, seconded by Rob Roy Parnell, made a motion to approve the minutes. The motion passed with a unanimous vote in favor.

Presiding Officer, Ron Menard moved to agenda item D. Public Comment. There was no public comment at this time.

Presiding Officer, Ron Menard moved to agenda item E. Staff Reports. Bill Kuntz, Executive Director, provided a report from the Executive Office. Robert Posey, Program Manager, provided the Compliance Division report. Kim Whitt, Program Specialist, provided the Education and Examination Division report. Robert Musemeche, Prosecutor, provided the Enforcement Division report. Chloe Whalon, Licensing Supervisor, provided the Licensing Division report.

Presiding Officer, Ron Menard moved to agenda item F. Workgroup Reports. Robert Posey gave an update on Workgroup A (Standards), Workgroup B (Rules), and Workgroup C (Education). The Committee discussed the need for future meetings.

Presiding Officer, Ron Menard moved to agenda item G. Discussion and possible recommendation on Technical Memoranda 08-01 & 11-01. Robert Posey, Program Manager, provided a draft proposal of the technical memoranda and advised the Committee that the Access Board is looking into issuing new standards based on PROWAC recommendations which may make this memorandum no longer effective. The Committee discussed points of clarification. Todd Gritch, seconded by Kathy-Ann Riley, made a motion to recommend approval of TM 08-01 as presented. The motion passed by unanimous vote. Robert Posey, Program Manager presented a revised draft of TM 11-01 with a few minor corrections made from the dais. Committee member Kathy-Ann Riley, seconded by Todd Gritch, made a motion to recommend approval of TM 11-01 with the corrections suggested. The motion passed by unanimous vote.

Presiding Officer, Ron Menard moved to agenda item H. Discussion and possible recommendation of amendments to existing rule at 16 Texas Administrative Code, Chapter 68, §68.100(a) regarding the 2012 Texas Accessibility Standards. Robert Posey, Program Manager, presented the proposed rules. The Committee heard public comment from David Lancaster suggesting changes to the safe harbor language. Committee member, Todd Gritch made a recommendation to incorporate the changes suggested by Mr. Lancaster regarding safe harbor. Ron Menard seconded the motion. The motion passed by unanimous vote. Rob Roy Parnell, seconded by Todd Gritch, made a motion to post the rules in the Texas Register for public comment. The motion passed by unanimous vote.

Presiding Officer, Ron Menard moved to agenda item I. Discussion and possible recommendation of amendments to existing rules at 16 Texas Administrative Code, Chapter 68, §§68.65, 68.74 & 68.76. Robert Posey, Program Manager, outlined the changes to the proposed rules to provide clarity to the Technical Memorandum approval process through work groups. Robert Posey, Program Manager, outlined the changes to §68.74 clarifying the education requirements. The Committee heard public comment from John Torkleson. Committee member, Rob Roy Parnell, seconded by Todd Gritch, made a motion to recommend the proposed changes. The motion passed by a unanimous vote. Robert Posey, Program Manager, outlined the change which would allow the RAS limited participation in the preparation of variances. The Committee heard public comment from David Lancaster and John Torkleson. Committee member, Todd Gritch, seconded by Kathy-Ann Riley, made a motion to recommend approval of the rules as presented. The motion passed by a unanimous vote. Committee member Todd Gritch, seconded by Kathy-Ann Riley, made a motion to post the proposed rules in the Texas Register with an effective date of March 15, 2012. The motion passed by a unanimous vote.

Presiding Officer, Ron Menard moved to agenda item J. Recommendations for agenda items for next meeting. The Committee offered no agenda items at this time.

Presiding Officer, Ron Menard moved to agenda item K. Discussion of date, time and location of next meeting. The Committee decided to hold the next meeting October 13, 2011 at 10:00 a.m. in Austin, TX.

Presiding Officer, Ron Menard moved to agenda item O. Adjournment. The meeting adjourned at 12:03 p.m.

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Ronald Menard, Presiding Officer
Architectural Barriers Advisory Committee

Architectural Barriers Advisory Committee

Meeting of May 20, 2011
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Ron Menard called the meeting to order at 10:06 a.m.

Presiding Officer, Ron Menard moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Committee members, Ron Menard, Andrew Combs, Todd Gritch, Brion Sargent, Philip Pearce, Charles Hunter, and Kathy-Ann Riley were present. Nancie Etzel and Rob Roy Parnell were absent. A quorum was present.

Presiding Officer, Ron Menard moved to agenda item C. Approval of Minutes – Meeting of April 18, 2011. Committee member, Phillip Pearce, seconded by Charles Hunter, made a motion to approve the minutes with a modification to paragraph seven. The motion passed with a unanimous vote in favor.

Presiding Officer, Ron Menard moved to agenda item D. Public Comment. There was no public comment at this time.

Presiding Officer, Ron Menard moved to agenda item E. Staff Reports. Bill Kuntz, Executive Director, provided a report from the Executive Office. Robert Posey, Program Manager, provided the Compliance Division report. Don Dudley, Division Director, provided the Education and Examination Division report. Robert Musemeche, Prosecutor, provided the Enforcement Division report. Bill Kuntz, Executive Director, provided the Licensing Division report.

Presiding Officer, Ron Menard moved to agenda item F. Workgroup Reports:

Workgroup A (Standards)
Robert Posey, Program Manager, reported that the work group had completed the tasks of the work group.

Workgroup B (Rules)
Robert Posey, Program Manager, reported that the work group needed to develop a few more rules before completing the process.

Workgroup C (Education)
Robert Posey, Program Manager, reported that this group had not met pending some direction from the Rules and Standards Work Groups.

Presiding Officer, Ron Menard moved to agenda item G. Discussion on TRASA's open letter dated October 29, 2010, regarding the new standards. Robert Posey, Program Manager opened the discussion for the Committee. The Committee discussed what if any action was necessary and determined that this matter should be referred to staff.

Presiding Officer, Ron Menard moved to agenda item L. Discussion and possible recommendation on rule changes at 68.30, 68.31, 68.50, 68.65, 68.74, 68.80, 68.100, 68.101, 68.102, 68.103, 68.104 of 16 Texas Administrative Code Chapter 68. Lynn Latombe, Staff Attorney, outlined the review-to-adoption process and created a time line of future meetings.

Presiding Officer, Ron Menard moved to agenda item H. Discussion and possible recommendation on the new state standards for accessible design. Robert Posey, Program Manager outlined the changes from Sections One and Two and reported that all other sections remain the same. The Committee discussed the standards and requirements for Texas. Committee member, Andrew Combs, seconded by Phillip Pearce, made a motion to post the draft accessibility standards on the department's website for comment and, based on those comments, staff will determine the need for a Public Hearing. The motion passed by a unanimous vote.

Presiding Officer, Ron Menard moved to agenda item I. Discussion on Technical Memorandum 08-01 regarding curb ramps. Robert Posey, Program Manager, provided Federal Highway Administration standards for curb ramps. Committee member Phillip Pearce suggested that the discussion should focus on the non public right-of-way portion of the Technical Memorandum. The Committee suggested that this matter may be addressed by the new standards within the next few months. Presiding Officer, Ron Menard, seconded by Kathy-Ann Riley, made a motion to defer this TM 08-01 to the Standards Work Group. Motion passed by unanimous vote.

Presiding Officer, Ron Menard moved to agenda item J. Discussion and possible recommendation on Technical Memorandum 11-01 regarding electric vehicle charging stations. Robert Posey, Program Manager, outlined the memo and a proposed change to adjust the percentage of accessible charging stations from 5% to 20%. The Board discussed this requirement and determined that it should remain at 20%. The Committee discussed the requirements for signage designating the charging stations as accessible and determined that signage was not required in lieu of the increased number of spaces. The Committee heard public comment from John Torkleson regarding the need to tie the requirement for the 36 inches of accessible route to the accessible charging station. Committee member, Phillip Pearce, seconded by Todd Gritch, made a motion to remove the signage requirements and tie the 36 inch requirement of accessible route to the charging station. The motion passed by a unanimous vote.

Presiding Officer, Ron Menard moved to agenda item K. Discussion and possible recommendation on new software to allow RAS updates electronically. Robert Posey reported that he had contacted three software vendors for information on electronic reporting. Mr. Posey said additional time was necessary to develop this possibility as well as exploring the funding for the new software.

Presiding Officer, Ron Menard moved to agenda item L. Discussion and possible recommendation on rule changes at 68.30, 68.31, 68.50, 68.65, 68.74, 68.80, 68.100, 68.101, 68.102, 68.103, 68.104 of 16 Texas Administrative Code Chapter 68. Robert Posey, Program Manager, outlined the proposed changes to the rules. The Committee sent sections 68.65 and 68.74 back to the work group for further review and discussion.

Presiding Officer, Ron Menard moved to agenda item M. Recommendations for agenda items for next meeting. The Committee decided to place the following items on the next agenda: Technical Memorandum 08-01, Technical Memorandum 11-01, work group reports, and draft rules.

Presiding Officer, Ron Menard moved to agenda item N. Discussion of date, time and location of next meeting. The Committee decided to hold the next meeting June or July, 2011, at 10:00 a.m.

Presiding Officer, Ron Menard moved to agenda item O. Adjournment. The meeting adjourned at 12:20 p.m.

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Ronald Menard, Presiding Officer
Architectural Barriers Advisory Committee

Chapter 68. Elimination of Architectural Barriers

Proposal Filed: August 22, 2011 – Published in the *Texas Register*: September 2, 2011
Deadline for Public Comment: October 3, 2011

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§68.10. 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 Government Code, Chapter 469, Elimination of Architectural Barriers (the Texas Architectural Barriers Act).

(2) **Building**--Any structure located in the State of Texas that is used and intended for supporting or sheltering any use or occupancy.

(3) **Commencement of Construction**--The date of placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.

[~~(4) **Common Use**--Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).~~]

(4) [~~(5)~~] **Completion of Construction**--The date when a construction project results in occupancy or the issuance of a certificate of occupancy. For public roadway projects, completion of construction occurs upon final payment and release of the contractor performing the work or, if the work is performed by public employees, removal of barricades and opening of all traffic lanes for use.

(5) [~~(6)~~] **Construction Documents**--Documents used for the construction of a building or facility, including working drawings, plans, specifications, addenda, change orders, and other supplemental documents issued for the purpose of construction.

(6) [~~(7)~~] **Contract Provider**--The state agency or political subdivision under contract with the department to perform plan reviews, inspections, or both.

(7) [~~(8)~~] **Crosswalk**--That part of a roadway where motorists are required to yield to pedestrians crossing, as defined by state and local regulations, whether marked or unmarked.

(8) [~~(9)~~] **Curb Line**--A line that represents the extension of the face of the curb and marks the transition between the sidewalk and the gutter or roadway at a curb ramp or flush landing.

(9) [~~(10)~~] **Designated Agent**--An individual designated in writing by the owner to act on the owner's behalf.

[~~(11) **Detention and Correctional Facilities**--Facilities where occupants are under some degree of restraint or restriction for security reasons including, but not limited to, state prisons, county jails, city jails, detention centers, and substance abuse centers.~~]

(10) [~~(12)~~] **Element**--An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

[~~(13) **Employee Work Area**--An area designated for employee use only and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are examples of areas that are not employee work areas.~~]

(11) [~~(14~~] **Facility**--All or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site: including complexes, equipment, roads, walks, passageways, parking lots, or other real property subject to the Act.

(12) [~~(15)~~] **Issue**--To mail, deliver, transmit, or otherwise release plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, applying for a building permit, or obtaining regulatory approval after such plans have been sealed by an architect, interior designer, landscape architect, or engineer. In the case of a state-funded or other public works project, it is the time at which plans or specifications are publicly posted for bids, after such plans or specifications have been sealed by an architect, interior designer, landscape architect, or engineer.

(13) [~~(16)~~] **Overall Responsibility**--The level of responsibility held by an architect, interior designer, landscape architect or engineer who prepares construction documents and coordinates the various aspects of the design of a building or facility.

(14) [~~(17)~~] **Owner**--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(15) [~~(18)~~] **Pedestrian Access Route**--An accessible route for pedestrian use within the public right-of-way.

(16) [~~(19)~~] **Pedestrian Elements**--Components that make up a pedestrian access route including, but not limited to walking surfaces, ramps, curb ramps, crosswalks, pedestrian overpasses and underpasses, automated pedestrian signals, elevators, and platform lifts.

(17) [~~(20)~~] **Public Right-of-Way**--The land or property provided for public roadways, including the roadway itself and the areas between the roadway and adjacent properties.

(18) [~~(21)~~] **Registered Building or Facility**--For the purposes of §469.101 [~~§469.102~~] of the Act, a registered building or facility is a construction project that has been assigned a project registration number by the department.

(19) [~~(22)~~] **Registered Accessibility Specialist**--An individual who is certified by the department to perform review and inspection functions of the department.

(20) [~~(23)~~] **Religious Organization**--An organization that qualifies as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).

(21) [~~(24)~~] **Renovation, Modification, or Alteration**--Any construction activity, including demolition, involving any part or all of a building or facility. Cosmetic work and normal maintenance do not constitute a renovation, modification, or alteration.

(22) [~~(25)~~] **Rules**-- Title 16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and Regulation promulgated pursuant to the Act.

(23) [~~(26)~~] **Sidewalk**--That portion of an exterior circulation path that is improved for use by pedestrians and usually paved.

[~~(27) **Space**--A definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.~~]

(24) [~~(28)~~] **State Agency**--A board, commission, department, office, or other agency of state government.

(25) [~~(29)~~] **TAS**--The 2012 Texas Accessibility Standards which were adopted by the Commission [~~December 17, 1993~~] and became effective [~~April 1, 1994~~] March 15, 2012.

(26) [~~(30)~~] **Variance Application**--The formal documentation filed with the department, by which the owner requests that the department waive or modify accessibility standards.

§68.30. Exemptions.

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

(1) *Federal Property*. Buildings or facilities owned, operated, or leased by the federal government;

[~~(2) *Construction Sites*. Structures and sites directly associated with the actual processes of construction, including, but not limited to, scaffolding, bridging, materials hoists, materials storage, construction trailers, and portable toilet units provided for use exclusively by construction personnel on a construction site;~~]

[~~(3) *Raised Areas*. Areas raised primarily for purposes of security, life safety, or fire safety, including, but not limited to, observation or lookout galleries, prison guard towers, fire towers, or lifeguard stands;~~]

[~~(4) *Limited Access Spaces*. Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways;~~]

[~~(5) *Machinery Spaces*. Spaces accessed primarily by service personnel for maintenance, repair, or occasional monitoring of equipment. Machinery spaces include, but are not limited to, elevator pits, elevator penthouses, mechanical, electrical, or communications equipment rooms, piping or equipment catwalks, water and sewage treatment pump rooms and stations, petroleum and chemical processing and distribution structures, electric substations and transformer vaults, environmental treatment structures, and highway and tunnel utility facilities;~~]

[~~(6) *Single Occupant Structures*. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels;~~]

(2) [~~(7)~~] *Restricted Occupancy Spaces*. Vertical access (elevators and platform lifts) is not required for the second floor of two-story control buildings located within a chemical manufacturing facility where the second floor is restricted to employees and does not contain common areas or employment opportunities not otherwise available in accessible locations within the same building;

(3) [~~(8)~~] *Places Used Primarily for Religious Rituals*. An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to common use areas. Examples of common use areas include, but are not limited to, the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits;

[~~(9) *Specific Employee Work Areas*. Employee work areas, or portions of employee work areas, that are less than 300 square feet (28m^2) in area and elevated 7 inches (180 mm) or more above the ground or finish floor where the elevation is essential to the function of the spaces; and dumpster pads/enclosures that are accessed exclusively by employees;~~]

(4) [~~(10)~~] *Van Accessible Parking at Garages Constructed Prior to April 1994*. Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility; and

(5) [~~(11)~~] *Residential Facilities*. Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings used exclusively by residents and their guests.

§68.31. Variance Procedures.

(a) Requests to waive or modify an accessibility standard shall be submitted on the Variance Application form. A separate Variance Application form shall be submitted for each condition within a single building or facility.

(b) Variance Applications shall be submitted by the owner of the subject building or facility, and shall be accompanied by the applicable fee, plans of all affected areas, and any supporting documentation such as photos, cost analyses, and code references.

[~~(c) Variance Applications may not be submitted more than two hundred seventy (270) calendar days after the date of the inspection report. After two hundred seventy (270) calendar days, remaining deficiencies will be addressed as an enforcement issue as provided by §68.90.~~]

(c) [~~(d)~~] A denial of a Variance Application may be appealed to the Director of Compliance, or his designee, in writing within thirty (30) calendar days from issuance, upon payment of the applicable appeal fee. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(d) [~~(e)~~] A denial of a Variance Appeal from the Director of Compliance may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designee, in writing within thirty (30) calendar days of notification of the Director of Compliance's decision. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(e) [~~(f)~~] When a Variance or Variance Appeal determination has been made, the owner and the person making the submission shall be advised in writing of the determination.

(f) [~~(g)~~] Variance and Variance Appeal determinations shall be based on the information and supporting documentation submitted with the application and shall be issued in accordance with §469.151 and §469.152 of the Act.

§68.50. Submission of Construction Documents.

(a) An architect, interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver the construction documents along with a Proof of Submission form to the department, a registered accessibility specialist, or a contract provider not later than the twentieth [~~fifth~~] day after the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday or legal holiday is not included.

(b) In instances when there is not a design professional with overall responsibility, the owner of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver construction documents to the department, a registered accessibility specialist, or a contract provider prior to filing an application for building permit or commencement of construction.

(c) An [~~Elimination of~~] Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation Page must be completed for each subject building or facility and submitted along with the applicable fees when the design professional or owner submits the construction documents.

§68.65. Advisory Committee.

(a) The Elimination of Architectural Barriers Advisory Committee shall review rules [~~and Technical Memoranda~~] relating to the Elimination of Architectural Barriers program and recommend changes to the Commission.

(b) The Elimination of Architectural Barriers Advisory Committee may review Technical Memoranda relating to the Elimination of Architectural Barriers program and recommend changes.

(c) [~~(b)~~] Recommendations of the committee will be transmitted to the Commission by the Executive Director through the Director of the Compliance Division.

(d) [~~(c)~~] Committee meetings are called by the committee chair or the Commission.

(e) [~~(d)~~] Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and traveling to and from committee meetings. The least expensive method of travel should be used.

(f) [~~(e)~~] Expenses paid to committee members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.

(g) [~~(f)~~] The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barriers problems and solutions. The committee shall be composed of nine members. Persons with disabilities must make up a majority of the membership. Committee members will serve staggered three-year terms.

§68.74. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a certificate of registration, a registered accessibility specialist must complete eight hours of continuing education as provided in this section.

(1) The continuing education hours must include four hours of instruction in courses approved by the department under Chapter 59 of this title in one or more of the following topics:

(A) [~~(1)~~] Texas Government Code, Chapter 469, Elimination of Architectural Barriers [~~state laws or rules that regulate the conduct of registered accessibility specialists~~];

(B) 16 Texas Administrative Code, Chapter 68 – Administrative Rules;

(C) [~~(2)~~] Texas Accessibility Standards;

(D) [~~(3)~~] Technical Memoranda as published by the Department; or

(E) [~~(4)~~] Registered Accessibility Specialist Procedures as published by the Department.

(2) The continuing education hours may include up to four hours of instruction in courses that are not approved by the department under Chapter 59 of this title and that are offered by providers not registered with the department under Chapter 59 of this title, subject to the following conditions:

(A) The courses must be dedicated to instruction in one or more of the topics listed in subsection (f);

(B) The registered accessibility specialist must certify at the time of renewal the number of hours completed under this subsection;

(C) The department has final authority to deny any hours of credit claimed by a registered accessibility specialist under this subsection; and

(D) The credit received under this subsection may not count toward the four hours of instruction required by subsection (b)(1).

(c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.

(d) A registered accessibility specialist may not receive continuing education credit for attending the same course more than once during the one-year period for which the course is approved.

(e) A registered accessibility specialist shall retain a copy of the certificate of completion for a [~~department-approved course for one year after the date of completion and shall retain a copy of the certificate of completion for a~~] course [~~completed under Subsection (g)~~] for three years after the date of completion. In conducting any inspection or investigation of the registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this section.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Government Code, Chapter 469 – Elimination of Architectural Barriers;

(2) 16 Texas Administrative Code, Chapter 68 – Administrative Rules;

(3) 2012 Texas Accessibility Standards;

(4) Technical Memoranda as published by the Department;

(5) Registered Accessibility Specialist Procedures as published by the Department;

(6) Other laws and standards:

(A) 2010 Standards for Accessible Design [~~Americans with Disabilities Act Accessibility Guidelines (ADAAG)~~] or any other accessibility guidelines proposed or adopted by the Access Board or United States Department of Justice;

(B) Americans with Disabilities Act;

(C) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities;

(D) Life safety codes; or

(E) Fair Housing Act;

(7) Business practices; [~~or~~]

(8) Ethics; or [~~.~~]

(9) Presentations on products related to accessibility.

[~~(g) A registered accessibility specialist may receive up to four hours of continuing education credit per renewal for completing courses that are not approved by the department under Chapter 59 of this title and that are offered by providers not registered with the department under Chapter 59 of this title, subject to the following conditions:~~]

[~~(1) the courses must be dedicated to instruction in one or more of the topics listed in subsection (f);~~]

[~~(2) the courses must be offered by a college or university, professional organization, or government agency;~~]

[~~(3) the registered accessibility specialist must certify at the time of renewal the number of hours completed under this subsection;~~]

[~~(4) the department has final authority to deny any hours of credit claimed by a registered accessibility specialist under this subsection; and~~]

[~~(5) credit received under this subsection may not count toward the four hours of instruction required by Subsection (b).~~]

(g) [~~(h)~~] This section shall apply to providers and courses for registered accessibility specialists upon the effective date of this section.

(h) [~~(i)~~] This section shall apply to certificates of registration, issued under §469.201 of the Act, that expire on or after July 1, 2012 [~~March 1, 2009~~].

§68.76. Standards of Conduct for Registered Accessibility Specialist.

(a)-(d) (No Change.)

(e) *Specific Rules of Conduct*. A registered accessibility specialist shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the TAS;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in a plan review, inspection, or related activity;

(3) state or imply that the department will approve a variance;

(4) submit [~~or prepare~~] a variance application for a project in which the RAS has provided review or inspection services;

(5) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing a plan review, inspection, or related activity;

(6) perform a plan review, inspection, or related activity in a negligent or incompetent manner;

(7) perform a plan review, inspection, or related activity on a building or facility in which the registered accessibility specialist is an owner, either in whole or in part, or an employee of a full or partial owner;

(8) perform a plan review, inspection, or a related activity on a building or facility that is or will be leased or occupied by an agency of the State of Texas, when the registered accessibility specialist is an employee of the state agency that will occupy the facility;

(9) perform a plan review, inspection, or related activity on a building or facility wherein the registered accessibility specialist participated in creating the overall design of the current project;

(10) use the Texas State seal without obtaining the appropriate license in accordance with Texas Business and Commerce Code, Chapter 17, §17.08(c); or

(11) represent himself or herself as an employee of the department or as a person hired by the department.

§68.80. Fees.

(a) Fees collected by the department will be assessed according to the fee schedule. Plan review and inspection fees collected by the department shall be determined by the estimated cost of construction for the project, not including site acquisition, <u>architectural, engineering or consulting fees,</u> furnishings, or equipment that is not part of the building mechanical systems. Fee Schedule:

Estimated Construction Cost	Plan Review Fee	Project Filing Fee	Inspection Fee
50,000 - 200,000	$250	$175	$350
200,001 - 500,000	$315	$175	$375
500,001 - 1,000,000	$380	$175	$400
1,000,001 - 5,000,000	$445	$175	$445
5,000,001 - 10,000,000	$575	$175	$575
10,000,001 - 15,000,000	$620	$175	$620
15,000,001- 25,000,000	$785	$175	$785
25,000,001 - 50,000,000	$955	$175	$955
50,000,001 - 75,000,000	$1175	$175	$1175
> 75,000,000	Contact TDLR	$175	Contact TDLR
Late Project Filing Fee		$300	
Preliminary Review Fee		$145 each	
State Lease Inspection (no construction)		$225 per lease	
Special Inspection Fee		$215 per hour, one hour minimum	
Variance Application Fee		$175 each	
Variance Appeal Fee		$200 each	
Texas Accessibility Academy Fee		$150	

Registered Accessibility Specialists	
Application for Certificate of Registration	$300
Registration Renewal	$250
Wall Certificate Duplicate or Replacement	$25
Wallet Card Duplicate or Replacement	$25

(b)-(g) (No Change.)

§68.100. Technical Standards and Technical Memoranda.

(a) The Texas Commission [~~Department~~] of Licensing and Regulation adopts by reference the 2012 Edition of the Texas Accessibility Standards (TAS), effective March 15, 2012 [~~April 1, 1994~~ edition].

(b) The Texas Commission [~~Department~~] of Licensing and Regulation may publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Elimination of Architectural Barriers Advisory Committee.

§68.101. State Leases.

(a)-(b) (No Change.)

(c) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) New construction shall comply with TAS 201.1 [~~4.1.2 and 4.1.3~~].

(2) Additions shall comply with TAS 202.2 [~~4.1.5~~].

(3) Alterations shall comply with TAS 202.3 and 202.4 [~~4.1.6~~].

(4) Historic buildings or facilities shall comply with TAS 202.5 [~~4.1.7~~].

(5) Existing buildings and facilities are ones that have not been constructed, renovated, or modified since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 208 and 502 [~~4.6~~].

(B) An accessible route from the parking area(s) shall comply with TAS 206 and 402 [4.3].

(C) At least one entrance serving the leased space shall comply with TAS 206.4.5 and 404 [~~4.14~~].

(D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 213 and 603 [~~4.22 or 4.23~~].

(E) Signage at toilet rooms or bathrooms shall comply with TAS 703 [~~4.30~~]. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 703.1, 703.2.4, 703.2.5, 703.6.2 [~~4.30.1, 4.30.2, 4.30.3, 4.30.5~~] and 703.7, [~~4.30.7~~] indicating the location of the nearest accessible toilet room or bathroom within the facility.

(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 602 [~~4.15~~]. If more than one drinking fountain is provided, at least 50% shall comply with TAS 602 [~~4.15~~].

(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 704 [~~4.31~~].

(H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 201.1 [~~4.1.6~~].

§68.102. Public Right-of-Ways Projects.

(a) For purposes of §68.80, the estimated cost of construction for the project shall be based on the pedestrian elements only. Construction documents submitted for review are only required to include pedestrian elements being constructed, renovated, modified, or altered as part of the project scope.

(b) Application of TAS shall be limited to those pedestrian elements being constructed, renovated, modified, or altered as part of the project scope. The pedestrian elements shall comply with applicable sections of TAS [~~4.1 through 4.35~~] except as modified by this section.

(1) Sidewalks--At sidewalks constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 405.8 [~~4.8.5~~]. Where the adjacent roadway has running slopes of 5% or greater, the pedestrian access route shall not exceed the grade established for the adjacent roadway. EXCEPTION: The running slope of a pedestrian access route is permitted to be steeper than the grade of the adjacent roadway provided that the pedestrian access route complies with TAS 405 [~~4.8~~].

(2) Curb Ramps--At curb ramps constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 405.8 [~~4.8.5~~]. For purposes of this section, non-signalized driveways are not considered to be hazardous vehicular areas.

(A) At perpendicular curb ramps constructed within the public right of way, detectable warnings complying with TAS 705 [~~4.29.2~~] at a minimum of 24” in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area.

(B) At parallel curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 705 [~~4.29.2~~] at a minimum of 24” in depth (in the direction of pedestrian travel) and extending the full width of the landing shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area.

(C) At diagonal curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 705 [~~4.29.2~~] at a minimum of 24” in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp or landing, shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area. Additionally, the department will allow the detectable warning to be curved with the radius of the corner. The detectable warning shall be located so that the edge nearest the curb line is 6” minimum and 10” maximum from the curb line.

Repeal -- [~~§68.103. Detention and Correctional Facilities.~~]
Repeal -- [~~§68.104. Elements, Spaces, and Accessible Routes at Fire Stations~~.]

ATHLETIC TRAINERS
Occupations Code, Chapter 451
Effective 9/1/2015

Sec. 451.051. BOARD; MEMBERSHIP. (b) The board consists of five members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three members who are athletic trainers; and

(2) two members who represent the public.

Sec. 451.0521. DUTIES OF BOARD.

The board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Sec. 451.053 VACANCY. (b) If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the unexpired portion of the term.

Sec. 451.055. PRESIDING OFFICER.

The presiding officer of the commission shall designate a member of the board to serve as the presiding officer of the board for a one-year term. The presiding officer of the board may vote on any matter before the board.

Sec. 451.056. MEETINGS.

The board shall meet at the call of the presiding officer of the commission or the executive director.

Advisory Board of Athletic Trainers

Meeting of February 22, 2016
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer David Weir called the meeting to order at 9:06 a.m.

Presiding Officer David Weir moved to agenda item B, Roll Call and Certification of Quorum and Introductions. Board members David Weir, Darrell Ganus, Britney Webb, David Schmidt, and Michael Fitch were present. A quorum was present.

Presiding Officer David Weir moved to agenda item C, Approval of the Minutes of November 9, 2016. Board Member Ganus, seconded by Britany Webb moved to approve the Minutes of November 9, 2015. Motion passes unanimously.

Presiding Officer David Weir moved to agenda item D, Public Comment. There was no public comment.

Presiding Officer David Weir moved to agenda item E. Staff Reports. Mary Winston, Attorney for the Advisory Boards Team, reported on the overview of TDLR and the Executive Office Operations; Overview of TDLR and Executive Office Operations; and presented an update and discussion regarding transition of Athletic Trainers Program from the Department of State Health Services (DSHS) to the Texas Department of Licensing and Regulation (TDLR) pursuant to Senate Bill 202, 84th Legislature, Regular Session (2015), including contingency rider funding, progress report, transition plan, dates and deadlines and personnel. Mr. Stewart Myrick, Program Director of the Athletic Trainers Program for DSHS presented the DSHS report to the Board and answered questions from the Board.

Presiding Officer David Weir moved to agenda item F. Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Section 110 to implement Chapter 451 and Chapter 51 of the Texas Occupations Code, relating to Senate Bill 202, 84th Legislature, Regular Session (2015), for transition from DSHS to TDLR. Lynn Latombe, Assistant General Counsel, provided an overview of the proposed rules, discussed the public comments received and answered questions from the Board. They recommended the change to "professional rescuer" CPR in Section 110.21(e)(1) from "adult" CPR as a result of the comment. The board advised that no greater regulatory burden would be placed on a licensee as a result of the change. The industry is largely completing professional rescuer CPR at this time. The rule is catching up to the best industry practice. The Board heard comments from Spanky Stephens and Josh Woodall regarding the Continuing Education on-line course hours. The Board heard comments from Spanky Stephens and Josh Woodall regarding the Continuing Education on-line course hours.

Motion by Board Member Darrell Ganus, seconded by Dr. David Schmidt, moved to change the 8 hour on-line Continuing Education course allowance to 20 hours for renewal. Board Members Darrell Ganus, Dr. David Schmidt and Michael Fitch voted "for". Board Members Britney Webb and David Weir voted "against". Motion passed 3-2.

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Motion by Board Member Dr. David Schmidt, seconded by Darrell Ganus, moved to recommend to the Commission for adoption the proposed rules as discussed including the change 110.21(e)(1) from "adult" to "professional rescuer" CPR and online continuing education. Motion passed unanimously.

Presiding Officer David Weir moved to agenda item G, Discussion and possible recommendation regarding two step testing process. Presiding Officer, David Weir discussed the two step process: Step 1 passing a computer test; Step 2 oral testing-people required. Ray Pizzaro, Director of Education and Examination, explained the current process in place at TDLR and answered questions from the board.

Motion by Board Member Darrell Ganus, seconded by Britney Webb moved to go forward with the 2 step testing process. Motion passed unanimously.

Presiding Officer David Weir moved to agenda item H, Discussion and possible appointment of workgroups:

1. Enforcement workgroup to review and make recommendations regarding criminal conviction guidelines, the penalty matrix, and other enforcement related matters and rules.

Presiding Officer David Weir appointed the following board members to the Enforcement Workgroup: **Dr. David Schmidt and Darrell Ganus.** Christina Kaiser, Director of Enforcement, will be the contact person for the workgroup.

2. Licensing workgroup to review and make recommendations regarding licensing requirements and rules, inspections and compliance, and other administrative matters.

Presiding Officer David Weir appointed the following board members to the Licensing workgroup: **Presiding Officer David Weir and Darrell Ganus.** Dede McEachern, Director of Licensing, will be the contact person for the workgroup.

3. Education and Examination workgroup to review and make recommendations regarding education and examination, continuing education requirements, and rules.

Presiding Officer David Weir appointed the following board members to the Education and Examination workgroup: **Britney Webb and Michael Fitch**. Ray Pizarro, Director of Education and Examination, will be the contact person for the workgroup.

4. Standard of Care workgroup to review and make recommendations regarding standard of care matters and rules.

Presiding Officer David Weir appointed the following board members to the Standard of Care workgroup: **Presiding Officer David Weir and Britney Webb.** George Ferrie, Director of Compliance, will be the contact person for the workgroup.

Presiding Officer David Weir moved to agenda item I, Recommendations for agenda items for next Board meeting. Presiding Officer David Weir extended an invitation to TDLR to attend the Southwest Athletic Trainers Association conference in Arlington, Texas on July 21, 2016. Presiding Officer David Weir asked that the Penalty Matrix be on the next agenda; Darrell Ganus asked that testing opportunities be on the next Agenda.

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Presiding Officer David Weir moved to agenda item J, Discussion of date, time, and location of next Board meeting. Next meetings: Monday, May 23, 2016 and Monday, September 19, 2016. Both meetings will start at 9:00 a.m.

Presiding Officer David Weir moved to agenda item K, Adjournment. Presiding Officer David Weir adjourned the meeting at 11:04 a.m.

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David Weir, Presiding Officer
Advisory Board of Athletic Trainers

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Advisory Board of Athletic Trainers

Meeting of November 9, 2015
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer David Weir called the meeting to order at 9:02 a.m.

Presiding Officer David Weir moved to agenda item B, Roll Call and Certification of Quorum and Introductions. Board members David Weir, Darrell Ganus and Britney Webb were present. Dr. David Schmidt was absent. A quorum was present.

Presiding Officer David Weir moved to agenda item C, Training for Board Members. Lynn Latombe, Assistant General Counsel provided an overview of the training and highlighted some resources the board should review and follow.

Presiding Officer David Weir moved to agenda item D, TDLR Video presentation on public comment process.

Presiding Officer David Weir moved to agenda item E. Public Comment. There was no public comment.

Presiding Officer David Weir moved to agenda item F, History and overview of the Athletic Trainers Program. Board member David Weir gave a history of the program from its formation in Houston, Texas to it's present existence at Department of State Health Services.

Presiding Officer David Weir moved to agenda item G, Staff Reports. Brian Francis, Deputy Executive Director reported on the Agency structure and use of Agency functions to achieve some of the goals for the program, presented the model of collaboration document to highlight our close workings with the Department of State Health Services, and the conversion process and the rules process the Legislative Session and agency re-organization. George Ferrie, Compliance Division Director, introduced Yvonne Lopez as a point of contact for the Compliance Division, also welcomed the opportunity for speaking engagements and training activities, reported current involvement in review of rules and documents related to the program, and reported that future meetings will include statistics. Answered questions from the Board on statistics and annual training conference called Southwest Athletic Trainers Association (SWATA). Ray Pizarro, Education and Examination Division Director, reported on the exam delivery process and the use of Subject Matter Experts (SME's) in the development of the exam. He also discussed reviewing the exam waiver for reciprocity, statistics that will be provided, and introduced Kim Whitt as a point of contact. The board asked questions regarding the examination process and proctoring the exam. Board Chair, David Weir provided a handout on the exam statistics and education training opportunities. Ken Sharp, Enforcement Division Attorney, provided case statistics and highlighted cases of note. Dede McEachern, Licensing Division Director, reported on licensing statistics.

Presiding Officer David Weir moved to agenda item H, Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Section 110 to implement Chapter 451 and Chapter 51 of the Texas Occupations Code, relating to Senate Bill 202, 84th Legislature, Regular Session (2015), for transition from DSHS to TDLR. Lynn Latombe, Assistant General Counsel provided an overview of the rules, transition process, and a line-by-line

comparison; and reported on the movement of rules into the TDLR format. Presiding Officer David Weir reported that rule 871.12 under DSHS rules in Continuing Education, has been sent to the Attorney General for an opinion on clarification. It was also requested that the rules change to allow the use of technology in Continuing Education, to allow online courses and training. Motion by Board Member Brittney Webb, seconded by Board Member Darrell Ganus moved to approve changes to the language in Continuing Education to include or allow the use of technology in Continuing Education. Motion passes unanimously. Brad Bowman, General Council reported that cleanup to the proposed rules will be addressed. Motion by Board Member Brittney Webb, seconded by Board Member Darrell Ganus to accept the edits and changes as presented and to publish the proposed rules in the Texas Register. Motion passes unanimously.

Presiding Officer David Weir moved to agenda item I, Recommendations for agenda items for next meeting. The Board requested the following items on its next agenda: staff reports, rules and comments, DSHS update, update on the budget approval, jurisprudence exam, criminal conviction guidelines, and discussion on dual stage examination process.

Presiding Officer David Weir moved to agenda item J, Discussion of date, time, and location of next Board meeting. The next Board meeting date will be February 22, 2016 at 9:00 a.m. in Austin Texas.

Presiding Officer David Weir moved to agenda item K, Adjournment. The meeting was adjourned at 12:20 p.m.

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David Weir, Presiding Officer
Advisory Board of Athletic Trainers

Chapter 110. Athletic Trainers
Proposal Filed: December 14, 2015 – Published in the *Texas Register*: December 25, 2015
Deadline for Public Comment: January 25, 2016

Underlined text is new language.

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.1, 110.12, 110.14, 110.15, 110.16, 110.17, 110.18, 110.19, 110.20, 110.21, 110.22, 110.23, 110.24, 110.25, 110.30, 110.70, 110.80, 110.90 and 110.95, regarding the Athletic Trainers program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202) , 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 110 are necessary to implement S.B. 202 and to regulate the Athletic Trainers program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 871, regarding the Athletic Trainers program, which are still in effect.

The Department's Advisory Board of Athletic Trainers met on November 9, 2015, to consider a draft of these rules and recommended proposing them in the *Texas Register* for public comment.

Proposed new §110.1 create the definitions to be used in this chapter.

The proposed new §110.12 establish the scope of practice for this profession.

Proposed new §110.14 establish the composition of the advisory board of athletic trainers.

Proposed new §110.15 create the duties of the advisory board.

Proposed new §110.16 establish the terms and vacancies for board members.

The proposed new §110.17 create a presiding officer and their role on the board.

Proposed new §110.18 provide guidelines on when meetings are held.

Proposed new §110.19 provide reimbursement guidelines for board members.

The proposed new §110.20 establish application requirements.

The proposed new §110.21 establish licensing requirements.

Proposed new §110.22 specify the activities an athletic training student may do without being in violation of this chapter.

The proposed new §110.23 establish examination for licensure requirements.

The proposed new §110.24 create the terms for license renewal.

Proposed new §110.25 create the continuing education requirements.

Proposed new §110.30 establish the requirements for a temporary license.

The proposed new §110.70 establish the standards of conduct for athletic trainers.

Proposed new §110.80 create fees associated with the athletic trainers program.

The proposed new §110.90 provide the administrative penalties and sanctions.

Proposed new §110.95 establish the enforcement authority of the Department.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the athletic trainers program was appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory

requirements under the authority of the Commission and the Department and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51 and 451, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the proposal.

<rule>

§110.1. Definitions.

The following words and terms, when used in these rules shall have the following meanings unless the context clearly indicates otherwise. Words and terms defined in the Athletic Trainers Act shall have the same meaning in these rules:

(1) Act--Texas Occupations Code, Chapter 451.

(2) Athlete--A person who participates in an organized sport or sport-related exercise or activity, including interscholastic, intercollegiate, intermural, semiprofessional, and professional sports activities.

(3) Board--the Advisory Board of Athletic Trainers.

(4) Commission--the Texas Commission of Licensing and Regulation.

(5) Department--the Texas Department of Licensing and Regulation.

(6) Executive Director--the executive director of the department.

(7) Licensee--A person who holds a current license or a temporary license as an athletic trainer issued by the department under the Act.

(8) Temporary license--A license issued under §110.30.

§110.12. Scope of Practice.

(a) A licensed athletic trainer prevents, recognizes, assesses, manages, treats, disposes of, and reconditions athletic injuries and illnesses under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license.

(b) The activities listed in subsection (c)(1)-(7) may be performed in any setting authorized by a licensed physician and may include, but not be limited to, an educational institution, professional or amateur athletic organization, an athletic facility, or a health care facility.

(c) Services provided by a licensed athletic trainer may include, but are not limited to:

(1) planning and implementing a comprehensive athletic injury and illness prevention program;

(2) conducting an initial assessment of an athlete's injury or illness and formulating an impression of the injury or illness in order to provide emergency or continued care and referral to a physician for definitive diagnosis and treatment, if appropriate;

(3) administering first aid and emergency care for acute athletic injuries and illnesses;

(4) coordinating, planning, and implementing a comprehensive rehabilitation program for athletic injuries;

(5) coordinating, planning, and supervising all administrative components of an athletic training or sports medicine program;

(6) providing health care information and counseling athletes; and

(7) conducting research and providing instruction on subject matter related to athletic training or sports medicine.

(d) A licensee shall not provide health care services which are not within the definition of "athletic training" in the Act except in accordance with state and federal laws and rules applicable to the provided services including, but not limited to, Occupations Code, Chapter 157, relating to a physician's delegated authority; other licensure laws; and laws relating to the possession and distribution of controlled substances.

§110.14. The Advisory Board Membership.

The Advisory Board of Athletic Trainers consists of five members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three members who are athletic trainers; and

(2) two members who represent the public.

§110.15. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

§110.16. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of one or two members expiring on January 31st of each odd-numbered year.

(b) If a vacancy occurs on the advisory board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the unexpired portion of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code, §51.209, Advisory Boards; Removal of Advisory Board Member.

§110.17. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all advisory board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§110.18. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

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

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is three members.

(d) Advisory board action shall require a majority vote of those members present and voting.

§110.19. Reimbursement.

(a) An advisory board member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing duties as an advisory board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(b) Expense reimbursements to advisory board members:

(1) are limited to authorized expenses incurred while traveling to and from advisory board meetings; and

(2) must be limited to those allowed by the State of Texas Travel Allowance Guide, the department's policies governing employee travel allowances, and the General Appropriations Act.

(c) Expenses can be reimbursed to advisory board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

§110.20 Application Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) official transcript(s)/documentation of all relevant college work showing successful completion of education requirements and apprenticeship hours;

(3) the form providing information regarding other state licenses, certificates, or registrations that an applicant holds or held, if applicable;

(4) proof of successfully completing the jurisprudence examination no more than six months prior to the date of application; and

(5) the fee(s) required under §110.80.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under this chapter.

(e) The department will notify the applicant regarding whether the applicant qualifies to take the license examination.

(f) Pursuant to Texas Occupations Code, Chapters 51 and 451, the commission or the executive director may deny the application for violation of the Act.

(g) If after review the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a hearing under Texas Government Code, Chapter 2001.

§110.21 License Requirements.

(a) Applicants qualifying under the Act, §451.153(a)(1), shall have:

(1) a baccalaureate or post-baccalaureate degree, which includes at least 24 hours of combined academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology or biomechanics;

(D) physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries;

(F) advanced athletic training, advanced sports medicine, or assessment of injury; and

(G) therapeutic exercise or rehabilitation or therapeutic modalities.

(2) an apprenticeship in athletic training meeting the following requirements:

(A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;

(B) the apprenticeship must be a minimum of 1,800 hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;

(C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 hours of the 1,800 hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. No more than 300 hours may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or

university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by a certified or state-licensed athletic trainer in prevention of injuries, emergency care, rehabilitation, and modality usage.

(b) In place of the requirements in subsection (a), applicants qualifying under the Act, §451.153(a)(1) shall hold a baccalaureate or post-baccalaureate degree and one of the following:

(1) current licensure, registration, or certification as an athletic trainer issued by another state, jurisdiction, or territory of the United States; or

(2) current national certification as an athletic trainer issued by the Board of Certification, Inc. (BOC).

(c) Applicants qualifying under the Act, §451.153(a)(2) or (a)(3), shall have a baccalaureate or post-baccalaureate degree or a state-issued certificate in physical therapy or a baccalaureate or post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state-licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(d) In place of the requirements in subsections (a) and (b), applicants qualifying under the Act, §451.153(a)(1), shall have a baccalaureate or post-baccalaureate degree in athletic training from a college or university, which held accreditation, during the applicants matriculation at the college or university and at the time the degree was conferred, from a nationally recognized accrediting organization that is approved by the department.

(e) Certification required. An applicant must have:

(1) current certification in the techniques of adult cardio-pulmonary resuscitation and the use of

an automated external defibrillator; or

(2) current certification for Emergency Medical Services (EMS) with the department.

(f) Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university, which held accreditation, at the time the degree was conferred, from a regional educational accrediting association that is approved by the department.

(g) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the department.

(h) The department shall not accept courses, which an applicant's transcript indicates, were not completed with a passing grade for credit.

§110.22 Athletic Training Student Activities.

An athletic training student performing the activities of an athletic trainer will not be in violation of the act if the student is performing:

(1) as part of the athletic training apprenticeship hours described in §110.21; or

(2) as follows:

(A) the student's supervising college or university licensed athletic trainer has approved, referred, sent, or directed the student to a setting other than with the student's school's intercollegiate athletes;

(B) the setting is with another college or university, a high school, a professional athletic team, or a health care clinic; and

(C) the student is directly supervised in the setting by a licensed athletic trainer, licensed physician or licensed physical therapist.

(3) Hours which fall under paragraph (2), shall not be counted as apprenticeship hours unless the hours meet the requirements of §110.21.

(4) For the purposes of this section, supervision means daily, direct, and immediate communication.

(5) An athletic training student who has graduated, shall not accumulate apprenticeship hours at the same college, university, high school, professional athletic team, or health care clinic at which the athletic training student is employed. In cases where an athletic training student is employed by a school, the athletic training student shall not accumulate apprenticeship hours at a setting within the same school.

§110.23 Examination for Licensure.

(a) The department shall offer examinations at least two times a year at times and at places established and announced by the department.

(b) The examination shall consist of written and practical questions and evaluations prescribed by the department.

(c) An applicant may file an application for examination if the applicant:

(1) is within 30 semester hours of graduation;

(2) has completed or is currently pre-registered or enrolled in the courses listed in §110.21; and

(3) has completed at least 1,300 hours of the required 1,800 hours and the apprenticeship program is in progress; or

(4) is currently enrolled in, and within two semesters of graduating from, an athletic training program at a college or university which holds accreditation from a nationally recognized accrediting organization that is approved by the department, if the applicant qualifies under the Act, §451.153(a)(1); or

(5) has completed at least 600 hours of the required 720 hours and the apprenticeship program is in progress, if the applicant qualifies under the Act, §451.153(a)(2) or (a)(3).

(d) The department shall review all applications prior to the examination. An applicant meeting the requirements of subsection (c) or of §110.21, and pays the required examination fee, shall be approved to take the examination.

(e) The department shall notify an applicant whose application has been approved for examination at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(f) An examination registration form must be completed and returned to the department by the applicant with the required examination fee (unless otherwise instructed by the department) at least 15 days prior to the date of examination. Applications which are received incomplete or late may cause a delay.

(g) Examinations shall be graded by the department's designee.

(h) The department shall notify each applicant by mail of the results of the examination within 30 days of the date of the examination.

(i) The following procedures relate to applicants who fail the examination prescribed by the department.

(1) An applicant who fails the examination may take a subsequent examination after paying the examination fee.

(2) The department will furnish a copy of the department's policy concerning examination review to an applicant who fails an examination.

(j) An applicant who fails to take the examination within a period of two years after the initial examination approval notice is mailed by the department, shall have such approval withdrawn and the application for licensure voided.

(k) An applicant who has failed the state examination described in subsections (a) - (m), must successfully complete that examination in order to be issued a license. If the application has been voided as described in subsection (j), the person shall submit a new application, and the provisions of subsection (n) shall apply.

(l) Applicants who have passed the examination and do not have a degree, will have 90 days from their graduation date to submit all documents and fees necessary to show compliance with this chapter and complete the licensing procedure. If the application process is not completed within 90 days of the graduation date, the applicant shall be required to file a new application and retake the examination successfully in order to qualify for licensure.

(m) A first-time applicant must apply for examination within five years from the date on which the applicant's qualifying degree was conferred or the apprenticeship was completed, whichever is later. An applicant may submit an application after this time period upon successful completion of remedial coursework or apprenticeship, as approved by the department.

(n) If an applicant has successfully completed the examination administered by the Board of Certification, Inc. (BOC) on or after January 1, 2004, the applicant shall not be required to complete the state examination described in subsections (a) - (m), unless the applicant has previously held a license issued by the department. The applicant must furnish to the department a copy of the test results indicating that the applicant passed the examination.

(o) If an applicant has completed the examination administered by the Board of Certification, Inc. (BOC) before January 1, 2004, the applicant shall be required to complete the state examination described in subsections (a) - (m).

§110.24 License Renewal.

(a) Licenses are valid for two years from the date of issuance.

(b) A licensee must renew the license on or before the expiration date or pay a late renewal fee.

(c) Expiration of license.

(1) A person whose license has expired may not hold himself or herself out as an athletic trainer; imply that he or she has the title of "licensed athletic trainer," "athletic trainer" or "sports trainer,"

or use "LAT," "AT," or "LATC" or any facsimile of those titles in any manner.

(2) A person whose license has expired may not perform the activities of an athletic trainer.

§110.25 Continuing Education Requirements.

(a) To renew a license that expires on or after September 1, 2015 a licensee must have completed 40 clock-hours of continuing education during the previous two-year period. The continuing education must include two clock-hours of training in concussion management. In addition to the number of continuing education clock-hours required under this subsection, a licensee must also show proof of current Emergency Cardiac Care certification at the Basic Life Support for Healthcare Providers/Professional Rescuers and Healthcare Providers level or beyond, which shall be maintained throughout each two-year period. The two-year period begins on the first day following the license issuance month and ends upon the expiration date of the license.

(b) Continuing education taken by a licensee for renewal, shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses at a regionally accredited college or university related to sports medicine;

(2) clinical courses related to athletic training and/or sports medicine;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in sports medicine or athletic training;

(4) instructing or presenting education programs or activities without compensation at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences in athletic training or sports medicine, not to exceed five clock-hours each continuing education period;

(5) publishing a book or an article in a peer review journal relating to athletic training or sports medicine, not to exceed five clock-hours each continuing education period;

(6) serving as a skills examiner at the state licensure examination, not to exceed one clock-hour of continuing education credit for each examination date for a maximum of four clock-hours of credit each continuing education period; or

(7) successful completion of an online or distance education program in athletic training or sports medicine, not to exceed eight clock-hours each continuing education period.

(c) Continuing education experience shall be credited as follows:

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock-hours of credit for each semester hour successfully completed for credit or audit, as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (b)(2) or (3), shall be credited on a one-for-one basis, with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) Successful completion of courses described in subsection (b)(7), is evidenced by a certificate of completion presented by the sponsoring organization of the online or distance education program.

(4) Approval by the department must be obtained for each continuing education program as described in subsection (b), unless continuing education credit is granted by a national, regional or state health care professional association.

(5) Successful completion of courses related to athletic training and/or sports medicine as described in subsection (b)(2) and (3), is evidenced by a certificate of completion or attendance that is issued by the sponsoring organization of the course.

(d) Requests for approval of continuing education experience should address the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(2) objectives of specific information or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs; including the name of the sponsoring individual(s) or organization(s), and program leaders or faculty, if different from sponsors and contact person.

(e) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal, unless the license holder has been selected for audit.

(1) The audit process shall be as follows:

(2) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(3) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(4) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(5) A licensee who is selected for a continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until the required continuing education documents are received, accepted and approved by the department.

(6) Licenses will not be renewed until continuing education requirements have been met.

(f) The department may not grant continuing education credit to any licensee for:

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

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

(3) any continuing education activity completed before or after the period of time described in subsection (a); or

(4) performance of duties that are routine job duties or requirements.

§110.30 Temporary License.

(a) A temporary license may be issued to an individual who meets the educational and apprenticeship requirements of this chapter.

(b) The temporary license entitles an applicant to perform the activities of an athletic trainer until the results of the first examination, which the applicant is eligible to take, are released.

(c) An applicant who failed an examination administered by the department, shall not be eligible for a temporary license. If a temporary license has previously been issued, it shall be voided and the applicant shall not be eligible for another temporary license.

(d) A person who has been licensed as an athletic trainer and allowed the license to expire, may be eligible for a temporary license upon submission and approval of a new application for licensure. The expiration of a temporary license issued under this subsection will be in accordance with subsection (b).

§110.70 Standards of Conduct.

(a) An athletic trainer shall work under the direction of a licensed physician or another qualified, licensed health professional, who is authorized to refer for health care services within the scope of the person's license when carrying out the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries.

(b) A licensee shall not misrepresent any professional qualifications or credentials.

(c) A licensee shall not make any false or misleading claims about the effectiveness of any athletic training care.

(d) A licensee shall not promote or endorse products in a manner that is false or misleading.

(e) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of athletic training care.

(f) A licensee shall comply with the provisions of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, and the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483, and any rules of the Department of State Health Services or the Texas State Board of Pharmacy, implementing those statutes.

(g) A licensee shall have the responsibility of reporting violations of department rules to the department.

(h) A licensee shall not present false information to the department, on any application or other document or in any investigation or disciplinary proceeding of the department.

(i) A licensee shall not aid or abet the practice of an unlicensed person when that person is required to have a license under the Act.

(j) A licensee shall comply with any order relating to the licensee, which is issued by the executive director or commission.

(k) A licensee shall not provide health care services, which are not within the definition of "athletic training" in the Act, except in accordance with state and federal laws and rules applicable to the provided services including, but not limited to, Occupations Code, Chapter 157, (relating to a physician's authority to delegate certain medical acts); other licensure laws; and laws relating to the possession and distribution of controlled substances.

(l) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of athletes for professional services.

(m) A licensee shall provide athletic training services without discrimination based on race, creed, sex, religion, national origin, or age.

(n) A licensee shall not violate any provision of any federal or state statute relating to confidential medical communications and/or records.

(o) A licensee shall not offer professional services to a person concurrently receiving the same or similar professional services from another individual, except with the knowledge of that individual.

(p) A licensee shall not engage in sexual contact or sexually exploitive behavior with a person receiving athletic training services from the licensee. Sexual contact shall mean the activities or behaviors described in the Texas Penal Code, §21.01. Sexually exploitive behavior shall mean any verbal or physical conduct that can reasonably be construed as intended to arouse or gratify the sexual desire of any person.

(q) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's service with another health care professional's service, unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided, if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment, when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name, a title or professional identification, that is expressly or commonly reserved to or used by another profession or professional.

(r) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for athletic training services previously made on a bill or a statement for the client. This requirement applies even if the charges are to be paid by a third party.

(s) Unreasonable or medically unnecessary billing is prohibited.

(t) The license certificate shall be displayed in the primary office or place of employment of the licensee. In the absence of a primary office or place of employment or when the licensee is

employed in multiple locations, the licensee shall carry a current license identification card.

(u) Neither the licensee nor anyone else, shall display a photocopy of a license certificate or carry a photocopy of a license identification card in lieu of the original document.

(v) Neither the licensee nor anyone else, shall make any alteration on a license certificate or identification card issued by the department.

(w) The licensee shall notify the department of changes in name or preferred mailing address within thirty (30) days of such change.

(x) A licensee may not violate any provision of the Act or this chapter.

(y) A person may not hold himself or herself out as an athletic trainer or perform any of the duties of an athletic trainer as defined in the Act, unless the person holds an appropriate license issued under the Act. A person may not hold himself or herself out as an athletic trainer by implying that he or she has the title of "licensed athletic trainer," "sports trainer," or "athletic trainer" or using the letters "LAT," "LATC," or "AT" or any facsimile of those titles in any manner, unless the person holds a license issued under the Act.

§110.80 Fees.

(a) All fees paid to the department are nonrefundable.

(b) The schedule of fees is as follows:

(1) application fee--$60;

(2) temporary license fee--$200;

(3) written examination fee--$75;

(4) practical examination fee--$90;

(5) initial license fee--$100;

(6) returned check fee--$25;

(7) renewal license--$250;

(8) jurisprudence exam fee--$35;

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title

(relating to Dishonored Check Fee).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

§110.90. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 451, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 451 and any associated rules.

§110.95. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 451 and any associated rules may be used to enforce Texas Occupations Code, Chapters 51, 451 and this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State, on December 14, 2015.

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation

AUCTIONEERS
Texas Occupations Code, Chapter 1802
Effective 6/14/2013

SUBCHAPTER C. AUCTIONEER ADVISORY BOARD

Sec. 1802.101. Auctioneer Advisory Board.
The advisory board shall advise the commission on educational matters, operational matters, and common practices within the auction industry.

Sec. 1802.102. Appointment of Advisory Board; Membership; Eligibility.
(a) The advisory board consists of seven members appointed as follows:

(1) four members who are licensed auctioneers appointed by the presiding officer of the commission, with the commission's approval;

(2) the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission; and

(3) two public members.

(b) In appointing advisory board members under Subsection (a)(1), the presiding officer of the commission shall consider the geographical diversity of the members.

(c) Appointments to the advisory board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Sec. 1802.103. Terms; Vacancies.

(a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1 and may not serve more than two consecutive terms. If a vacancy occurs during the term of such a member, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to serve for the remainder of the term.

(b) The remaining members are ex officio members. Each ex officio member shall continue to serve during the time the member holds office.

Sec. 1802.104. Presiding Officer.
The presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve as presiding officer of the board. The presiding officer serves for two years and may not serve more than two consecutive terms.

Sec. 1802.106. Compensation.
A member appointed under Section 1802.102(a)(1) may not receive compensation for serving on the advisory board.

Sec. 1802.107. Meetings.
The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Sec. 1802.108. Civil Liability.
A member of the advisory board is not liable in a civil action for an act performed in good faith while performing duties as an advisory board member.

Sec. 1802.109. Auctioneer Education Programs.
(a) The advisory board shall:

(1) evaluate educational programs, seminars, and training projects; and

(2) make recommendations to the commission on their usefulness and merit as continuing education tools.

(b) On the recommendation of the advisory board, the commission may fund or underwrite specific classes, seminars, or events for the education and advancement of the auctioneering profession in this state.

AUCTIONEERS

Administrative Rules of the Texas Department of Licensing and Regulation

16 Texas Administrative Code, Chapter 67

67.65. Auctioneer Advisory Board.

(a) The board is established to advise the commission on educational matters, operational matters, and common practices within the auction industry, including those matters relating to use of the educational trust fund established with fees collected for the auctioneer education and recovery fund.

(b) Recommendations of the board will be transmitted to the commission.

(c) Board meetings are called by the presiding officer. Meetings in excess of one each calendar quarter shall be authorized by the commission or the commission's designee.

(d) One member shall be the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission.

AUCTIONEER ADVISORY BOARD

Meeting of December 14, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Jim Sample called the meeting to order at 9:00 a.m.

Presiding Officer, Jim Sample moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Board Members present were Presiding Officer Jim Sample, Norman Seaton, John Swofford, Joel Lemley, Douglas Oldmixon and Shelley Weidner. A quorum was seated.

Presiding Officer, Jim Sample moved to agenda item C., Approval of minutes – Meeting of October 9, 2015.

Board member Norman Seaton, seconded by Joel Lemley, made a motion to accept the minutes as presented. The motion passed with a unanimous vote in favor

Presiding Officer, Jim Sample moved to Agenda Item D., Public Comment. There was no public comment at this time.

Presiding Officer, Jim Sample moved to agenda item E,. Staff reports: Executive Office. Brian Francis, Deputy Executive Director, presented the Executive Office Staff Report on the new programs, new advisory boards, and agency new hires; Bill Implementation timeline and FAQ's and agency re-organization.

Presiding Officer, Jim Sample moved to agenda item E2 Education and Examination Division. Kim Whitt, Education Team Leader, provided the Education and Examination report and answered questions from the Board members.

Presiding Officer, Jim Sample moved to agenda item E3 Enforcement Division. Charlotte Melder, Lead Enforcement Prosecutor, provided the case of note, statistics and updates for the Enforcement Division and answered questions from the Board.

Presiding Officer, Jim Sample moved to agenda item E4 Financial Services Division. Jerry Daniels, Director of Financial Services presented the staff report on the status of the Auctioneer Education and Recovery fund and informed the Board of license fees being reduced and answered questions from the Board.

Presiding Officer, Jim Sample moved to agenda item E5 Licensing Division. Lisa Houdek, Licensing Team Leader, provided Licensing statistics and program updates and answers questions from the Board.

Presiding Officer, Jim Sample moved to agenda item F., Discussion and possible recommendation regarding proposed rule amendments to 16 Texas Administrative Code, Chapter

DRAFT

67, §§67.20, 67.21, 67.25, 67.30, 67.65, and 67.80, the proposed repeal of §67.70, and proposed new rules §§67.70, 67.71 and 67.72, to implement House Bill 2481, 84th Legislature, relating to the licensing and regulation of auctioneers and associate auctioneers. Della Lindquist, Deputy General Counsel presented the changes to the proposed amendments to the rules and informs the Board that two comments were received. She went through each section and answered questions from the Board Members.

Board Member Norman Seaton, seconded by Board Member John Swofford made a motion to approve the rules as presented with changes and recommend that they be presented to the Commission. Motion passes unanimously.

Presiding Officer, Jim Sample moved to agenda item G., Discussion of internet bidding and transfer of funds as it relates to auctioneering in Texas. Board Member Joel Lemley presented an explanation of internet bidding. There are four platforms of internet bidding: time bids; Live web casting of internet bidding; Catalogue Auctions and Tender Bids. The Board heard public comment from Lance Swagart regarding on-line bidding. The Board engaged in discussion regarding the online bidding process

Presiding Officer, Jim Sample moved to agenda item H., Recommendations for agenda items for next meeting. No Item requested

Presiding Officer, Jim Sample moved to agenda item I., Discussion of date, time, and location of next Board meeting. No date set at this time.

Presiding Officer, Jim Sample moved to agenda item J., Adjournment.

Board Member, Norman Seaton, seconded by Board Member Joel Lemley, made a motion to adjourn the meeting. The motion passed with a unanimous vote in favor. Presiding Officer Jim Sample adjourned the meeting at 10:35 a.m.

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Jim Sample, Presiding Officer
Auctioneer Advisory Board

DRAFT

AUCTIONEER ADVISORY BOARD

Meeting of October 9, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Jim Sample called the meeting to order at 9:00 a.m.

Presiding Officer, Jim Sample moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Board Members present were Presiding Officer Jim Sample, Norman Seaton, John Swofford, Joel Lemley, and Shelley Weidner. Board Member Douglas Oldmixon was absent. A quorum was seated.

Presiding Officer, Jim Sample moved to agenda item C., Training for Board Members on Open Meetings Act, Public Information Act and Administrative Procedures Act. Deputy General Counsel Della Lindquist presented her training on the Open Meetings Act, Public Information Act and Administrative Procedures Act to the Board Members.

Presiding Officer, Jim Sample moved to Agenda Item D., Approval of minutes – Meeting of August 8, 2014. Board member Norman Seaton, seconded by Shelley Weidner, made a motion to accept the minutes as presented. The motion passed with a unanimous vote in favor.

Presiding Officer, Jim Sample moved to agenda item E., TLDR Video Presentation on Public Comment Process. No video was presented because of no public comments.

Presiding Officer, Jim Sample moved to agenda item F., Public Comment. There was no public comment at this time.

Presiding Officer, Jim Sample moved to agenda item G., Staff reports: On behalf of Bill Kuntz, Executive Director and Brian Francis, Deputy Executive Director, Director of Compliance, George Ferrie presented the Executive Office Staff Report on the new programs, new advisory boards, and agency new hires; Bill Implementation timeline and FAQ's and agency re-organization. Russ Taulli presented the Compliance staff report and presented an overview of HB 2481. Kim Whitt, Education Team Leader, provided the Education and Examination report and answered questions from the Board members. Charlotte Melder, Lead Enforcement Prosecutor, provided the statistics and updates for the Enforcement Division and cases of note and informs the Board that a small error was made on the report presented to them. Lisa Houdek, Licensing Team Leader, provided Licensing statistics and program updates and answers questions from the Board.

Board member Douglas Oldmixon arrives during the Staff Reports at 9:32 a.m. and is welcomed to the meeting.

Presiding Officer, Jim Sample moved to agenda item H., Discussion and possible recommendation to publish or take other action regarding proposed amendments to 16 Texas Administrative Code, Chapter 67, Sections 67.20, 67.21, 67.25, 67.30, 67.65, and 67.80, the proposed repeal of 67.70, and proposed new rules 67.70, 67.71 and 67.72, to implement House

Bill 2481, 84th Legislature, relating to the licensing and regulation of auctioneers and associate auctioneers. Della Lindquist presented the proposed amendments to the rules and went through each individual section and answered questions from the Board Members. Board Member Norman Seaton, seconded by Board Member Douglas Oldmixon made a motion to recommend that the proposed amendments to the Auctioneer Rules be published with the Registry. Motion passes unanimously.

Presiding Officer, Jim Sample moved to agenda item I., Recommendations for agenda items for next meeting. Discussion of internet bidding legalities and transfer of funds.

Presiding Officer, Jim Sample moved to agenda item J., Discussion of date, time, and location of next Board meeting. The Board set the next board meeting to Monday, December 14, 2015 at 9:00 a.m.

Presiding Officer, Jim Sample moved to agenda item K., Adjournment. Board Member, Norman Seaton, seconded by Board Member Joel Lemley, made a motion to adjourn the meeting. The motion passed with a unanimous vote in favor. Presiding Officer Jim Sample adjourned the meeting at 11:12 a.m.

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Jim Sample, Presiding Officer
Auctioneer Advisory Board

AUCTIONEER EDUCATION ADVISORY BOARD

Meeting of August 28, 2014
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Jim Sample called the meeting to order at 9:01 a.m.

Presiding Officer, Jim Sample moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Members present were Presiding Officer Jim Sample, Norman Seaton, John Swofford, and Joel Lemley. Board members Shelley Weidner and Douglas Oldmixon were absent. A quorum was seated.

Presiding Officer, Jim Sample moved to agenda item C., Approval of minutes – Meeting of March 30, 2012. Board member Norman Seaton, seconded by John Swofford, made a motion to accept the minutes as presented. The motion passed with a unanimous vote in favor.

Presiding Officer, Jim Sample moved to agenda item D, Public Comment. There was no public comment at this time.

Presiding Officer, Jim Sample moved to agenda item E., Staff reports, Executive Office. Brian Francis, Deputy Executive Director, reported on Strategic Plan and the Legislative Appropriations including advisory board reimbursement for travel expenses. Kim Whitt, Education Team Leader, provided the Education and Examination report and answered questions from the Board members. Mary Winston, Enforcement Prosecutor, provided the statistics and updates for the Enforcement Division and cases of note. Lisa Houdek, Licensing Team Leader, provided Licensing statistics and program updates. Della Lindquist, Assistant General Counsel, provided the General Counsel report on the Rule Simplification Project.

Presiding Officer, Jim Sample moved to agenda item F., Recommendations for agenda items for next meeting. The Board decided to keep the rule simplification project on the agenda.

Presiding Officer, Jim Sample moved to agenda item G., Discussion of date, time, and location of next Board meeting. The Board did not set a date for the next meeting.

Presiding Officer, Jim Sample moved to agenda item H., Adjournment. Board member, John Swofford, seconded by Joel Lemley, made a motion to adjourn the meeting. The motion passed with a unanimous vote in favor. Presiding Officer Jim Sample adjourned the meeting at 9:21 a.m.

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Jim Sample, Presiding Officer
Auctioneer Education Advisory Board

Chapter 67
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§67.20. License Requirements--Auctioneer.

(a) An applicant for licensure as an auctioneer must submit a completed application along with required fees.

(b) To obtain a license as an auctioneer an applicant must:

(1) be at least 18 years of age;

(2) be a citizen of the United States or a legal alien; **and**

(3) either:

(A) [~~(3)~~] pass a written or oral examination provided by the department; **or**

(B) provide proof of employment and licensure as an associate auctioneer for at least two (2) years, and of having participated in at least ten (10) auctions, as described in §67.72(c).

(4) hold a high school diploma or a high school equivalency certificate;

(5) not have been convicted of a felony **during the [~~within~~]** five **(5)** years **preceding [~~of~~]** the application date; and

(6) show proof of successful completion of at least **eighty (80) [~~80~~]** hours of classroom instruction at an auction school with a curriculum approved by the department.

§67.21. License Requirements--Associate Auctioneers.

An applicant for licensure as an associate must:

(1) submit a completed application along with required fees;

(2) be employed under the direct supervision of an auctioneer licensed under this chapter; and

(3) either be a citizen of the United States or a legal alien.

§67.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as an auctioneer **or associate auctioneer**, a licensee must complete six hours of continuing education in courses approved by the department, including two hours of instruction in laws and rules that regulate the conduct of auctioneers **and associate auctioneers**.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once.

(e) A licensee **must [~~shall~~]** retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 1802, Auctioneers;

(2) Title 16, Texas Administrative Code, Chapter 67, Auctioneers Administrative Rules;

(3) other laws and rules that regulate the conduct of auctioneers **and associate auctioneers**;

(4) auction-related laws, such as the Uniform Commercial Code - Sales, Title 1, Chapter 2, Texas Business and Commerce Code §2.328 and the Deceptive Trade Practices - Consumer Protection Act, Chapter 17, Subchapter E, Texas Business and Commerce Code; or

(5) business practices, such as insurance, auction ethics, contracts, maintenance of trust accounts, and marketing.

(g) A licensee whose license has been placed on inactive status, pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to 'active' status.

§67.30. Exemptions.

(a) Any auction of property conducted by live bid call, regardless of whether the property may also be bid upon through the internet, is subject to this chapter and Texas Occupations Code, Chapter 1802 and is not exempt under 1802.002(14).

[~~(a) A person is not engaged in the business of selling property at auction for purposes of Texas Occupations Code, §1802.002(4), if the person acquired the property at issue for reasons other than resale at auction.~~]

(b) For purposes of this chapter and Texas Occupations Code, Chapter 1802, the sale of real or personal property is not considered to be a competitive bid subject to this chapter if all of the material terms of the transaction other than price are not the same.

§67.65 Auctioneer [~~Education~~] Advisory Board

[~~§67.70. Requirements--Auctioneer~~]

[~~(a) An auctioneer must list his license number in any advertisement.~~

~~(b) An auctioneer must furnish to the department the name, including assumed names, addresses, website, or social media pages, and phone numbers of all auction companies which he owns or operates.~~

~~(c) A licensee may not allow any person who is not a licensed auctioneer to call bids at a sale.~~

~~(d) A licensee may not knowingly use, or permit the use of false bidders at any auction.~~

~~(e) Before beginning an auction, a licensee must ensure the announcement of, give notice, display notice or disclose:~~

~~(1) that the auctioneer conducting the sale is licensed by the department;~~

~~(2) the terms and conditions of the sale including whether a buyer's premium will be assessed; and~~

~~(3) if the owner, consignor, or agent thereof has reserved the right to bid.~~

~~(f) If an auctioneer advertises an auction as "absolute" or "without reserve", no lots included may have a minimum bid. Advertising may include the wording, "many lots are without reserve"; however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.~~

~~(g) All auctioneers shall notify consumers and service recipients of the name, mailing address, website www.tdlr.texas.gov, and telephone number of the department for purposes of directing complaints to the department. The notification shall be included on any auction listing contract and on at least one of the following. This subsection is effective January 1, 2015.~~

~~(1) A sign prominently displayed at the place of the auction or on any auction website;~~

~~(2) Bills of sale or receipt to be given to buyers; or~~

~~(3) On bidder cards.~~

~~(h) An auctioneer who intends to charge a buyer's premium at an auction must state this condition and the amount of the buyer's premium in all advertising for the auction.~~

~~(i) Any statement in an advertisement for an auction that alters the meaning of another statement in the advertisement must be in a type font at least as large as the type font of the statement it alters.~~

~~(j) An auctioneer must report any change of address to the department within 30 days.~~

~~(k) Each licensed auctioneer must:~~

~~(1) maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which shall come into the auctioneers possession;~~

~~(2) deposit all proceeds from an auction into his trust or escrow account within 72 hours of the auction unless the owner/consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts;~~
~~(3) pay any public monies, including but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and~~

~~(4) pay all amounts due the seller within 15 banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.~~

~~(l) Each licensed auctioneer shall keep records relative to all auctions for at least two years from the date of the sale.~~

~~(m) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk for the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.~~

~~(n) In addition, the auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.~~]

§67.70. Auctioneer Standards of Practice.

(a) Advertising

(1) All advertisements designed to solicit auction business shall include the auctioneer’s name as it appears on the license and the license number.

(2) If an auctioneer advertises an auction as "absolute" or "without reserve", no lots included may have a minimum bid. Advertising may include the wording "many lots are without reserve"; however, the auction may not be titled, headed or called an "absolute" or "without reserve" auction unless all lots meet that criteria.

(3) An auctioneer who intends to charge a buyer's premium at an auction must state this condition and the amount of the buyer's premium in all advertising for the auction.

(4) An auctioneer may not make a false or misleading statement in an advertisement.

(b) Recordkeeping

(1) An auctioneer must furnish to the department the name, including assumed names, addresses, website, or social media pages, and telephone numbers of all auction companies that he owns or operates.

(2) An auctioneer must report any change of address to the department in writing within 30 days of the change.

(3) Each licensed auctioneer shall keep records relative to all auctions for a minimum of two years from the date of the sale.

(4) The records for each auction must state the name(s) and address of the owners of the property auctioned, the date of the sale, the name of the auctioneer and clerk for the sale, the gross proceeds, the location and account number of the auctioneer's trust or escrow account, an itemized list of all expenses charged to the consignor or seller, a list of all purchasers at the auction and a description and selling price for each item sold.

(5) The auctioneer shall keep, as part of the records for each auction, all documents relating to the auction. These documents shall include, but are not limited to, settlement sheets, written contracts, copies of advertising and clerk sheets.

(6) These documents include records and documents online.

(7) Each licensed auctioneer must:

(A) Maintain a separate trust or escrow account in a federally insured bank or savings and loan association, in which shall be deposited all funds belonging to others which come into the auctioneer's possession and control.

(B) Deposit all proceeds from an auction into his trust or escrow account within 72 hours of the auction unless the owner or consignor of the property auctioned is paid immediately after the sale or the written contract stipulates other terms, such as sight drafts.

(C) Pay any public monies, including, but not limited to state sales tax, received into the State Treasury at the times and as per the regulations prescribed by law; and

(D) Pay all amounts due the seller or consignor within 15 banking days of the auction unless otherwise required by statute or a written contract between license holder and seller.

(E) A licensed auctioneer shall cooperate with the department in the performance of an investigation. This includes, but is not limited to responding to requests from the department, including producing requested documents or other information, within 30 days of the request.

(F) The failure of a licensed auctioneer to timely pay a consignor may subject the licensed auctioneer to a claim under the Auctioneer Education and Recovery Fund.

(c) At auction

(1) A licensee may not allow any person who is not either a Texas licensed (1) auctioneer or (2) associate auctioneer who is directly supervised by a licensed auctioneer, to call bids at a sale.

(2) A licensee may not knowingly use, or permit the use of false bidders at any auction.

(3) All licensed auctioneers shall notify consumers and service recipients of the name, mailing address, website www.tdlr.texas.gov, and telephone number of the department for purposes of directing complaints to the department. The notification shall be included on any auction listing contract and on at least one of the following:

(A) A sign prominently displayed at the place of the auction or on any auction website;

(B) Bills of sale or receipt to be given to buyers; or

(C) Bidder cards.

§67.71. Requirements--Sponsoring Auctioneer.

(a) There must be a legitimate employee-employer relationship between an associate auctioneer and the sponsoring auctioneer or between the associate and an auction company operated by a licensed auctioneer that employs the sponsoring auctioneer.

(b) A sponsoring auctioneer must be on premises and directly supervising an associate auctioneer when the associate is bid calling.

(c) A sponsoring auctioneer is responsible for supervision of an associate auctioneer as he performs the items listed in §67.72(c).

(d) An auctioneer who terminates his sponsorship of an associate auctioneer must:

(1) within thirty days notify the department in writing; and

(2) provide signed documentation to the associate auctioneer showing:

(A) the beginning and ending date of the sponsorship;

(B) date and location of up to ten auctions bid called by the associate;

(C) items listed in §67.72(c), that the associate has performed.

§67.72. Requirements--Associate Auctioneers.

(a) An associate auctioneer shall provide auction services only when under the supervision of the licensed Texas auctioneer whose name is on file with the department as the associate's sponsoring auctioneer.

(b) When bid calling, an associate auctioneer must be under the direct on-premises supervision of the sponsoring auctioneer.

(c) In order to be eligible for licensure as an auctioneer without taking the examination, an associate auctioneer must participate in all aspects of the auction business involving the laws of this state, in at least ten (10) auctions including but not limited to:

(1) appraising;

(2) inventorying;

(3) advertising;

(4) property make ready;

(5) site selection and preparation;

(6) lotting;

(7) registration;

(8) clerking;

(9) cashiering;

(10) bid-calling;

(11) ring working;

(12) property check out;

(13) security;

(14) accounting; and

(15) managing an escrow account.

(d) An associate auctioneer must report any change of his address to the department within thirty (30) days.

(e) When a sponsoring auctioneer terminates his sponsorship of an associate auctioneer, the associate may not provide auction services until he has an agreement with a new sponsoring auctioneer whose name and signature are on file with the department.

§67.80. Fees.

(a) The application fee for an auctioneer license is $50.

(b) The application fee for an associate auctioneer license it $25.

(c) [~~(b)~~] The annual application fee to renew an auctioneer license is $50.

(d) The annual fee to renew an associate auctioneer license is $25.

(e) [~~(c)~~] Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(f) [~~(d)~~] Inactive License Status--Auctioneer

(1) The fee to place a license on 'inactive' status--no charge.

(2) The fee to renew a license on 'inactive' status--renewal fee as stated in subsection (c) or (d).

(3) The fee to change from 'inactive' status to 'active status' is $25.

(g) [~~(e)~~] Revised/Duplicate License/Certificate/Permit/Registration--$25

(h) [~~(f)~~] A $250 curriculum review fee will be assessed to all schools submitting their curriculum for review and approval by the department.

(i) [~~(g)~~] The initial recovery fund fee is $50.

(j) [~~(h)~~] All fees are non-refundable.

BARBERING
Occupations Code
Chapter 1601, Title 9
Effective 9/1/2005

SUBCHAPTER B. ADVISORY BOARD ON BARBERING

Section 1601.051. Board Membership.

The Advisory Board on Barbering consists of five members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) two members, each of whom:

(A) is engaged in the practice of barbering as a Class A barber; and

(B) does not hold a barbershop permit;

(2) two members, each of whom is a barbershop owner who holds a barbershop permit; and

(3) one member who holds a permit to conduct or operate a barber school.

Section 1601.055. Terms; Vacancy.

(a) Members of the board serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval shall appoint a replacement to fill the unexpired term.

Section 1601.058. Presiding Officer.

The presiding officer of the commission, with the commission's approval, shall designate a board member as presiding officer to serve in that capacity for a two-year term.

Section 1601.059. Board Duties.

(a) The board shall advise the commission and the department on:

(1) the education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to barbering; and

(4) other issues affecting barbering.

(b) The board shall respond to questions from the department and the commission regarding barbering.

BARBERS

Administrative Rules

16 Texas Administrative Code, Chapter 82

82.65. Advisory Board on Barbering. *(Rule effective December 8, 2005, 31 TexReg 8075)*

(a) The purpose of the Advisory Board on Barbering is to advise the commission and department on adopting rules, setting fees, and enforcing and administering these rules, and Texas Occupations Code Chapters 1601 and 1603, as applicable.

(b) The board is composed of five persons as specified in the Texas Occupations Code Chapter 1601. Board members will serve staggered six-year terms.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

(d) Expense reimbursements to board members are limited to authorized expenses incurred while traveling to and from board meetings and shall be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

ADVISORY BOARD ON BARBERING

Meeting of August 24, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Linda Connor called the meeting to order at 9:35 a.m.

Presiding Officer, Linda Connor called roll. Board members present were Linda Connor, James Bowens, Michelle Narlo Wasser, and Ronald Brown. Board member Jenny Grisham was absent. A quorum was present. Ms. Connor accepted a motion to excuse the absence of Jenny Grisham.

Presiding Officer, Linda Connor moved to agenda item C., Board member training. Pamela Legate, Assistant General Counsel, provided an overview of the Open Meeting Act, Public Information Act, and the Administrative Procedures Act.

Presiding Officer, Linda Connor moved to agenda item D., Approval of minutes – Meeting of June 23, 2014. Board member Ron Brown, seconded by Michelle Narlo Wasser, made a motion to accept the minutes as presented. Motion passed.

Presiding Officer, Linda Connor moved to agenda item E., Public Comment. There was no public comment.

Presiding Officer, Linda Connor moved to agenda item F., Staff Reports. Brian Francis, Deputy Executive Director, gave the report for the Executive Office. Marineula LaFleur, Program Specialist gave the Compliance Division staff report. Ray Pizarro, Director gave the Education and Examination Division staff report. Chris Funderburg, Prosecutor, gave the Enforcement staff report. Tanya Gauthreaux, Division Director, gave the Field Operations staff report. Joyce Hennington, Program Manager, gave the Licensing staff report.

Presiding Officer, Linda Connor moved to agenda item G., Education and Curriculum work group report and discussion. Board member Ron Brown stated that there was no report at this time.

Presiding Officer, Linda Connor moved to agenda item H., Discussion and possible recommendation regarding proposed rule amendments, at 16 Texas Administrative Code, Chapter 82, §§82.10, 82.20 - 82.22, 82.28, 82.31, 82.70 - 82.72, 82.80, 82.110 and 82.120 regarding hair braiding deregulation and special event services. These rules are proposed to implement House Bill 104 and House Bill 2717, 84th Legislature, Regular Session (2015), and to make editorial changes and clarifications. Pamela Legate, Assistant General Counsel provided an overview of the proposed changes and revisions to rules. Board member Ron Brown, seconded by James Bowens, made a motion to recommend the proposed rules for publication in the Texas Register. The motion passed by a unanimous vote.

Presiding Officer, Linda Connor moved to agenda item I., Recommendations for agenda items for next meeting. The Board decided to place the following items on the next meeting agenda: work group reports Sanitation work group – Connor and Wasser; Organizational development work group – Connor and Bowens, and Education work group – Brown and Grisham (will address the written public comment); and review and discussion on public comments on the proposed rules.

Presiding Officer, Linda Connor moved to agenda item J., Discussion of date, time, and location of next Board meeting. The Board decided to hold the next meeting on November 2, 2015 at 9:00 a.m.

Presiding Officer, Linda Connor moved to agenda item L., Adjournment. Presiding Officer, Linda Connor adjourned the meeting at 11:10 a.m.

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Linda Connor, Presiding Officer
Advisory Board on Barbering

ADVISORY BOARD ON BARBERING

Meeting of June 23, 2014
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Linda Connor called the meeting to order at 9:10 a.m.

Presiding Officer, Linda Connor called roll. Board members present were Linda Connor, James Bowens, Michelle Narlo, and Jenny Grisham. Board member Ronald Brown was absent. A quorum was present.

Presiding Officer, Linda Connor moved to agenda item C., Approval of minutes – Meeting of April 28, 2014. The Board passed on this item.

Presiding Officer, Linda Connor moved to agenda item D., Board member training. Pamela Legate, Assistant General Counsel, provided an overview of the Open Meeting Act, Public Information Act, and the Administrative Procedures Act.

Presiding Officer, Linda Connor moved to agenda item E., Public Comment. Presiding Officer Linda Connor saluted Kevin Lane for his June 21, 2014, Gala celebrating the history and future of barbering.

Presiding Officer, Linda Connor moved to agenda item F., Staff Reports. Brian Francis, Deputy Executive Director, gave the report for the Executive Office. David Gonzales, Program Manager, and Marinela LaFleur, Program Specialist, gave the Compliance Division staff report. Ray Pizarro, Director, and Rebecca Armas, Program Specialist, gave the Education and Examination Division staff report. Chris Funderburg, Prosecutor, gave the Enforcement staff report. Tanya Gauthreaux, Division Director, gave the Field Operations staff report. Joyce Hennington, Program Manager, gave the Licensing staff report.

Presiding Officer, Linda Connor moved to agenda item G., Education and Curriculum work group report and discussion. Jenny Grisham presented a document detailing the work group progress on the distribution of hours for Barbers curriculum. The board discussed the proposed changes and addressed past concerns for the hours. Board and staff suggested that this item be presented to the regulated community for discussion. Staff will post the proposal for public comment before the next meeting.

Presiding Officer, Linda Connor moved to agenda item H. Brainstorming Session regarding Barber related Strategic Planning Comments. Brian Francis, Deputy Executive Director, led the review of the strategic plan comments. The Board heard input from: Kevin Ratliff, Elon Silas, Shawn Whitelow, Stephon Taylor, Andre Bowie, Mark Fuller, James Lynch, Kevin Lane, and William Pomp.

Presiding Officer, Linda Connor moved to agenda item I. Possible work group assignments based on the comments received during the discussions under item H. Linda Connor assigned Michelle Narlo to work with her on the Sanitation Work Group; and, James Bowens was assigned to Organization Development along with Ms. Connor. Jenny Grisham and Ron Brown will continue to work as the Education and Curriculum Work Group.

Presiding Officer, Linda Connor moved to agenda item J., Recommendations for agenda items for next meeting. The Board decided to place the following items on the next meeting agenda: work group reports; and discussion of five year review of the Barbering program under the question from the strategic plan.

Presiding Officer, Linda Connor moved to agenda item K., Discussion of date, time, and location of next Board meeting. The Board did not set a time for the next meeting.

Presiding Officer, Linda Connor moved to agenda item L., Adjournment. Presiding Officer, Linda Connor adjourned the meeting at 1:54 p.m.

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Linda Connor, Presiding Officer
Advisory Board on Barbering

ADVISORY BOARD ON BARBERING

Meeting of February 24, 2014
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Linda Connor called the meeting to order at 2:13 p.m.

Presiding Officer, Linda Connor called roll. Board members present were Linda Connor, Jimmy Johnson, and Jenny Grisham. Board member Ronald Brown was absent. A quorum was present.

Presiding Officer, Linda Connor moved to agenda item C., Approval of minutes – Meeting of November 4, 2013. Board member, Jimmy Johnson, seconded by Jenny Grisham, made a motion to accept the minutes as presented. The motion passed by a unanimous vote.

Presiding Officer, Linda Connor moved to agenda item D., Public Comment. The Board heard public comment from Jane Owen and Kevin Lane.

Presiding Officer, Linda Connor moved to agenda item E., Staff Reports., Executive Office. Brian Francis, Deputy Executive Director, gave the report for the Executive Office. David Gonzales, Program Manager, gave the Compliance Division staff report. Marinela LaFleur, Education Specialist, gave the Education and Examination Division staff report. Chris Funderberg, Prosecutor, gave the Enforcement staff report. Tanya Gauthreaux, Division Director, gave the Field Operations staff report. Joyce Hennington, Program Manager, gave the Licensing staff report.

Presiding Officer, Linda Connor moved to agenda item F., Education and Curriculum work group report and discussion. Board member, Jenny Grisham presented the work group report on the adjustment of training hours for specialty licenses and the Barber Technician/Barber Manicurist posed a problem in the number of hours spent on the manicuring program over and above the number of hours required for a Class A Barber. The work group also proposed rules in the Barber curriculum to address waxing and draping.

Presiding Officer, Linda Connor moved to agenda item G. Discussion and possible recommendation regarding proposed rule amendments and new rules, at 16 Texas Administrative Code, Chapter 82, §§82.10, 82.2, 82.2, 82.2, 82.23, 82.31, 82.70 - 82.72, 82.80 and 82.120 regarding mini-barbershop and mini-dual shop licensing, distance education, hair braiding instructor curriculum, examination and licensing requirements and hair braiding barber school equipment requirements. These rules are proposed to implement House Bill 2095, 83rd Legislature, Regular Session (2013), and the Commission's general rulemaking authority to administer the Barber program. Pamela Legate outlined the proposed rules and discussed and proposed changes with the Boards input to sections 82.71(g) and 82.71(v). The Board heard public comment from Jane Owen and Kevin Lane regarding the proposed rules. Board member Jenny Grisham, seconded by Jimmy Johnson, made a motion to recommend the revised proposed rules to be posted in the Texas Register. Motion passed with a unanimous vote.

Presiding Officer, Linda Connor moved to agenda item H., Recommendations for agenda items for next meeting. The Board decided to place the following items on the next meeting agenda: discussion of the Strategic Plan Development; discussion on the testing practices; public comment on

proposed rules, and work group report on education curriculum.

Presiding Officer, Linda Connor moved to agenda item I., Discussion of date, time, and location of next Board meeting. The Board decided to hold the next meeting in April 2014.

Presiding Officer, Linda Connor moved to agenda item J., Adjournment. Presiding Officer, Linda Connor adjourned the meeting at 4:30 p.m.

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Linda Connor, Presiding Officer
Advisory Board on Barbering

Chapter 82
Discussion and possible recommendation
Future rule proposal

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

82.10. 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, Chapters 1601 and 1603.

(2) **Barber Establishment**--A barbershop, mini-barbershop, specialty shop, dual shop, mini-dual shop, mobile shop, or school that is subject to regulation under the Act.

(3) **Barber Instructor--**A person authorized by the department to perform or offer instruction in any act or practice of barbering under Texas Occupations Code §1601.002.

(4) **Barber School**-- An entity that holds a permit issued under this chapter to teach the practice of barbering and that may be privately or publicly funded. The term includes a barber college.

(5) **Barber Technician--**A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C), (D), (F), (G) and (I).

(6) **Barber Technician/Manicurist--**A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C) - (G).

(7) **Barber Technician/Hair Weaver--**A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(C), (D), (G) and (H).

(8) **Beard**--The beard extends from below the line of demarcation and includes all facial hair regardless of texture.

(9) **Board**--The Advisory Board on Barbering.

(10) **Booth Rental Permit--**A permit issued or renewed to an applicant the same time the applicant is issued one of the following license types: barber, barber instructor, specialty instructor, barber technician, manicurist, barber technician/manicurist, barber technician/hair weaver, **or** hair weaver**[~~, or hair braider~~]**; which allows the holder to lease space on the premises of a barber shop, specialty shop, mini-barbershop, dual shop, or mini-dual shop to engage in the practice of barbering as an independent contractor.

(11) **Class A Barber--**A person authorized by the department to perform any act or practice of barbering under Texas Occupations Code §1601.002.

(12) **Commission**--The Texas Commission of Licensing and Regulation.

(13) **Common Area**--An area within a barbering establishment that contains equipment and facilities available for use by all persons who practice barbering on the premises under a license, certificate, or permit issued under this chapter.

(14) **Department**--The Texas Department of Licensing and Regulation.

(15) **Distance Education**--A formal instructional process in which the student and teacher are separated by physical distance and a variety of communication technologies are used to deliver

instruction in theory to the student. Courses taught by distance education do not satisfy the requirements of the practical portion of the course curriculum.

(16) **Dual Shop**--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.

(17) **Guest Presenter**--A person who possesses subject matter knowledge in a specific curriculum topic and who has the teaching ability necessary to impart the information to students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom sessions in order for students to earn hours.

[~~(18)~~] **[~~Hair braider--A person who holds a Hair Braiding Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(K).~~]**

(18) [~~(19)~~] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(19) [~~(20)~~] Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(H).

(20) [~~(21)~~] License--A license, permit, certificate, or registration issued under the authority of the Act.

(21) [~~(22)~~] License by reciprocity--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(22) [~~(23)~~] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(23) [~~(24)~~] Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(E) and (F).

(24) [~~(25)~~] Mini-Barbershop--A barber establishment in which a person practices barbering under a license, certificate, or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(25) [~~(26)~~] Mini-Dual Shop--A shop owned, operated, or managed by a person holding a mini-barber and mini-beauty shop license under Texas Occupations Code §1603.207.

(26) [~~(27)~~] Mini-Barbershop Permittee--A person or entity that holds a license for a mini-barbershop or mini-dual shop. The mini-barbershop permittee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for its mini-barbershop or mini-dual shop.

(27) [~~(28)~~] Mobile Shop--A barbershop, specialty shop, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(28) [~~(29)~~] Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(29) [~~(30)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

[~~(31)~~] **[~~Shampoo Apprentice Permit--A non-renewable permit that allows a person to perform the practice of barbering defined in Texas Occupations Code §1601.002(1)(I).~~]**

(30) [~~(32)~~] Sideburn--Part of a haircut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(31) Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(32) [~~(33)~~] Specialty Instructor--A person authorized by the department to perform or offer instruction in an act or practice of barbering limited to Texas Occupations Code §1601.002(1)(C) - (H) **[~~and (K)~~]**.

(33) [~~(34)~~] Specialty Shop--A barber establishment in which only the practice of barbering as defined in Texas Occupations Code §1601.002(1)(E), (F), (H) or (K) is performed.

(34) [~~(35)~~] Student Permit--A permit issued by the department to a student enrolled in barber school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(35) [~~(36)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

82.20. License Requirements--Individuals.

(a) To be eligible for a Class A Barber Certificate, Barber Instructor License, Barber Technician License, Manicurist License, Barber Technician/Manicurist License, Barber Technician/Hair Weaving License or Hair Weaving Specialty Certificate of Registration, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pass the applicable examination;

(3) pay the fee required under §82.80; and

(4) meet other applicable requirements of the Act, this section, and the applicable curriculum set forth in §82.120.

(b) To be eligible for a **[~~Hair Braiding Specialty Certificate of Registration or~~]** Student Permit, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act, this section and the applicable curriculum set forth in §82.120.

(c) Class A Barber Certificate--To be eligible for a Class A barber certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.253.

(d) Barber Instructor License To be eligible for a Barber Instructor License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.254.

(e) Barber Technician License--To be eligible for a Barber Technician License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.256.

(f) Manicurist License--To be eligible for a Manicurist license, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.257.

(g) Hair Weaving Specialty Certificate of Registration--To be eligible for a Hair Weaving Specialty Certificate of Registration, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.258.

[~~(h)~~] [~~Hair Braiding Specialty Certificate of Registration--To be eligible for a Hair Braiding Specialty Certificate of Registration, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.259. No examination is required.~~]

(h) [~~(i)~~] Student Permit--To be eligible for a Student permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260.

(i) [~~(j)~~] Barber Technician/Manicurist License--To be eligible for a Barber Technician/Manicurist License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.262.

(j) [~~(k)~~] Barber Technician/Hair Weaving License--To be eligible for a Barber Technician/Hair Weaving License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.263.

(k) [~~(l)~~] To be eligible for a Specialty Instructor License as a Manicurist Instructor, Barber Technician Instructor, Barber Technician/Manicurist Instructor, Barber Technician/Hair Weaving Instructor, or Hair Weaving Instructor, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80;

(3) be at least 18 years of age;

(4) have a high school diploma or high school equivalency certificate;

(5) hold a current specialty license in the specialty or specialties in which the applicant is seeking licensure; and

(A) have completed a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or

(B) have at least one year of licensed work experience in each of the specialties in which the applicant is seeking licensure; and

(i) have completed 500 hours of instruction in barber courses and methods of teaching in a barber school; or

(ii) have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or

(iii) have obtained a degree in education from an accredited college or university; and

(6) pass a written and practical exam required under §82.21.

[~~(m)~~] [~~To be eligible for a Hair Braiding Specialty Instructor License, on or after September 1, 2014, an applicant must:~~]

[~~(1)~~] [~~submit the completed application on a department-approved form;~~]

[~~(2)~~] [~~pay the fee required under §82.80;~~]

[~~(3)~~] **[~~be at least 18 years of age;~~]**

[~~(4)~~] **[~~have a high school diploma or high school equivalency certificate;~~]**

[~~(5)~~] **[~~hold a current hair braiding specialty certificate;~~]**

[~~(6)~~] **[~~have completed a 50 hour hair braiding instructor course in a barber school; and~~]**

[~~(7)~~] **[~~pass a written examination required under §82.21. No practical examination is required.~~]**

82.21. License Requirements--Examinations.

(a) To be eligible for a department examination, an applicant must:

(1) submit a completed license application on a department-approved form;

(2) pay the applicable license application fee under §82.80; and

(3) have completed the number of curriculum hours required by this chapter and the Act.

(b) For a Class A barber certificate, a student enrolled in a 1,500 hour program is eligible to take the written examination when the department receives proof of completion of 1,000 curriculum hours. A student enrolled in a 1,000 hour program is eligible to take the written examination when the department receives proof of completion of 900 curriculum hours.

(c) All department examinations consist of a written and practical part. A passing grade of 70 on each part is needed to satisfy the examination requirement.

[~~(d)~~] **[~~Notwithstanding subsection (c), no practical examination is required for the Hair Braiding Specialty Instructor license.~~]**

(d) [~~(e)~~] Examinees must pass the written examination before being eligible to take the practical examination.

(e) [~~(f)~~] When appearing for an examination the examinee shall bring the instruments necessary to give a practical demonstration of the barbering services applicable to the license for which the examinee is applying.

(f) [~~(g)~~] The examinee shall provide a model, of 16 years of age or older, on whom to demonstrate the practical work. The department may require parental approval for models under 18 years of age.

(g) [~~(h)~~] To be admitted to an examination, the examinee must present a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

(h) [~~(i)~~] Examinees are required to wear a smock or professional attire for the practical examination.

(i) [~~(j)~~] The department will notify an examinee if the examinee fails either the written or practical examination.

(j) [~~(k)~~] Any student or applicant having had a name change during his or her enrollment at any department licensed barber school must notify the department in writing prior to the date on which the student or applicant is scheduled to take any examination, written or practical.

82.22. Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, Mini-Dual Shops, Mobile Shops, and Booth Rental.

(a) To be eligible for a Barbershop, Specialty Shop Permit, a Dual Shop or Mobile Shop License, Mini-Barbershop or Mini-Dual Shop Permit, or a Booth Rental Permit, an applicant must:

(1) submit the completed application on a department approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act and this chapter.

(b) Barbershop Permit - To be eligible for a barbershop permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303.

(c) Specialty Shop Permit - To be eligible for a Specialty Shop Permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.305. The categories of Specialty Shop Permits issued by the department are: manicurist, **and** hair weaving**[, and hair braiding]**.

(d) Dual Shop License--To be eligible for a Dual Shop License, an applicant must comply with the requirements of the Act, this chapter, Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 for obtaining a beauty salon license and a barbershop permit.

(e) Mini-Barbershop Permit--To be eligible for a Mini-Barbershop Permit, **[on or after November 1, 2014,]** an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303 and §1603.207.

(f) Mini-Dual Shop Permit--To be eligible for a Mini-Dual Shop Permit, **[on or after November 1, 2014,]** an applicant must comply with the requirements of the Act, this chapter, Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 for obtaining a beauty salon license and a barbershop permit.

(g) Mobile Shop License--To be eligible for a Mobile Shop License, an applicant must:

(1) provide a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use;

(2) provide a permanent mailing address where correspondence from the department may be received; and

(3) verify that the mobile shop complies with the requirements of the Act and this chapter.

(h) Booth Rental Permit--To be eligible for a booth rental permit, an applicant must hold a valid department-issued Class A barber certificate, barber technician license, barber technician/manicurist license, barber technician/hair weaving license, barber instructor license, specialty instructor license, manicurist license, **or** hair weaving specialty certificate of registration**[, or hair braiding specialty certificate of registration]** and meet the requirements of this section.

82.28. Reciprocity or Endorsement and Provisional Licensure.

(a) The examination requirement shall be waived for any person who completes the application for and payment of fees prescribed by the department for a certificate of registration, license, or permit and who submits satisfactory proof that he or she holds an active and valid certificate, license or permit from another state or country that has substantially equivalent licensing requirements to those of the State of Texas.

(b) Applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee for license by reciprocity, the applicable license application fee, and the law and rules book fee**,** under §82.80;

(3) be at least 16 years of age and have at least a seventh grade education;

(4) furnish an active and valid license or certificate from the home licensing state or country; and

(5) provide one of the following:

(A) a letter from the licensing board in the home state, bearing its official seal of office, stating that the applicant's license is active, valid and in good standing; or

(B) if the applicant is from a territory or foreign country, provide documents verified by a certified credentialing agency confirming that the licensure in the territory or foreign country was obtained by standards substantially equivalent to those of Texas.

(c) Texas requires 1,500 hours of training substantially equivalent to the Texas curriculum. If the applicant graduated in a state that required less than 1,500 hours, documented work experience may be substituted at the rate of 25 hours per month worked, up to a maximum of 500 hours, or the applicant must complete the balance of hours required in an approved Texas barber school.

(d) The department may waive any license requirement, except for a license or certificate for a Class A Barber, Barber Technician, **or** Hair Weaver **[~~or Hair Braider~~]**, for an applicant who holds a license from another state or country that has license requirements substantially equivalent to those of Texas.

(e) The department may issue a provisional license to applicants currently licensed in another jurisdiction who file an application for a Texas barber license by reciprocity.

(f) To be eligible for a provisional license, an applicant must:

(1) file a completed application for a Texas barber license by reciprocity;

(2) provide information sufficient for the department to verify the applicant's licensure in good standing, for at least two years immediately preceding the person's Texas application, in the same license type for which the person seeks the certificate or license; and

(3) have been licensed in a jurisdiction or foreign country in which the requirements for obtaining the same certificate or license are substantially equivalent to the requirements under the Act, including passage of a national examination or other examination recognized by the commission relating to the practice of the profession.

(g) A person issued a provisional license may perform those acts of barbering authorized by the provisional certificate or license pending the department's approval or denial of an applicant's license by reciprocity.

(h) A provisional certificate or license is valid until the date the department approves or denies the application for licensure by reciprocity. The department must approve or deny a provisional certificate or license holder's application for a certificate or license by reciprocity not later than the 180th day after the date the provisional certificate or license is issued.

(i) The department shall issue a certificate or license by reciprocity to the provisional certificate or license holder if the person is eligible to hold a certificate or license under the Act.

(j) An applicant for licensure by reciprocity is eligible for a provisional certificate or license only once. A person who is denied licensure by reciprocity and subsequently reapplies for licensure by reciprocity is not eligible to obtain additional provisional certificates or licenses to practice barbering in Texas.

82.31. Licenses--License Terms.

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

(1) Class A Barber Certificate;

(2) Barber Instructor License

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving;

(4) Specialty Certificate of Registration--Hair Weaving**[~~, Hair Braiding~~]**;

(5) Specialty Instructor License-- Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving**[~~, Hair Braiding~~]**;

(6) Barbershop Permit;

(7) Mini-Barbershop Permit;

(8) Specialty Shop Permit;

(9) Dual Shop License;

(10) Mini-Dual Shop Permit;

(11) Mobile Shop License; and

(12) Booth Rental Permit.

(b) A Barber School Permit issued under this chapter shall have a term of one year from the date of issuance.

(c) A Student Permit issued under this chapter does not expire.

82.70. Responsibilities of Individuals.

(a) For purposes of this section, "licensed facility" means the premises of a place of business that holds a license, certificate, or permit under Texas Occupations Code, Chapters 1601**, 1602** and 1603.

(b) A licensee **is [~~shall be~~]** restricted to working in a licensed facility but may perform a service within the scope of the license, **[~~certificate or permit~~]** at a location other than a licensed facility for a customer who: **[~~, because of illness or physical or mental incapacitation,~~]**

(1) is unable to receive the services at a licensed facility **because of illness of physical or mental incapacitation; or [~~. The appointment for services must be made through a licensed facility.~~]**

(2) will receive the services in preparation for and at the location of a special event; and

(3) makes the appointment for services through a licensed facility.

(c) Only a permitted barber school, barbershop, mini-barbershop, specialty shop, dual shop, mini-dual shop, mobile shop, or a licensed barber may advertise as a "Barber."

(d) License holders, including Class A barbers, barber instructors, barber technicians, barber technician/manicurists, barber technician/hair weavers, hair weavers, **[~~hair braiders,~~]** manicurists, and specialty instructors are responsible for compliance with the health and safety standards of this chapter**.**

(e) Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and does not include lingerie or see-through fabric.

(f) Licensees shall notify the department in writing of any name change within thirty days of the change.

(g) Licensees shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(h) Barbers, manicurists, barber instructors, specialty instructors, barber technicians, barber technician/manicurists, barber technician/hair weavers, **or** hair weavers**[~~, or hair braiders~~]** who lease

space on the premises of a barbershop, dual shop, or specialty shop to engage in the practice of barbering as an independent contractor must hold a booth rental permit.

82.71. Responsibilities of Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, and Mini-Dual Shops.

(a) The owner of a barbershop, dual shop, specialty shop, mini-barbershop, or mini-dual shop and the shop manager in whose name the shop permit is jointly issued, if different from the owner, shall both be responsible individually and jointly for ensuring that all persons who work in a shop are properly licensed at all times. Individuals who do not hold a current license and /or permit required by the department shall not be allowed to engage in barbering. Shop owners and shop managers commit an offense in violation of department rules if an individual with an expired license or permit or no license or no permit engages in barbering in a shop.

(b) Shop owners and/or shop managers shall verify that all employees and independent contractors have current licenses and permits, as applicable.

(c) The shop owner and/or shop manager shall maintain a current list of all individuals who work in a shop at the time of inspection including employees, independent contractors, and mini-barbershop and mini-dual shop permittees who engage in barbering. The list must be made available to department representatives upon request and must contain the following information:

(1) name of every person working in the shop including their license type, number, and license expiration date;

(2) whether the person is an employee or an independent contractor who engages in barbering; and

(3) license number and license expiration date of each mini-barbershop and mini-dual shop.

(d) The mini-barbershop and mini-dual permittee must maintain a current list of all persons who work in a shop at the time of the inspection, including employees and independent contractors who engage in barbering, and which must include the name of each person working in the mini-barbershop or mini-dual shop, along with their license type number and expiration date. The list must be made available to department representatives upon request.

(e) Each barbershop, dual shop, mini-barbershop and mini-dual shop may display a barber pole. This pole shall be the traditional red, white with the optional blue.

(f) In addition, barbershops shall display on the exterior of the building or premises a sign containing the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber".

(g) Mini-barbershops must display on the exterior of the mini-barbershop premises a sign containing the words “Barber Shop” or “Barber Salon” or any phrase containing the word “Barber”.

(h) Food or drink must be disposed of in a closed container and the shop shall be separated by a solid wall and have a separate entrance if located in the same building with a restaurant or food preparation area. This rule will not apply to a licensed barbershop or specialty shop in a department store when the sale of food and drink is not immediately adjacent to the shop.

(i) A shop shall provide for the use of individuals who work in the shop at least one sink, wash basin, or hand sanitizer for every three chairs or stations.

(j) Only a permitted barber school, barbershop, mini-barbershop, dual shop, mini-dual shop, mobile shop or specialty shop or a licensed barber may advertise as a "Barber."

(k) A shop is responsible for maintaining all common areas and for compliance with the health and safety standards of this chapter.

(l) Alterations to the shop's floor plan must be in compliance with the requirements of the Act and this chapter.

(m) A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

(n) Shops may establish rules of operation and conduct, which may include rules relating to clothing which do not conflict with this chapter.

(o) Shops shall notify the department in writing of any name change of the shop within thirty days of the change.

(p) Shops shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(q) Hair weaving specialty shops shall provide the following equipment for each licensee present and providing services:

(1) one work station;

(2) one styling chair;

(3) a sufficient amount of shampoo bowls for licensees providing hair weaving services; and

(4) one chair dryer/handheld dryer for each three licensees providing hair weaving services.

[~~(r)~~] **[~~Hair braiding specialty shops shall provide the following equipment for each licensee present and providing services:~~]**

[~~(1)~~] **[~~one work station; and~~]**

[~~(2)~~] **[~~one styling chair.~~]**

(r) **[~~(s)~~]** Manicure specialty shops shall provide the following equipment for each licensee present and providing services;

(1) one manicure table with light;

(2) one manicure stool; and

(3) one professional client chair for each manicure station.

(s) **[~~(t)~~]** Dual shops shall:

(1) comply with all requirements of the Act and this chapter applicable to barbershops;

(2) comply with all requirements of Texas Occupations Code, Chapter 1602 and 16 TAC Chapter 83 applicable to beauty salons; and

(3) if the shop does not currently have employed or have a contract with at least one licensed barber (or cosmetologist) the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber (or cosmetologist) is available; and:

(4) if the shop has neither employed nor contracted with at least one licensed barber (or cosmetologist) for a period of 45 days or more the owner shall;

(A) not place any new advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(B) remove or obscure any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

(t) [~~(u)~~] Mini-barbershops must comply with all requirements of the Act and this chapter applicable to mini-barbershops and Texas Occupations Code §1603.207.

(u) [~~(v)~~] Mini-dual shops must:

(1) comply with all requirements of the Act and this chapter applicable to barbershops; and

(2) comply with all requirements of Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 applicable to beauty shops; and

(3) comply with all the requirements for dual shops listed under subsection (t).

(v) [~~(w)~~] A person holding a barber shop, mini-barbershop, specialty shop, dual shop, mini-dual shop, or mobile shop license may not employ a person who is not otherwise licensed by the department to shampoo or condition a person's hair, unless the person holds an active student permit.

82.72. Responsibilities of Barber Schools.

(a) If a barber school changes ownership, the new owner must apply for a new school permit, including the new permit fee, ten days prior to the change of ownership.

(b) A new permit fee shall be required from a barber school that has changed ownership.

(c) A barber school must have one barber chair available for each student in attendance on the practical floor. Additional students in attendance must be assigned to the beginner's department or theory classroom.

(d) The barber school must issue within seven days of enrollment each student his or her own textbook or books which shall contain all subjects referred to in Texas Occupations Code §1601.558. The department must approve each textbook or books before it may be used in the barber school curriculum.

(e) Within 30 days of enrollment, a barber school shall furnish to or ensure that each student is equipped with his or her own personal tools which must include the following:

(1) one professional electric clipper of modern design;

(2) one neck duster;

(3) one barber shears;

(4) one thinning shears;

(5) one razor equipped with disposable blades;

(6) three barber combs;

(7) one styptic powder or liquid styptic;

(8) one tool kit (carrying kit);

(9) one hair styling brush;

(10) one neck clip;

(11) one can clipper oil;

(12) one hand held hair dryer; and

(13) one T-edger or outliner.

(f) No student may take instruction or accrue hours for practical work unless he or she is equipped with the tools required in subsection (e).

(g) Each barber school shall have:

(1) for each student in attendance on the practical floor, enrolled in a manicurist course outlined in §82.120, one complete manicure table, one complete set of manicuring implements for plain and sculptured nails, and one textbook with complete instructions;

(2) an adequate supply of permanent wave rods, and optional hair styling rollers;

(3) a minimum of two canvas-type wig blocks;

(4) two mannequins, one long-haired and one short-haired;

(5) a minimum of one wig, one hairpiece, and hair extensions for weaving;

(6) clock;

(7) bulletin board;

(8) chalk board or dry erase board;

(9) one hooded hair dryer;

(10) fire extinguisher with current inspection report;

(11) instructor's desk in classroom; and

(12) if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer.

[~~(13)~~] [~~If providing the hair braiding curriculum, the equipment listed in subsection (h)(1) - (11).~~]

[~~(h)~~] [~~Notwithstanding subsections (c) - (g), a barber school that offers only the hair braiding curriculum must have a clock and a fire extinguisher with current inspection report and must make the following equipment available in adequate number for student use:~~]

[~~(1)~~] [~~mannequin with sufficient hair, with table or attached to styling station;~~]

[~~(2)~~] [~~assortment of combs;~~]

[~~(3)~~] [~~brushes;~~]

[~~(4)~~] [~~yarn;~~]

[~~(5)~~] [~~artificial hair;~~]

[~~(6)~~] [~~scissors;~~]

[~~(7)~~] [~~butterfly clamps and small clips;~~]

[~~(8)~~] [~~hackle;~~]

[~~(9)~~] [~~chairs;~~]

[~~(10)~~] **[~~spray bottle; and~~]**

[~~(11)~~] **[~~drawing board/card.~~]**

(h) [~~(i)~~] A student instructor may instruct theory only if assisted by a person holding a barber instructor's license.

(i) [~~(j)~~] A barber school shall submit each application for student permit in a manner prescribed by the department.

(j) [~~(k)~~] Students must have a permit to attend barber school and are authorized to only practice barbering in that school.

(k) [~~(l)~~] The school must attach a current student photograph to the school's portion of the permit and to the student's portion of the permit. No student permit is valid unless these photographs are attached.

(l) [~~(m)~~] Notwithstanding subsection **(j) [~~(k)~~]**, a student may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(m) [~~(n)~~] A barber school shall maintain one album displaying the school's portion of student permits, including affixed picture, of all enrolled students. The permits shall be in alphabetical order. No student may accrue hours for practical work or theory unless the student's permit is displayed in accordance with this subsection.

(n) [~~(o)~~] Each barber school approved by the department shall include in its instruction the curricula approved by the department.

(o) [~~(p)~~] No business other than the teaching and practicing of barbering can be operated on the premises of a barber school, with the exception of vending machines or retail products directly relating to hair care.

(p) [~~(q)~~] A barber school offering distance education must:

(1) obtain department approval before offering a course;

(2) provide students with the educational materials necessary to fulfill course requirements; and

(3) comply with the curriculum requirements set forth in §82.120 by limiting distance education to the maximum number of theory hours designated for each course type.

(q) [~~(r)~~] Only a permitted barber school, barbershop, mini-barbershop, dual shop, mini-dual shop, mobile shop, or manicurist specialty shop or a licensed barber may advertise as a "Barber."

(r) [~~(s)~~] Schools may establish rules of operation and conduct, which may include rules relating to student clothing, that do not conflict with this chapter.

(s) [~~(t)~~] A student enrolled in a barber school must wear a clean uniform or smock during school hours.

(t) [~~(u)~~] Barber schools are responsible for compliance with the health and safety standards of this chapter.

(u) [~~(v)~~] Alterations to the school's floor plan must be in compliance with the requirements of the Act and this chapter.

(v) [~~(w)~~] Barber schools shall notify the department in writing of any name change of the school within thirty days of the change.

(w) [~~(x)~~] Barber schools shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(x) [~~(y)~~] At least one time per month, barber schools shall submit to the department an electronic record of each student's accrued hours, in a manner and format prescribed by the department. Delayed data submission(s) are permitted only upon department approval, and the department shall determine the period of time for

which a school may delay the electronic submission of data on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(y) [~~(z)~~] A school shall maintain and have available for department and/or student inspection the monthly progress report required by Texas Occupations Code, §1601.561(a), documenting the daily attendance record of each student and number of credit hours earned. The school shall maintain the monthly progress report throughout the period of the student's enrollment and for 48 months after the student completes the curriculum, withdraws, or is terminated.

(z) [~~(aa)~~] A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

(aa) [~~(bb)~~] A barber school must have at least one instructor for every 25 students on the school's premises.

(bb) [~~(cc)~~] A barber school must have at least one instructor for every three student instructors on the school's premises. A student instructor shall concentrate on developing teaching skills and may not be booked with customers.

(cc) [~~(dd)~~] A barber school must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum topic and that a licensed instructor is present during the guest presenter's classroom instruction.

(dd) [~~(ee)~~] A private barber school or post-secondary barber school may provide barber instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school barber program for purposes of the Act and department rules.

82.80. Fees.

(a) Application Fees:

(1) Class A Barber Certificate--$55

(2) Barber Instructor License--$65

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--$30

(4) Student Permit--$25

(5) Specialty Certificate of Registration--Hair Weaving**[~~, Hair Braiding~~]**--$30

(6) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving**[~~, Hair Braiding~~]**--$65

(7) Barbershop Permit--$60

(8) Mini-Barbershop Permit--$60

(9) Specialty Shop Permit--$50

(10) Booth Rental Permit--No fee

(11) School Original Permit--$300

(12) Dual Shop--$130

(13) Mini-Dual Shop Permit--$60

(14) Mobile Shop--$60

(b) Renewal Fees:

(1) Class A Barber Certificate--~~**[$60 for certificates expiring before February 1, 2014;]**~~ $55 ~~**[for certificates expiring on or after February 1, 2014]**~~

(2) Barber Instructor License--~~**[$70 for licenses expiring before February 1, 2014;]**~~ $65 ~~**[for licenses expiring on or after February 1, 2014]**~~

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--$30

(4) Student Permit--No **fee** ~~**[charge]**~~.

(5) Specialty Certificate of Registration--Hair Weaving~~**[, Hair Braiding--$43 for certificates expiring before February 1, 2014;]**~~ $30 ~~**[for certificates expiring on or after February 1, 2014]**~~

(6) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving~~**[, Hair Braiding--$70 for licenses expiring before February 1, 2014;]**~~ $65 ~~**[for licenses expiring on or after February 1, 2014]**~~

(7) Barbershop Permit--$60

(8) Mini-Barbershop Permit--$60

(9) Specialty Shop Permit--$50

(10) Booth Rental Permit--**No fee** ~~**[$50 for permits expiring before February 1, 2014; No fee for licenses expiring on or after February 1, 2014.]**~~

(11) School Permit--$200

(12) Dual Shop--$100

(13) Mini-Dual Shop Permit--$60

(14) Mobile Shop--$60

(c) Reciprocity or Endorsement Fee--$55

(d) Revised/Duplicate License/Certificate/Permit/Registration--$25

(e) Verification of license, permit or certificate to other states--$15

(f) Law and Rules Book Fee--$10

(g) Late renewals fees for licenses, certificates and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(h) Inspection Fees (for each occurrence):

(1) Initial Inspection or Re-inspection of school--$200

(2) Risk-based Inspection Fees for schools and shops--$150

(i) All fees are nonrefundable, except as otherwise provided by law or commission rule.

(j) Law and rule book fee is included in the application and renewal fees for student, individual and establishment licenses, certificates and permits.

82.110. Health and Safety Standards--Hair Weaving [~~and Hair Braiding~~] Services.

(a) Hair weavers **[~~and hair braiders~~]** shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) Hair extensions, tracks, needles, and thread shall be stored in a bag or covered container until ready to use. No unrelated items shall be stored in the same bag or container.

(d) Needles shall be sprayed with a disinfectant before use.

82.120. Technical Requirements--Curricula.

(a) - (j) (No change.)

[~~(k)~~] [~~The curriculum for the hair braiding specialty certificate of registration consists of 35 hours as follows:~~]

[Figure: 16 TAC §82.120(k)]

(k) [~~(l)~~] The curriculum for the hair weaving specialty certificate of registration consists of 300 hours as follows:

Hair Weaving Curriculum	
(1) Hair weaving :	150 hours
Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing	
(2) Shampooing client, weft and extensions:	50 hours
Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	
(3) Professional practices:	40 hours
Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	
(4) Anatomy and physiology-scalp:	30 hours
Major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	
(5) Chemistry in hair weaving:	10 hours
Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	
(6) Sanitation and safety measures:	10 hours
Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	

(7) Safety measures: client protection	10 hours

[~~(m)~~] **[~~The curriculum for the hair braiding specialty instructor license consists of 50 hours as follows:~~]**

[Figure: 16 TAC §82.120(m)]

(l) **[~~(n)~~]** Field Trips

(1) Barber related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hour Class A Barber course;

(B) a maximum of 50 hours out of the 1,000 hour class A Barber course;

(C) a maximum of 30 hours for the Manicure course;

(D) a maximum of 20 hours for the Barber Technician course;

(E) a maximum of 45 hours for the Barber Technician/Manicurist course;

(F) a maximum of 30 hours for the Barber Technician/Hair Weaving course;

(G) a maximum of 20 hours for the Hair Weaving course;

(H) a maximum of 35 hours for the 750 hour Instructor course;

(I) a maximum of 25 hours for the 500 hour Instructor course; and

(J) a maximum of 15 hours for the Cosmetology Operator to Class A Barber course.

(3) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(4) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(5) No credit may be earned for travel.

Boiler Law
HEALTH AND SAFETY CODE, CHAPTER 755
Effective 9/1/2009

SUBCHAPTER B. BOARD OF BOILER RULES

§ 755.011. COMPOSITION OF BOARD.

(a) The Board of Boiler Rules is in the department.

(b) The board is composed of the following 11 members appointed by the presiding officer of the commission, with the commission's approval:
   (1) three members representing persons who own or use boilers in this state;
   (2) three members representing companies that insure boilers in this state;
   (3) one member representing boiler manufacturers or installers;
   (4) one member representing organizations that repair or alter boilers in this state;
   (5) one member representing a labor union; and
   (6) two public members.

(c) All members except the members appointed under Subsection (b)(6) must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(d) The executive director serves as an ex officio board member.

§ 755.012. TERMS. Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

§ 755.013. PRESIDING OFFICER. The chief inspector serves as presiding officer of the board.

§ 755.014. REMOVAL OF BOARD MEMBERS; VACANCY.

(a) The commission may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The presiding officer of the commission shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

§ 755.015. COMPENSATION. A board member may not receive a salary but is entitled to reimbursement for actual expenses incurred in performing board duties.

§ 755.016. MEETINGS. The board shall meet at least twice each year at the call of the presiding officer at a place designated by the board.

§ 755.017. POWERS AND DUTIES. The board shall advise the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

§ 755.018. MAJORITY VOTE REQUIRED. A board decision is not effective unless supported by the vote of at least five board members.

BOILERS

Administrative Rules of the Texas Department of Licensing and Regulation

16 Texas Administrative Code, Chapter 65

Subchapter M. Board of Boiler Rules.

65.100. Board of Boiler Rules--Purpose. *(Adopted effective June 15, 2015, 40 TexReg 3121)*

(a) The purpose of the Board of Boiler Rules is to advise the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and appurtenances.

(b) Recommendations of the board will be transmitted to the commission by the executive director.

65.101. Board of Boiler Rules--Membership. *(Adopted effective June 15, 2015, 40 TexReg 3121)*

(a) The Board of Boiler Rules is composed of the following 11 members appointed by the presiding officer of the commission, with the commission's approval:

(1) three members representing persons who own or use boilers in this state;

(2) three members representing companies that insure boilers in this state;

(3) one member representing boiler manufacturers or installers;

(4) one member representing organizations that repair or alter boilers in this state;

(5) one member representing a labor union; and

(6) two public members.

(b) All members, except the members appointed under subsection (a)(6), must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(c) The executive director serves as an ex officio board member.

(d) Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

(e) The chief inspector serves as presiding officer of the board.

65.102. Board of Boiler Rules--Removal of Board Members; Vacancy. *(Adopted effective June 15, 2015, 40 TexReg 3121)*

(a) The commission may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The presiding officer of the commission shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

65.103. Board of Boiler Rules--Reimbursement of Expenses. *(Adopted effective June 15, 2015, 40 TexReg 3121)*

(a) A board member may not receive a salary, but is entitled to reimbursement for actual expenses incurred in performing board duties subject to the General Appropriations Act.

(b) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and traveling to and from board meetings. The least expensive method of travel should be used.

(c) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the department's policies governing travel allowances for employees.

65.104. Board of Boiler Rules--Board Meetings. *(Adopted effective June 15, 2015, 40 TexReg 3121)*

(a) The board shall meet at least twice each year, at the call of the presiding officer, at a place designated by the board.

(b) A board decision is not effective unless supported by the vote of at least five board members.

BOARD OF BOILER RULES

Meeting of December 16, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Rob Troutt called the meeting to order at 9:10 a.m.

Presiding Officer, Rob Trout moved to agenda item B., Roll Call and Certification of Quorum. Board members present were Rob Troutt, Norman Anderson, Richard West, George Crawford, Gerald Harris, Don Mitchell, Bryan Schulte, Mark Thompson, and Stuart Nester. Board member Bill Quisenberry was absent. A quorum was seated.

Presiding Officer, Rob Troutt moved to agenda item C., Approval of Minutes – Meeting of September 24, 2015. Board member Bryan Schulte corrected a typo in the minutes. Board member Gerald Harris, seconded by Bryan Schulte, made a motion that the minutes be approved as amended. The motion passed by a unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item D., Public Comment. There was no public comment.

Presiding Officer, Rob Troutt moved to agenda item E., Staff Reports: William Kuntz, Executive Director, provided the Executive Office staff report. Tracy Black, Program Specialist, provided the Compliance Division staff report along with Inspection Specialist Keith Sanford. John Medlock, Enforcement Prosecutor, provided the Enforcement Division staff report. Tarsha Redd, Program Supervisor, provided the Licensing Division staff report.

Presiding Officer, Rob Troutt moved to agenda item F., Discussion and possible recommendation regarding proposed rule amendments to 16 Texas Administrative Code, Chapter 65, Subchapter A, §65.2; Subchapter C, §65.13; Subchapter I, §65.62; Subchapter J, §65.72; Subchapter N, §65.203 and §65.210; Subchapter O, §65.300; Subchapter P, §65.401; Subchapter R, §§65.605 and 65.608 - 65.613; and proposed new rules Subchapter B, §§65.6, 65.7 and 65.8 and Subchapter K, §65.86; and proposed repeal of Subchapter B, §65.10 and §65.11 to implement House Bill 3091, 84th Legislature; address safety concerns; make technical and editorial corrections; and add a temporary operating permit fee. Assistant General Counsel, Charles Johnson, outlined the proposed rule changes and reported that no comments were received during the public comment period. The Board then discussed the proposed rules. Board member Bryan Schulte, seconded by Gerald Harris, made a motion to recommend the proposed rules for adoption by the Commission. The motion passed by unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item G, Recommendations for agenda items for the next meeting. The board did not set any items for discussion at the next agenda.

Presiding Officer, Rob Troutt moved to agenda item K., Discussion of date, time, and location of next meeting. The Board did not set a meeting date.

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Presiding Officer, Rob Troutt moved to agenda item L., Adjournment. The meeting adjourned at 9:25 a.m.

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Rob Troutt, Presiding Officer
Board of Boiler Rules

DRAFT

BOARD OF BOILER RULES

Meeting of September 24, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Rob Troutt called the meeting to order at 9:06 a.m.

Presiding Officer, Rob Trout moved to agenda item B., Roll Call and Certification of Quorum. Board members present were Rob Troutt, Norman Anderson, George Crawford, Gerald Harris, Don Mitchell, Stuart Nester, Bill Quisenberry, Bryan Schulte and Mark Thompson. Board members Palmer Dent, Russell Mays and Richard West were absent. A quorum was seated.

Presiding Officer, Rob Troutt moved to agenda item C., Training for the Board members. Charles Johnson provided an overview of the Open Meetings Act, Public Information Act, and Administrative Procedures Act. Charles Johnson, Assistant General Counsel presented an overview of the Open Meetings Act, Public Information Act and the Administrative Procedures Act and answered questions from the board.

Presiding Officer, Rob Troutt moved to agenda item D., Approval of Minutes – Meeting of March 6, 2015 meeting. Board member Bryan Schulte, seconded by Gerald Harris, made a motion that the minutes be approved as amended. The motion passed by a unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item E., TDLR video presentation on the public comment process. The video could not be shown due to technical difficulties.

Presiding Officer, Rob Troutt moved to agenda item F., Public Comment. There was no public comment.

Presiding Officer, Rob Troutt moved to agenda item G., Staff Reports: Brian Francis, Deputy Executive Director provided the Executive Office staff report. Tracy Black, Program Specialist provided the Compliance Division staff report. Lorraine Sroufe, Program Specialist provided the Education and Examination report. John Medlock, Enforcement Prosecutor provided the Enforcement Division staff report and answered questions from the board. Tarsha Redd, Program Supervisor provided Licensing Division staff report.

Presiding Officer, Rob Troutt took a break at 10:05 a.m. and the meeting reconvened at 10:18 a.m.

Presiding Officer, Rob Troutt moved to agenda item H., Discussion and possible recommendations regarding proposed rule amendments, at 16 Texas Administrative Code, Chapter 65, Subchapter A, §65.2; Subchapter C, §65.13; Subchapter I, §65.62; Subchapter J, §65.72; Subchapter K, § 65.86, Subchapter N, §65.203 and §65.210; Subchapter O, §65.300; Subchapter P, §65.401; Subchapter R, §§65.605, 65.608 - 65.611, 65.612(e), and 65.613, regarding new subsections, fees, safety concerns, and editorial and technical corrections. Assistant General Counsel, Charles Johnson outlined the proposed rule changes and the comment process. The Board

reviewed the rules and comments and discussed recommendations and changes:

65.2 Discussion on Definitions. Board member Bryan Schulte, seconded by Bill Quisenberry, made a motion to amend the definition in 65.2(64) regarding the definition of a serious accident to "An explosion resulting in any degree of distortion to the wall of the boiler or related equipment or damage to the building where the boiler is located. Or, emergency medical services are dispatched to the location of a boiler accident in which a person or people require medical services as a result of the boiler, this includes being treated on site, transported to a medical facility or result in a fatality." Motion passed by unanimous vote.

Board member Gerald Harris, seconded by Bryan Schulte, made a motion to accept 65.2 changes as amended. Motion passed by unanimous vote.

65.13 Boiler Installations. Board member Bryan Schulte, seconded by Donald Mitchell, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.72 Condemned Boilers. Board member Gerald Harris, seconded by Bryan Schulte, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.210. Standards for Internal Boiler Inspections. Board member Bryan Schulte, seconded by Stuart Nester, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.300. Certificate/Inspection Fees. Board member Bryan Schulte, seconded by Gerald Harris, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.401 Sanctions.

65.605. Board member Stuart Nester, seconded by Bryan Schulte, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.608 Unfired Steam Boilers. Board member Gerald Harris, seconded by Donald Mitchell, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.609 Process Steam Generators. Board member, Gerald Harris seconded by Bryan Schulte, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.610 Nuclear Boilers. Board member Bryan Schulte, seconded by Stuart Nester, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.611 Heating Boilers. Board member Gerald Harris, seconded by Stuart Nester, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.612. Repair and Alterations. Board discussed the work done by the task force. Board member Gerald Harris, seconded by Bryan Schulte, made a motion to accept the changes as presented. Motion passed by unanimous vote.

65.613 Liquid Pressure Tests. Board member Stuart Nester, seconded by Mark Thompson, made a motion to accept the changes as presented and adjusted references in the rules throughout. Motion passed by unanimous vote.

Board member Gerald Harris, seconded by Bryan Schulte, made a motion to recommend the proposed rules for publication in the Texas Register for public comment. Motion passed by unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item I., Discussion and possible recommendation regarding proposed rule amendments needed to implement House Bill 3091, 84th Legislature, Regular Session (2015), relating to the registration of boiler inspection agencies. Charles Johnson and Rob Troutt outlined the legislative proposal and proposed rules under HB 3091.

Board member Bryan Schulte, seconded by Gerald Harris made a motion to recommend the proposed rules for publication in the Texas Register. Motion passed by unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item I, Recommendations for agenda items for the next meeting. The board agreed to place the following items on the agenda public comments on proposed rules.

Presiding Officer, Rob Troutt moved to agenda item K., Discussion of date, time, and location of next meeting. The Board proposed the next meeting be held in December 2015.

Presiding Officer, Rob Troutt moved to agenda item L., Adjournment. Board member Bryan Schulte, seconded by Gerald Harris, made a motion to adjourn the meeting. The motion passed by unanimous vote. The meeting adjourned at 11:00 a.m.

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Rob Troutt, Presiding Officer
Board of Boiler Rules

BOARD OF BOILER RULES

Meeting of March 6, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Rob Troutt called the meeting to order at 10:06 a.m.

Presiding Officer, Rob Trout moved to agenda item B., Roll Call and Certification of Quorum. Board members present were Rob Troutt, Norman Anderson, Palmer Dent, Russell Mays, Don Mitchell, Todd Garver, Gerald Harris, Bryan Schulte and Mark Thompson. Board member Beth Cunningham was absent. A quorum was seated.

Presiding Officer, Rob Trout moved to agenda item C., Approval of Minutes – Meeting of October 23, 2014 meeting. Board member Gerald Harris, seconded by Russell Mays, made a motion that the minutes be approved as presented. The motion passed by a vote of 7-0 in favor, with Board member Bryan Schulte abstaining.

Presiding Officer, Rob Trout moved to agenda item E., Public Comment. The Board heard public comment from Bill Quisenberry regarding adding CSD1 to the boiler board rules.

Presiding Officer, Rob Troutt moved to agenda item F., Staff Reports, Brian Francis provided the Executive Office staff report. Tracy Guerra provided the Compliance Division staff report. Ray Pizarro provided the Education and Examination report. John Medlock, provided the Enforcement Division staff report. George Ferrie provided Licensing Division staff report.

Presiding Officer, Rob Troutt moved to agenda item H., Discussion and possible recommendation on proposed new rules at 16 Texas Administrative Code, Chapter 65, Subchapter A, 65.1- 65.3, Subchapter B, 65.10 and 65.11, Subchapter C, 65.12 - 65.15, Subchapter D, 65.25 and 65.26, Subchapter E, 65.30, Subchapter F, 65.40 and 65.41, Subchapter G, 65.45, Subchapter H, 65.50 - 65.52, Subchapter I, 65.60 - 65.63, Subchapter J, 65.70 - 65.72, Subchapter K, 65.80 - 65.85, Subchapter L, 65.90 and 65.91, Subchapter M, 65.100 - 65.104, Subchapter N, 65.200- 65.217, Subchapter O, 65.300, Subchapter P, 65.400 - 65.402, Subchapter Q, 65.500, Subchapter R, 65.600 - 65.615, regarding the Boiler Safety program, including public comments received on the proposed new rules. Assistant General Counsel, Charles Johnson outlined the proposed rule changes and the comment process. The Board reviewed the rules and comments and discussed recommendations and changes:

65.2 Discussion on comments. Board member Bryan Schulte, seconded by Russell Mays, made a motion to reject the comment to add a definition. Board member Bryan Schulte, seconded by Russell Mays, made a motion to reject the comment on preliminary order. Motion passed by unanimous vote.

65.14 Criminal History Background. The Board the reviewed and discussed this comment. The Board heard public comment from Frank Brusseau, withdrawing his objection. Board

member Bryan Schulte, seconded by Gerald Harris, made a motion to leave the comment as is, Harris recommended and Schulte accepted an amendment to include sections 65.14(a)(2) and 65.26(a)(2). Motion passed by unanimous vote.

65.26(a)(3).Inspector Requirements. Board member Russell Mays, seconded by Bryan Schulte, made a motion to change from *attend all* to *participate in all* and to reject the comment. Motion passed by unanimous vote.

65.14 Board member, Bryan Schulte, made a motion regarding Inspector Commissions and general comment on the placement of the term after 65.15. The motion failed for lack of a second.

Board member Russell Mays, seconded by Gerald Harris, motion to reject the comment to reverse the order of 65.14 and 65.15. Motion passed by a vote 7-1 with Bryan Schulte opposed.

65.52 Board member Bryan Schulte, seconded by Gerald Harris, made a motion to delete *in accordance with law and rules and procedure* and add new language which states *and shall include reference to with applicable law, rules and procedure violated*. Motion passed by unanimous vote.

65.52 Completion of Reports Required. Board member Russell Mays withdrew the comment.

65.61 Inspection of All Boilers Inspected. Editorial changes to change *must* to *shall*. The Board agreed to defer to staff judgement. Comment was withdrawn.

65.63 (a)(5) Russell Mays with withdrew the comment upon clarification.

65.81Insection Report Forms. Public Comment from Frank Brusseau seeking clarification of the $25 fee. Staff agreed to remove this rule. Bryan Schulte, seconded by Russell Mays, made a motion to delete section 65.81(e). Motion passed by unanimous vote.

65.85 Board member Russell Mays withdrew the comment.

65.300(k) Board member, Russell Mays, seconded by Bryan Schulte, made a motion to remove this section. Motion passed by unanimous vote.

65.91 Overdue boiler inspections. Board member Bryan Schulte, seconded by Russell Mays, made a motion to reject the comment and leave the language as is. Motion passed by unanimous vote.

65.200 New Boiler installations. Commenter requested TDLR staff do all new boiler inspections. Board Chair Rob Troutt suggested this item be sent to the boiler Task Force for review. Board member Bryan Schulte, seconded by Russell Mays, made a motion to send this item to the task group and leave the existing language as is. Motion passed by unanimous vote.

65.207(f). Board member Russell Mays, seconded by Bryan Schulte made a motion to delete the last sentence. Motion passed by unanimous vote.

65.210 (b)(3) Removal of loose scale as practical. The Board heard public comment from Dan Lancaster on clarification of amount of scale. Board member Russell Mays, seconded by Gerald Harris, made a motion to reject the comment and leave the language as is. Motion passed by unanimous vote.

65.210(b)(6) Board member Gerald Harris, seconded by Donald Harris to leave the language as written. Russell Mays, seconded by Bryan Schulte, made a motion to changed *furnace and combustion chamber shall be cooled and cleaned to provide safe access to the inspector*. Motion passed by unanimous vote.

65.603 Ventilation. The Board heard public comment from Tim McNolty, Rex Smith and Frank Brusseau on ventilation. Board member Bryan Schulte, seconded by Mark

Thompson, made a motion to leave as is with the correction of *3000 BTU's per hour to (.879) kilowatts* and reject the comment. The motion passed by unanimous vote.

65.210 (11) (a)(b)(c)Board member Bryan Schulte, seconded by Russell Mays, made a motion to remove this section. Motion failed by a vote of 1-7 with Schulte voting in favor.

65.210 (11) (a)(b)(c). Board member, Russell Mays made a motion to relocate the sections related to maintenance or reassembly to a new section titled Assembly of Boilers after Inspection. Vote on the motion was 7 -1 with Bryan Schulte opposed. The motion failed for lack of a second.

65.210 (a)(b)(c) The Board heard public comment from Dan Lancaster. Board member Bryan Schulte, seconded by Russell Mays, made a motion to add language to section (c) prohibiting the use of sealants on man hold and hand hold gaskets on water/steam filled pressure parts. Motion passed by unanimous vote.

65.217(a)(b)(c)(d)(f). The Board heard public comment from William Taylor. Board member Russell Mays, seconded by Bryan Schulte, made a motion to modify 65.217(f) with the language provided by Cal-Pine and modified by the Board. Motion passed by a unanimous vote.

65.601. The Board heard public comment from Frank Bresseua. Board member Bryan Schulte made a motion to change the existing language to remove a boiler from operation or reduce its service when deemed unsafe. Motion failed for lack of a second.

65.602 The Board heard public comment from Frank Russo. Board member Bryan Schulte, seconded by Gerald Harris, made a motion to reject the comments and leave the language. Motion passed by a unanimous vote.

65.601. Board member Russell Mays, seconded by Bryan Schulte, made a motion to revise the language to state: *a boiler deemed unsafe for operation by the inspector, shall be removed from service or placed in a safe operating condition in a manner deemed acceptable to the Department.* Motion passed by unanimous vote.

65.603(a)(C)(2). Charles notes a clarifying change in this section to *(1) and (2) to (A) and (B).* No vote was required.

65.605. The Board heard public comment Frank Bresseua. Russell Mays made a motion seconded by Mark Thompson to change the title to *Electric Steam Boiler/ Generator*. Motion passes by unanimous vote.

65.606. The Board heard public comment from Frank Bresseua. Board member Bryan Schulte, seconded by Russell Mays, made a motion to leave as is and reject the comment. Motion passed by a unanimous vote.

65.607(d)(5)(6). Board member, Russell Mays, seconded by Bryan Schulte, made a motion to replace (d)(5)(6) change *recommended* to *may.* Motion passed by unanimous vote.

65.607(e)(1). Board member Russell Mays, seconded by Bryan Schulte, made a motion to strike the term easily. Motion passed by unanimous vote.

65.607(g)(2) Board member Russell Mays, seconded by Bryan Schulte, made a motion to change *must* to *shall.* Motion passed by unanimous vote.

65.607(f)(3) Board member Norman Anderson, seconded by Russell Mays, made a motion to remove the terms *preferably.* Motion passed by unanimous vote.

65.607(g)(2) Board member Russell Mays, seconded by Bryan Schulte, made a motion to remove the terms *readily* and *easily*. Motion passed by unanimous vote.

65.608(g)(1). Board member Russell Mays, seconded by Bryan Schulte, made a motion to strike the term *easily*. Motion passed by unanimous vote.

65.609 (b)(3)(c). Board member Russell Mays, seconded by Bryan Schulte, made a motion to change *must* to *shall*. Motion passed by a unanimous vote.

65.609(h)(1). Board member Russell Mays, seconded by Gerald Harris, made a motion to strike the term *easily*. Motion passed by unanimous vote.

65.609(h)(2) Board member Russell Mays, seconded by Bryan Schulte, made a motion to change *must* to *shall*. Motion passed by unanimous vote.

65.611(a)(1)(A) Board member Russell Mays, seconded by Bryan Schulte, made a motion to strike *officially rated* for the rule. Motion passed by unanimous vote.

65.611(a)(3)(A) Board member Russell Mays, seconded by Gerald Harris, made a motion to delete the last sentence of this section. Motion passed by unanimous vote.

65.611(b)(1)(A) and (B) Board member Russell Mays, seconded by Bryan Schulte, made a motion to strike *officially rated* and *may*. Motion passed by unanimous vote.

65.611(b)(4)(d) Board member Russell Mays, seconded by Bryan Schulte, made a motion to strike the word *easily*. Motion passed by unanimous vote.

65.611(c)(1)(A) Board member Russell Mays, seconded by Bryan Schulte, made a motion to eliminate *officially rated* and change *ASME code symbol* to *ASME code certification mark*. Motion passed by unanimous vote.

65.611(c)(4)(d) Board member Russell Mays, seconded by Bryan Schulte, made a motion to remove the word *easily*. Motion passed by unanimous vote.

65.611(c)(4)(A) Board member Russell Mays, seconded by Bryan Schulte, made a motion to remove *easily*. Motion passed by unanimous vote.

65.612(c) Board Chair Rob Troutt offered an option to section 612 regarding plugging tubs and require an operator to submit plans to the Department be address on a case by case option per the manufactures requirements or design engineer The Board heard public comments from Bill Quinsenberry and William Taylor in support of this option. Board members Gerald Harris and Bryan Schulte offered comments in support of the proposal. Board member Bryan Schulte, seconded by Gerald Harris, made a motion to remove and crafted language reviewed by the jurisdiction based on the Nebraska statute with authority to change before the commission. The motion passed by a unanimous vote.

65.612 Board member Bryan Schulte, seconded by Russell Mays, made a motion to change *entity* to *organization*. Motion passed by unanimous vote.

Board member Gerald Harris, seconded by Russell Mays, made a motion to recommend the proposed changes to the Commission. Motion passed by unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item H., Discussion and possible recommendation on the repeal of existing 16 Texas Administrative Code, Chapter 65. Board member Gerald Harris, seconded by Russell Mays, made a motion to recommend repeal of existing rules listed above. Motion passed by unanimous vote.

Presiding Officer, Rob Troutt moved to agenda item I, Recommendations for agenda items for the next meeting. The board agreed to place the following items on the agenda Task Group Reports; all first inspections done by TDLR; Nebraska's standards on Boiler Plugging, and Legislative updates.

Presiding Officer, Rob Troutt moved to agenda item K., Discussion of date, time, and location of next meeting. The Board proposed the next meeting be held in September 2015.

Presiding Officer, Rob Troutt moved to agenda item L., Adjournment. Board member Gerald Harris, seconded by Richard West, made a motion to adjourn the meeting. The motion passed by unanimous vote. The meeting adjourned at 4:18 p.m.

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Rob Troutt, Presiding Officer
Board of Boiler Rules

Chapter 65
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§65.2. Definitions.

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

(1) Alteration--A [substantial] change in the item described on the [~~an~~] original Manufacturer's Data Report which affects the pressure containing capability of the pressure retaining item. Nonphysical changes such as an increase in the maximum allowable working pressure (Internal or External), increase in design temperature, or a reduction in minimum temperature of a pressure-retaining item shall be considered an alteration [~~design~~].

(2) - (59) (No change.)

(60) Repair--The work necessary to restore pressure-retaining items [~~return a boiler~~] to a safe and satisfactory operating condition [~~without changing the original design~~].

(61) - (62) (No change.)

(63) Secondhand Boiler--A boiler in which [~~either~~] the location and [~~or~~] ownership have changed.

(64) Serious Accident--An explosion resulting in any degree of distortion to the wall of the boiler or related equipment or damage to the building where the boiler is located. Or, [~~or~~] emergency medical services are dispatched to the location of a boiler accident in which one or more persons require on-site medical services, transport to a medical facility [~~the explosion and the injured party is transported to a hospital or other medical facility;~~] or the accident results [~~resulted~~] in a fatality.

(65) - (66) (No change.)

(67) Standard Boiler--A boiler that bears [~~a Texas stamp,~~] the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(68) - (71) (No change.)

§65.6. Registration--Authorized Inspection Agency With National Board Accreditation.

(a) A person with national board accreditation may not act as an Authorized Inspection Agency without first registering with the department under this chapter.

(b) To act as an Authorized Inspection Agency under this section, a person must complete a department-approved registration.

§65.7. Registration Renewal--Authorized Inspection Agency National Board Accreditation.

To renew an Authorized Inspection Agency registration under this section, a registrant must:

(1) complete a department-approved registration renewal; and

(2) provide proof of accreditation by the National Board.

§65.8. Registration--Authorized Inspection Agency Without NB-360 Accreditation.

(a) Registration as an Authorized Inspection Agency is required for entities not accredited by the National Board under NB-360.

(b) To be eligible for registration as an Authorized Inspection Agency under this section, an applicant must:

(1) complete a department-approved registration form; and

(2) submit a current Certificate of Accreditation issued from ISO 17020 “Type A” with ASME non-nuclear Boiler and Pressure Vessel Code for the scope of work performed.

§65.13. Boiler Installation.

(a) The owner or operator of a boiler in this state must submit the following to the department within thirty (30) days after completion of a boiler installation.

(1) A boiler installation report; and

(2) A manufacturer's data report for the boiler [~~and venting requirements~~].

(b) (No change.)

(c) Temporary Operating Permit

(1) The owner or operator may request a Temporary Operating Permit on a department-approved form.

(2) The owner or operator must pay the applicable fee required under §65.300.

(3) Upon approval from the department the boiler may be operated for thirty (30) days prior to the required initial inspection.

§65.62. Notice of Inspection to Owners or Operators of Boilers.

(a) All boilers, unless otherwise exempted, shall be prepared for initial inspection, regular inspections, or liquid pressure [~~hydrostatic~~] tests, whenever necessary, by the owner or operator when notified by the inspector.

(b) The owner or operator shall prepare each boiler, in accordance with §65.210 and §65.211, for an internal inspection and shall prepare for and apply the liquid pressure [~~hydrostatic~~] tests whenever necessary on the date specified by the inspector.

§65.72. Condemned Boilers.

(a) Any boiler, stamped or identified with the corrosion-resistant metal tag, having been inspected and declared unsafe by the chief inspector, [~~or~~] deputy inspector or executive director, shall be stamped by the inspector with an "X" on the star on either side of the Texas boiler number. The stamped tag identifies/designates the boiler as condemned.

(b) (No change.)

§65.86. Authorized Inspection Agencies Reporting Requirements.

Authorized Inspection Agencies must notify the department within ten (10) calendar days after the loss of ASME Certificate of Authorization, NB-360 Certificate of Authorization or NB-369 Certificate of Authorization.

§65.203. Maximum In-Service Time for Nonstandard Boilers.

(a) A nonstandard boiler construction, installed prior to 1937, shall have a maximum in-service time of thirty (30) years, unless the following are accepted:

(1) an internal and external annual inspection; and

(2) an annual liquid [~~hydrostatic~~] pressure test of one and one-quarter times the MAWP held for a period of at least thirty (30) minutes, during which no distress or leakage develops. At no time, while applying the liquid [~~hydrostatic~~] pressure test, shall the pressure exceed one and one-quarter times the MAWP by more than 6%.

(b) - (c) (No change.)

§65.210. [~~Preparation~~] Standards for Internal Boiler Inspections.

(a) (No change.)

(b) Preparation of the boiler for internal inspection shall include:

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

(4) where boilers [~~pressure vessels~~] are equipped with removable internals, these internals need not be completely removed provided assurance exists that deterioration in regions rendered inaccessible by the internals is not occurring to an extent that might constitute a hazard, or to an extent beyond that found in more readily accessible parts of the vessel.

(5) - (8) (No change.)

(9) All low-water cutoff devices shall be dismantled, cleaned, and prepared for inspection. Probe-type low water cutoff devices shall be removed from the boiler. [~~The cross-tees and plugs shall be removed to ensure complete clearance on the water and steam sides.~~]

(10) The cross-tees and plugs shall be removed to ensure complete clearance on the water and steam sides.

(11) [~~(10)~~] Before removing the manholes or handholes and entering any part of the boiler connected to a common header with other boilers, any leakage of steam or hot water shall be eliminated.

(A) The nonreturn and stop valves shall be closed, locked out and tagged out and drain valves between the two valves opened.

(B) The feedwater valves must be closed, locked out and tagged out.

(C) After draining the boiler, the blowdown valves shall be closed, locked out and tagged out.

(D) Blowdown lines, where practicable, shall be disconnected between pressure parts and valves.

(E) All vent and drain lines shall be opened.

(12) [~~(11)~~] Gaskets on manholes and handholes of pressure-retaining items, with exception of access and inspection doors of furnace and convection pass, shall be replaced with new gaskets upon reinstallation.

(A) Re-use of gaskets is prohibited.

(B) Gaskets shall be installed in accordance with the manufacturer's recommendations.

(C) The use of sealing compounds is prohibited on manhole and handhole gaskets on water/steam pressure parts.

(c) (No change.)

§65.300. Certificate/Inspection Fees.

(a) - (j) (No change.)

(k) Temporary Operating Permit Fee--$50

§65.401. Sanctions.

(a) If a boiler has not been properly prepared for an internal inspection or a liquid pressure [~~hydrostatic~~] test as required by the boiler law and rules, the inspector may decline to make the inspection or witness the test, and the certificate of operation shall be withheld until the owner or operator complies with all requirements. Late certificate of operation fees shall apply if the boiler is not inspected prior to the expiration date of the certificate of operation.

(b) Suspension or revocation of a commission.

(1) An inspector's commission may be suspended or revoked by the department for incompetence, untrustworthiness, or falsification of an application or in an inspection report or other requirement under this chapter.

(2) An inspector whose commission is revoked[~~,~~] must wait at least one year after the revocation date to reapply.

§65.605. Electric Steam Boilers--Generators.

(a) (No change.)

(b) A suitable screen or guard shall be provided around high-voltage bushings, and a sign posted warning of high voltage. This screen or guard shall be so located so that it prevents accidental contact with the high voltage circuit.

(c) [~~(b)~~] In electric boilers of the submerged-electrode type, the water gage glass shall be located to indicate the water levels both at start-up and under maximum load conditions as established by the manufacturer.

(d) [~~(c)~~] Electric boilers of the resistance-element type shall have at least one gage glass. The lowest visible water level in the gage glass shall be at least 1 inch (25 mm) above the lowest permissible water level as determined by the manufacturer. Each boiler of this type shall be equipped with an automatic low-water cutoff to cut off the power supply before the surface of the water falls below the visible level in the gage glass.

(e) [~~(d)~~] Tubular gage glasses on electric boilers shall be equipped with protective rods or shields.

(f) [~~(e)~~] The minimum relieving capacity for pressure relief valves on electric boilers shall be 3 1/2 pounds (24 kilopascals) of steam per hour per kilowatt input.

(g) All electric boilers shall be internally examined through the electric heating element, removable cover, inspection opening or handhole as construction allows.

§65.608. Unfired Steam Boilers.

(a) (No change.)

(b) Unfired steam boilers shall be constructed in accordance with ASME Code, Section I, or ASME Code, Section VIII, Division 1, 2 or 3.

(1) Unfired steam boilers constructed to ASME Code, Section VIII, Division 1, 2 or 3, shall meet jurisdictional limits established in §65.615, Exhibit 2.

(2) Unfired steam boilers constructed to ASME Code, Section I, shall meet jurisdictional limits established in §65.615, Exhibit 3.

(c) Safety valves and pressure relief valves.

(1) (No change.)

(2) Each ASME Code, Section VIII, Division 1, 2 or 3, unfired steam boiler shall:

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

(3) Each ASME Code, Section I, unfired steam boiler shall have one safety valve and if it has more than 500 square feet (47 square meters) of water heating surface, it shall have two or more safety valves.

(A) (No change.)

(B) Valves, except a changeover valve as defined in §65.2(14), shall not be placed between the required safety valve or pressure relief valve or valves and the boiler nor on the discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) (No change.)

(4) - (6) (No change.)

(d) - (h) (No change.)

§65.609. Process Steam Generators.

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

(d) Safety valves and pressure relief valves.

(1) - (2) (No change.)

(3) Each ASME Code, Section I, process steam generator, shall have one safety valve and if it has more than 500 square feet (47 square meters) of water heating surface, it shall have two or more safety valves. ASME Code, Section I, safety valves shall be applicably stamped.

(A) (No change.)

(B) No valves, except as defined in 65.2(14), of any description shall be placed between the required safety valve or pressure relief valve or valves and the steam collection or liberation drum, nor on the discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) (No change.)

(4)- (6) (No change.)

(e) -(i) (No change.)

§65.610. Nuclear Boilers.

(a) - (g) (No change.)

(h) The department [~~chief inspector~~] shall review and maintain summary reports of the in-service inspections that are submitted by the owner or operator in accordance with ASME Code, Section XI.

(i) - (k) (No change.)

§65.611. Heating Boilers.

(a) Steam Heating Boilers.

(1) Safety valves.

(A) Each steam boiler shall have one or more safety valves, that are identified with applicable designator with the ASME Certification Mark of the spring pop type, adjusted and sealed to discharge at a pressure not to exceed 15 psig (103 kilopascals). Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the MAWP of the boiler. A body drain connection below seat level shall be provided. For valves exceeding 2 1/2 inch nominal pipe size (65 mm), the drain hole or holes shall be tapped not less than 3/8 inch nominal pipe size (10 mm). For valves 2 1/2 inch nominal pipe size (65 mm) or less, the drain hole shall not be less than 1/4 inch (6 mm) in diameter.

(B) - (G) (No change.)

(2) - (8) (No change.)

(b) Hot Water Heating Boilers.

(1) Pressure relief valves.

(A) Each hot water heating boiler shall have at least one pressure relief valve, of the automatic reseating type, identified with the ASME Certification mark with the "V" or "HV" designator ASME Code Symbol, and set to relieve at or below the MAWP of the boiler.

(B) - (J) (No change.)

(2) - (8) (No change.)

(c) - (d) (No change.)

§65.612. Repair and Alterations.

(a) - (d) (No change.)

(e) Plugging of boiler tubes (excluding tubes in headers of economizers, evaporators, superheaters, or reheaters).

(1) Tube plugs shall be made of a material which is compatible with the material of the boiler tube being plugged and shall be welded into place, or manufactured to be expanded into the tube sheet or drum.

(2) Plugging boiler tubes on Fire Tube Boilers fabricated in accordance with ASME Section I or IV.

(A) Best practice is not to plug a boiler tube in a Fire Tube Boiler. If a Fire Tube Boiler tube is plugged, the following criteria shall apply.

(B) Plugging boiler tubes that are adjacent to another plugged boiler tube is prohibited.

(C) No more than 10% of the total number of boiler tubes shall be plugged.

(D) All non-expanded boiler tube plugs shall be welded into place.

(E) All plugged boiler tubes shall be replaced prior to the next required Certificate Inspection.

(3) Plugging boiler tubes on Water Tube Boilers, Unfired Boilers, or Process Steam Generators.

(A) Up to 10% of the boiler generating tubes may be plugged. Additional tubes may be plugged after approval is obtained from the Original Equipment Manufacturer or an Engineer experienced in boiler design. The scope of the approval is limited to the plugging of the tubes and shall

consider the operational effect on the water side pressure boundary or membrane and the effect on the combustion process throughout the boiler.

(B) No Water Wall tubes may be plugged, where the tube forms a separation wall between products of combustion and the outside atmosphere or a separation of the gas passes in a multiple (gas) pass boiler.

§65.613. Liquid [~~Hydrostatic~~] Pressure Tests.

(a) When there is a question or doubt about the extent of a defect found in a boiler, the inspector may require a liquid [~~hydrostatic~~] pressure test.

(b) In preparing a boiler for a liquid [~~hydrostatic~~] pressure test, the boiler shall be filled with water to the stop valve and all air vented off. If the boiler to be tested is connected with other boilers that are under pressure, such connections shall be blanked off unless they have double stop valves on all connection pipes with a drain between.

(c) During a liquid [~~hydrostatic~~] pressure test of a boiler, the safety valve or valves shall be removed or each valve disc shall be held to its seat by means of a testing clamp and not by screwing down the compression screw under the spring.

(d) The metal temperature for the pressure test shall not be less than 60 degrees Fahrenheit (16 degrees Celsius), unless the owner provides information on the toughness characteristics of the material for a lower test temperature, but the maximum metal temperature shall not exceed 120 degrees Fahrenheit (50 degrees Celsius), unless a higher temperature is specified and is acceptable to the inspector.

(e) When a liquid [~~hydrostatic~~] pressure test is to be applied after inspection, the pressure shall be as follows.

(1) - (2) (No change.)

(f) A liquid pressure [~~hydrostatic~~] test shall be held for a minimum of fifteen (15) minutes at the required pressure without leakage

(g) The actual pressure in the boiler shall not exceed 1.5 [~~1.59~~] x MAWP.

[~~65.10. Registration - Authorized Inspection Agency.~~]

[~~65.11. Registration Renewal - Authorized Inspection Agency.~~]

COSMETOLOGY
Occupations Code
Chapter 1602, Title 9
Effective September 1, 2013

SUBCHAPTER B. Advisory board on cosmetology

Section 1602.051. Board Membership

(a) The Advisory Board on Cosmetology consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) one member who holds a license for a beauty shop that is part of a chain of beauty shops;

(2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;

(3) one member who holds a private beauty culture school license;

(4) two members who each hold an operator license;

(5) one member who represents a licensed public secondary or postsecondary beauty culture school;

(6) one member who represents a licensed public secondary beauty culture school; and

(7) two public members.

(b) The associate commissioner for of the Texas Education Agency responsible for career and technical education or the associate commissioner's authorized representative shall serve as an ex officio member of the commission without voting privileges.

Section 1602.055. Terms; Vacancy.

(a) Members of the board serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to fill the unexpired term.

Section 1602.058. Presiding Officer

The presiding officer of the commission, with the commission's approval, shall designate one member of the commission as presiding officer to serve in that capacity for a two-year term.

Section 1602.060. Board Duties

(a) The board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to cosmetology; and

(4) other issues affecting cosmetology.

(b) The board shall respond to questions from the department and the commission regarding cosmetology.

COSMETOLOGISTS
Administrative Rules
16 Texas Administrative Code, Chapter 83

83.65. Advisory Board on Cosmetology. *(Adopted effective December 8, 2005, 30 TexReg 8082 amended effective March 1, 2006, 31 TexReg 1280; amended effective January 1, 2014, 38 TexReg 9520)*

(a) The purpose of the Advisory Board on Cosmetology is to advise the Commission and department on adopting rules, setting fees, and enforcing and administering the Act, as applicable.

(b) The board is composed of nine licensees and persons specified in the Act. Board members will serve staggered six-year terms.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

(d) Expense reimbursements to board members are limited to authorized expenses incurred while traveling to and from board meetings and shall be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

ADVISORY BOARD ON COSMETOLOGY

Meeting of February 8, 2016
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Glenda Jemison called the meeting to order at 9:10 a.m.

Presiding Officer, Glenda Jemison called roll. Board members present were Glenda Jemison, Anthony Anderson, Natelie Caballero Inderman, Aleshia Rivera, Diane Salazar, Vanessa Robbins and Ron Robinson. Board members Claudia Avalos and Marisela Higgins were absent. A quorum was present.

Presiding Officer, Glenda Jemison moved to agenda item C., Approval of minutes – Meetings of November 2, 2015. Board member, Ron Robinson, seconded by Marisela Higgins, made a motion to approve the minutes as presented. The motion passed by a unanimous vote.

Presiding Officer, Glenda Jemison moved to agenda item D., Staff Reports, and heard Staff Reports from Bill Kuntz, Executive Director, Executive Office regarding Legislative Appropriations and new programs. Bill Kuntz asked that Chairman Arismendez, Presiding Officer Glenda Jemison, and the Saavedra family move to the podium and presented an award to the family of Jessica Saavedra.

Presiding officer, Glenda Jemison recessed the meeting at 9:20 a.m. and reconvened at 9:45 a.m.

Elizabeth Perez, Compliance Division reported on statistics and trade show presentations; Rebecca Armas, Education and Examination Division reported on 10 industry experts meeting in March to go over the Education Connection newsletter and sheers emails and informs that the numbers are extremely high with minor corrections; Karen Cox, Enforcement Division reported on cases of note; Tanya Guthrie, Director of Field Operations reported on Most Common Violations, Division Projects, Personnel Updates, and Inspection Statistics; Joyce Hennington, Licensing Division reported on licensing statistics.

Farewell Presentation/Resolution given to Ms. Glenda Jamison for serving 15 years on the Texas Advisory Board on Cosmetology and heard farewell comments from the Cosmetology Board.

Presiding Officer, Glenda Jemison moved to agenda item E., Public Comments. Public comments from Suzi Mitchell and Catarina Perez regarding an inspection in their cosmetology program.

Presiding Officer, Glenda Jemison moved to agenda item F., Recommendations for agenda items for next Board meeting. The Board decided to place the following items on the next agenda:

DRAFT

workgroup assignments; practical in cosmetology program at the secondary level to be in a workgroup assignment.

Presiding Officer, Glenda Jemison moved to agenda item G., Discussion of date, time and location of next Board meeting. The Board decided to hold its next meeting in April/May, 2016 at 1:00 p.m. Presiding Officer, Glenda Jemison thanked the Cosmetology Board for being cooperative and coming to the meetings. She also thanked TDLR for the gifts and the wonderful presentation.

Presiding Officer, Glenda Jemison moved to agenda item H., Adjournment. The Presiding Officer adjourned the meeting at 10:20 a.m.

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Glenda Jemison, Presiding Officer
Advisory Board on Cosmetology

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ADVISORY BOARD ON COSMETOLOGY

Meeting of November 2, 2015
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Glenda Jemison called the meeting to order at 1:06 p.m.

Presiding Officer, Glenda Jemison called roll. Board members present were Glenda Jemison, Anthony Anderson, Natalie Caballero Inderman, Marisela Higgins, Aleshia Rivera, and Ron Robinson. Vanessa Robbins joined the meeting at 1:10 p.m. Board member Claudia Avalos and Diane Salazar were absent. A quorum was present.

Presiding Officer, Glenda Jemison moved to agenda item C., Approval of minutes – Meeting of August 24, 2015. Board member, Ron Robinson, seconded by Marisela Higgins, made a motion to approve the minutes as presented. The motion passed by a unanimous vote.

Presiding Officer, Glenda Jemison moved to agenda item D., Public Comment. The Board heard public comments from Shannon Tucker and Cynthia Kool.

Presiding Officer, Glenda Jemison moved to agenda item E., Staff Reports, and heard Staff Reports from Bill Kuntz, Executive Office; Elizabeth Perez, Compliance Division; Rebecca Armas, Education and Examination Division; Karen Cox, Enforcement Division; Tanya Gauthreaux and Juliane Crocker, Field Operations; and Joyce Hennington, Licensing Division.

Presiding Officer, Glenda Jemison moved to agenda item G., Discussion and possible recommendation regarding proposed rule amendments, at 16 Texas Administrative Code, Chapter 83, §§83.10, 83.20, 83.22, 83.25, 83.31, 83.70 - 83.72, 83.80, 83.106, 83.110, 83.114 and 83.120 regarding hair braiding deregulation and special event services. These rules are proposed to implement House Bill 104 and House Bill 2717, 84th Legislature, Regular Session (2015), and to make editorial changes and clarifications and review public comments. Pamela Legate, Assistant General Counsel, presented the public comments and the responses from the Department. Ms. Legate outlined the rule adoption process. Board member, Ron Robinson, seconded by Marisela Higgins, made a motion to recommend the proposed rules to the Commission for adoption. The motion passed by unanimous vote.

Presiding Officer, Glenda Jemison moved to agenda item H., Recommendations for agenda items for next Board meeting. The Board decided to place the following items on the next agenda: formation of work groups on - Administrative Rules; Education and Examination; Health and Safety; and Enforcement.

Presiding Officer, Glenda Jemison moved to agenda item I., Discussion of date, time and location of next Board meeting. The Board decided to hold its next meeting on February 8, 2016 at 9:00 a.m.

Presiding Officer, Glenda Jemison moved to agenda item J., Adjournment. The Presiding Officer adjourned the meeting at 2:28 p.m.

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Glenda Jemison, Presiding Officer
Advisory Board on Cosmetology

ADVISORY BOARD ON COSMETOLOGY

Meeting of August 24, 2015
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Glenda Jemison called the meeting to order at 1:07 p.m.

Presiding Officer, Glenda Jemison called roll. Board members present were Glenda Jemison, Marisela Higgins, Ron Robinson, Anthony Anderson, Natelie Inderman, and Claudia Avalos. Board member Aleshia Rivera, Vanessa Robbins, and Diane Salazar were absent. A quorum was present. The Board voted to excuse the absences of Vanessa Robbins and Alashia Riveria.

Presiding Officer, Glenda Jemison moved to agenda item C., Training for Board members. Pamela Legate provided an overview of the Open Meeting Act, Public Information Act, and the Administrative Procedures Act.

Presiding Officer, Glenda Jemison moved to agenda item E., Public Comment. The Board heard public comment from Pandora Freestone.

Presiding Officer, Glenda Jemison moved to agenda item F., Staff Reports, and heard Staff Reports from Brian Francis, Executive Office; Elizabeth Perez, Compliance Division; Ray Pizarro, Education and Examination Division; Karen Cox, Enforcement Division; Tanya Gauthreaux, Field Operations; and Joyce Hennington, Licensing Division.

Presiding Officer, Glenda Jemison moved to agenda item G., Discussion and possible recommendation regarding proposed rule amendments, at 16 Texas Administrative Code, Chapter 83, §§83.10, 83.20, 83.22, 83.25, 83.31, 83.70 - 83.72, 83.80, 83.106, 83.110, 83.114 and 83.120 regarding hair braiding deregulation and special event services. These rules are proposed to implement House Bill 104 and House Bill 2717, 84th Legislature, Regular Session (2015), and to make editorial changes and clarifications. Pamela Legate, Assistant General Counsel provided an overview of the proposed rules. Board member Claudia Avalos, seconded by Anthony Anderson, made a motion to recommend publication of the proposed rules as presented and corrected. The motion passed by unanimous vote.

Presiding Officer, Glenda Jemison moved to agenda item H., Recommendations for agenda items for next Board meeting. The Board decided to place the following items on the next agenda: comments from the proposed rules and work group assignments.

Presiding Officer, Glenda Jemison moved to agenda item I., Discussion of date, time and location of next Board meeting. The Board decided to hold its next meeting on November 2, 2015 at 1:00 p.m.

Presiding Officer, Glenda Jemison moved to agenda item D., Approval of minutes – Meetings of June 30, 2014. Board member, Ron Robinson, seconded by Claudia Avalos, made a motion to approve the minutes as presented. The motion passed by a unanimous vote.

Presiding Officer, Glenda Jemison moved to agenda item J., Adjournment. The Presiding Officer adjourned the meeting at 2:37 p.m.

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Glenda Jemison, Presiding Officer
Advisory Board on Cosmetology

Chapter 83. Cosmetologists

Proposal Filed: September 3, 2015 – Published in the *Texas Register*: September 18, 2015
Deadline for Public Comment: October 19, 2015

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§83.10. Definitions.

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

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

(4) Booth rental license--A license issued or renewed to an applicant the same time the applicant is issued one of the following license types: operator, manicurist, esthetician, esthetician/manicurist, eyelash extension specialist, hair weaver, [~~hair braider,~~] wig specialist, instructor, or specialty instructor, which allows the holder to lease space on the premises of a beauty shop, specialty shop, mini-salon, dual shop, or mini-dual shop to engage in the practice of cosmetology as an independent contractor.

(5) - (11) (No change.)

(12) Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(11) [~~(12)~~].

(13) Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1602.002(a)(5) - (8) [~~(6) - (9)~~] and (11) [~~(12)~~]. The term esthetician in this chapter includes the term facialist.

(14) Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(5) - (11) [~~(6) - (12)~~].

(15) Guest Presenter--A person who possesses subject matter knowledge in specific curriculum topics and who has the teaching ability necessary to impart the information to cosmetology students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom session in order for students to earn hours.

[~~(16) Hair braider - A person who holds a hair braiding specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2).~~]

(16) [~~(17)~~] Hair weaver--A person who holds a hair weaving specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2)[~~, (3),~~] and (12) [~~(13)~~].

(17) [~~(18)~~] Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(18) [~~(19)~~] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code Chapter 83.

(19) [~~(20)~~] License--A department-issued permit, certificate, approval, registration, or other similar permission required under Texas Occupations Code, Chapter 1601, 1602, or 1603.

(20) [~~(21)~~] License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(21) [~~(22)~~] Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(9) [~~(10)~~] and (10) [~~(11)~~].

(22) [~~(23)~~] Mini-Salon--A cosmetology establishment in which a person practices cosmetology under a license, certificate or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(23) [~~(24)~~] Mini-Dual Shop--A shop owned, operated, or managed by a person meeting the requirements of both a mini-barbershop and mini-beauty shop license under Texas Occupations Code §1603.207.

(24) [~~(25)~~] Mini-Salon Licensee--A person or entity that holds a license for a mini-salon or mini-dual shop. The mini-salon licensee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603, and 16 TAC Chapters 82 and 83 for the mini-salon or mini-dual shop.

(25) [~~(26)~~] Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(26) [~~(27)~~] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(27) [~~(28)~~] Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(28) [~~(29)~~] Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(29) [~~(30)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(30) [~~(31)~~] Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor from cutting too deeply and reduces the risk and incidence of accidental cuts.

[~~(32) Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code §1602.002(a)(3), relating to shampooing and conditioning a person's hair.~~]

(31) Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(32) [~~(33)~~] Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(5) - (10) [~~(7), (9), (10)~~] and/or (11) [~~(12)~~].

(33) [~~(34)~~] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(3) or (5) - (12) [~~(2), (4), (7), (9), (10), (12), or (13)~~] is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(34) [~~(35)~~] Student Permit--A permit issued by the department to a student enrolled in cosmetology school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1602 and 1603.

(35) [~~(36)~~] Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, thread or other material.

(36) [~~(37)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(37) [~~(38)~~] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

(38) [~~(39)~~] Wig Specialist--A person who holds a wig specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(3) [~~(4)~~].

§83.20. License Requirements--Individuals.

(a) - (d) (No change.)

(e) To be eligible for a hair weaving specialty certificate[~~, hair braiding specialty certificate,~~] or wig specialty certificate an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;

[~~(B) for a hair braiding specialty certificate, 35 hours of instruction; or~~]

(B) [~~(C)~~] for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment; and

(5) [~~for a hair weaving specialty certificate or wig specialty certificate~~] pass a written and practical examination required under §83.21. [~~No examination is required for a hair braiding specialty certificate.~~]

(f) - (h) (No change.)

§83.22. License Requirements--Beauty Salons, Specialty Salons, Mini-Salons, Dual Shops, Mini-Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors).

(a) (No change.)

(b) To be eligible for a mini-salon or mini-dual shop license [~~on or after November 1, 2014,~~] an applicant must:

(1) obtain the current law and rules book;

(2) comply with the requirements of the Act and this chapter;

(3) submit a completed application on a department-approved form; and

(4) pay the fee required under §83.80.

(c) - (e) (No change.)

[~~(f) To be eligible for a temporary beauty salon, specialty salon, or dual shop license, an applicant must:~~]

[~~(1) obtain the current law and rules book;~~]

[~~(2) comply with the requirements of the Act, this chapter and if applicable, Texas Occupations Code, Chapter 1601 and 16 TAC Chapter 82;~~]

[~~(3) submit a completed application on a department-approved form;~~]

[~~(4) pay the fee required under §83.80; and~~]

[~~(5) hold an active department-issued cosmetology operator license, specialty license, or certificate.~~]

[~~(g) A temporary license may not be issued for more than one physical address.~~]

[~~(h) A temporary license expires on the 60th day after the date the license is issued and may not be renewed.~~]

[~~(i) An applicant who is issued a license under subsection (f) is not eligible for another temporary license until one year after the date the previous license was issued.~~]

§83.25. License Requirements--Continuing Education.

(a) (No change.)

[~~(b) To renew an operator license, or an esthetician, manicurist, esthetician/manicurist or a hair weaving, hair braiding, or wig specialty certificate that expires prior to September 1, 2012, a licensee must complete a total of 6 hours of continuing education through department-approved courses. The continuing education hours must include the following:~~]

[~~(1) 2 hours in Sanitation required under the Act and this chapter;~~]

[~~(2) 2 hours in the Act and this chapter addressing topics other than Sanitation; and~~]

[~~(3) 2 hours in any topics listed in subsection (i).~~]

(b) [~~(c)~~] To renew an operator license, or an esthetician, manicurist, esthetician/manicurist or eyelash extension specialty license, or a hair weaving,[~~hair braiding,~~] or wig specialty certificate [~~that expires on or after September 1, 2012~~], a licensee must complete a total of 4 hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 1 hour in Sanitation required under the Act and this chapter; and

(2) 3 hours in any topics listed in subsection (i).

[~~(d) To renew an instructor license, an esthetician instructor, manicure instructor, or esthetician/manicure instructor license, that expires prior to September 1, 2012, a licensee must complete a total of 6 hours of continuing education through department-approved courses. The continuing education hours must include the following:~~]

[~~(1) 2 hours in Sanitation required under the Act and this chapter;~~]

[~~(2) 2 hours in the Act and this chapter, addressing topics other than Sanitation; and~~]

[~~(3) 2 hours in methods of teaching in accordance with §83.120.~~]

(c) [~~(e)~~] To renew an instructor license, or an esthetician instructor, manicure instructor, esthetician/manicure instructor or eyelash extension instructor specialty license [~~that expires on or after September 1, 2012~~], a licensee must complete a total of 4 hours of continuing education through department-approved courses in the following manner:

[~~(1) Option One~~]

(1) [~~(A)~~] 1 hour in Sanitation required under the Act and this chapter; and

(2) [~~(B)~~] 3 hours in methods of teaching in accordance with §83.120; or

[~~(2) Option Two (which expires on 9/1/2014)~~]

[~~(A) 2 hours in Sanitation required under the Act and this chapter: and~~]

[~~(B) 2 hours in methods of teaching in accordance with §83.120.~~]

(d) [~~(f)~~] For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.

(e) [~~(g)~~] A licensee may receive continuing education hours in accordance with the following:

(1) A licensee may not receive continuing education hours for attending the same course more than once.

(2) A licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.

(f) [~~(h)~~] A licensee shall retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(g) [~~(i)~~] To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Sanitation required under the Act and this chapter;

(2) the Act and this chapter, addressing topics other than Sanitation;

(3) the curriculum subjects listed in §83.120.

(h) [~~(j)~~] A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.

(i) [~~(k)~~] A provider shall pay to the department a continuing education record fee of $5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.

(j) [~~(l)~~] Notwithstanding subsections (b) and (c) [~~through (e)~~] a licensee may satisfy the continuing education requirement for renewal by completing one hour of Sanitation in department-approved courses, if the licensee:

(1) is at least 65 years of age; and

(2) has held a cosmetology license for at least 15 years.

§83.31. Licenses--License Terms.

(a) The following licenses have a term of two (2) years:

(1) operator license;

(2) specialty license--esthetician, manicurist, esthetician/manicurist, eyelash extension;

(3) specialty certificate--hair weaving, [~~hair braiding,~~] wig, shampoo/conditioning;

(4) - (11) (No change.)

(b) - (c) (No change.)

§83.70. Responsibilities of Individuals.

(a) For purposes of this section, "licensed facility" means the premises of a place of business that holds a license, certificate, or permit under Texas Occupations Code, Chapters 1601, 1602 and 1603.

(b) A licensee is [~~shall be~~] restricted to working in a licensed facility but may perform a service within the scope of the license, [~~certificate or permit~~] at a location other than a licensed facility for a customer who: [~~, because of illness or physical or mental incapacitation,~~]

(1) is unable to receive the services at a licensed facility because of illness or physical or mental incapacitation; or [~~. The appointment for services must be made through a licensed facility.~~]

(2) will receive the services in preparation for and at the location of a special event; and

(3) makes the appointment for services through a licensed facility.

(c) - (j) (No change.)

§83.71. Responsibilities of Beauty Salons, Mini-Salons, Specialty Salons, Dual Shops, Mini-Dual Shops and Booth Rentals.

(a) - (f) (No change.)

(g) A person holding a beauty, specialty or mini-salon license or a dual or mini-dual shop permit may not employ a person who is not otherwise licensed by the department to shampoo or condition a person's hair, unless the person holds a [~~an active shampoo apprentice permit or~~] student permit.

(h) (No change.)

(i) In addition to the requirements of subsection (h):

(1) - (7) (No change.)

[~~(8)~~] [~~hair braiding salons shall provide the following equipment for each licensee present and providing services:~~]

[~~(A) one work station; and~~]

[~~(B) one styling chair.~~]

(8) [~~(9)~~] Dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons;

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and Chapter 82 of this title applicable to barbershops;

(C) if the shop does not currently have employed or have a contract with at least one licensed barber or one licensed cosmetologist, the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber or no cosmetologist is available; and

(D) if the shop has neither employed nor contracted with at least one licensed barber or cosmetologist for a period of 45 days or more the owner shall:

(i) not place any new advertisement or display any sign or symbol indicating that the shop offers barbering or cosmetology services; and

(ii) remove or obscure any existing sign or symbol indicating that the shop offers barbering or cosmetology services.

(9) [~~(10)~~] Mini-dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons; and

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops.

(j) - (m) (No change.)

§83.72. Responsibilities of Beauty Culture Schools.

(a) - (u) (No change.)

(v) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct a minimum of ten students enrolled at the school:

(1) - (8) (No change.)

(9) If offering the operator curriculum the following equipment must be available in adequate number for student use:

(A) - (L) (No change.)

(M) wet disinfectant soaking containers [~~sanitizer~~].

(10) If offering the esthetician curriculum the following equipment must be available in adequate number for student use:

(A) - (L) (No change.)

(M) wet disinfectant soaking containers [~~sanitizer~~].

(11) If offering the manicure curriculum the following equipment must be available in adequate number for student use:

(A) - (G) (No change.)

(H) paraffin bath and paraffin wax; [~~and~~]

(I) air brush system; and [.]

(J) wet disinfectant soaking containers.

(12) (No change.)

(13) If offering the eyelash extension curriculum; the following equipment must be available in adequate number for student use:

(A) - (D) (No change.)

(E) wet disinfectant soaking containers [sanitizer]; and

(F) dry sanitizer.

(w) (No change.)

§83.80. Fees.

(a) Application fees.

(1) Operator License--$50

(2) Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension--$50

(3) Specialty Certificate--Hair Weaving, [Hair Braiding,] Wig--$50

(4) - (13) (No change.)

[(14) Temporary Beauty Salon, Specialty Salon, or Dual Shop License--$20]

(b) Renewal fees.

(1) Operator License--[$53 for licenses expiring before February 1, 2014;] $50 [for licenses expiring on or after February 1, 2014.]

(2) Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension--[$53 for licenses expiring before February 1, 2014;] $50 [for licenses expiring on or after February 1, 2014.]

(3) Specialty Certificate--Hair Weaving, [Hair Braiding,] Wig, Shampoo/Conditioning--[$53 for certificates expiring before February 1, 2014;] $50 [for certificates expiring on or after February 1, 2014.]

(4) Instructor License--[$70 for licenses expiring before February 1, 2014;] $60 [for licenses expiring on or after February 1, 2014.]

(5) Instructor Specialty License--Esthetician, Manicurist, Esthetician/Manicure, Eyelash Extension--[~~$70 for licenses expiring before February 1, 2014;~~] $60 [~~for licenses expiring on or after February 1, 2014.~~]

(6) - (8) (No change.)

(9) Booth Rental (Independent Contractor) License--[~~$67 for licenses expiring before February 1, 2014;~~] No fee [~~for licenses expiring on or after February 1, 2014.~~]

(10) - (12) (No change.)

(c) - (l) (No change.)

§83.106. Health and Safety Standards--Manicure and Pedicure Services.

(a) - (e) (No change.)

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and toe pumice, exfoliating block (washable [~~rough surfaced or absorbent~~] materials) shall be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with [~~Isopropyl or ethyl alcohol,~~] an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, [~~or a~~] or a high level chlorine bleach solution in accordance with this chapter. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) (No change.)

§83.110. Health and Safety Standards--Hair Weaving [~~and Hair Braiding~~] Services.

(a) Cosmetologists, wig specialists, and hair weavers[~~, and hair braiders~~] shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) - (d) (No change.)

§83.114. Health and Safety Standards--Establishments.

(a) - (h) (No change.)

(i) Only service animals [~~No animals with the exception of those providing assistance to individuals~~] are allowed in establishments. Covered aquariums are allowed provided that they are maintained in a sanitary condition.

§83.120. Technical Requirements--Curriculum.

(a) (No change.)

(b) Specialist Curricula

ESTHETICIAN CURRICULUM (750 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	facial treatment, cleansing, masking, therapy	225 hours
(B)	anatomy and physiology	90 hours
(C)	electricity, machines, and related equipment	75 hours
(D)	Makeup	75 hours
(E)	orientation, rules and laws	50 hours
(F)	Chemistry	50 hours
(G)	care of client	50 hours
(H)	sanitation, safety, and first aid	40 hours
(I)	Management	35 hours
(J)	superfluous hair removal	25 hours
(K)	aroma therapy	15 hours
(L)	Nutrition	10 hours
(M)	color psychology	10 hours
MANICURE CURRICULUM (600 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	procedures: basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products	320 hours
(B)	bacteriology, sanitation and safety: definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons	100 hours
(C)	professional practices: manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations	80 hours
(D)	arms and hands: major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases	70 hours
(E)	orientation, rules, laws and preparation	15 hours
(F)	equipment, implements and supplies	15 hours
ESTHETICIAN/MANICURE CURRICULUM (1200 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		

(A)	Orientation, rules, laws and preparation(F and M)	30 hours
(B)	Electricity, machines, related equipment, implements and supplies (F and M)	90 hours
(C)	Facial treatment, cleansing, masking, therapy (F)	215 hours
(D)	Procedures - basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products (M)	310 hours
(E)	Anatomy and physiology (F)	50 hours
(F)	Arms and hands - major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases (M)	50 hours
(G)	Makeup (F)	75 hours
(H)	Chemistry (F)	30 hours
(I)	Sanitation, safety, and first aid (F)	40 hours
(J)	Care of client (F)	50 hours
(K)	Management (F)	20 hours
(L)	Superfluous hair removal (F)	25 hours
(M)	Aroma therapy (F)	15 hours
(N)	Nutrition (F)	10 hours
(O)	Color psychology (F)	10 hours
(P)	Bacteriology, sanitation and safety - definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons (M)	100 hours
(Q)	Professional practices - manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations (M)	80 hours
EYELASH EXTENSION CURRICULUM (320 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Orientation, rules and law	10 hours
(B)	First aid and adverse reactions	15 hours
(C)	Sanitation and contagious diseases	20 hours
(D)	Safety and client protection	10 hours
(E)	Eyelash growth cycles and selection	20 hours
(F)	Chemistry of products	5 hours
(G)	Supplies, materials and related equipment	10 hours
(H)	Eyelash extension application	190 hours

(I)	Eyelash extension isolation and separation	15 hours
(J)	Eye shapes	15 hours
(K)	Professional image/salon management	10 hours
HAIR WEAVING CURRICULUM (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Hair weaving : Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	150 hours
(B)	shampooing client, weft and extensions: Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	50 hours
(C)	professional practices: Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	40 hours
(D)	anatomy and physiology-scalp: major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	30 hours
(E)	chemistry in hair weaving: elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	10 hours
(F)	sanitation and safety measures: definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	10 hours
(G)	safety measures: client protection	10 hours
WIG CURRICULUM (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	combing out	50 hours
(B)	Styling	50 hours
(C)	Coloring, tinting, bleaching	37 hours
(D)	Rolling	30 hours
(E)	cutting and shaping, scissors and razor	20 hours
(F)	hot iron	19 hours
(G)	Cleaning	10 hours
(H)	alterations, installation of elastic	10 hours
(I)	Conditioning	10 hours
(J)	brushing technique prior to styling	10 hours
(K)	identification and recognition definition-wigs, wiggery, wigology-pertaining to any human, synthetic, or animal hairpiece	10 hours

(L)	sanitation, disinfecting, required rules and laws	10 hours
(M)	eye tabbing	10 hours
(N)	Sizing	5 hours
(O)	Drying	5 hours
(P)	measuring head for proper size	5 hours
(Q)	preparation of wig on block	5 hours
(R)	history, background, and salesmanship	3 hours
(S)	knowledge of coloring: J L	1 hour

(c)- (e) (No change.)

DIETITIANS
Occupations Code, Chapter 701
Effective 9/1/2015

SUBCHAPTER B. DIETITIANS ADVISORY BOARD

Sec. 701.051. DIETITIANS ADVISORY BOARD MEMBERSHIP.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six licensed dietitian members, each of whom has been licensed under this chapter for not less than three years before the member's date of appointment; and

(2) three members who represent the public.

(b) In appointing dietitian members to the advisory board, the presiding officer of the commission shall attempt to maintain balanced representation among the following primary areas of expertise included in the professional discipline of dietetics:

(1) clinical;

(2) educational;

(3) management;

(4) consultation; and

(5) community.

(c) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 701.0511. DUTIES OF ADVISORY BOARD.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Sec. 701.054. TERMS; VACANCIES.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Sec. 701.057. PRESIDING OFFICER.

The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 701.058. MEETINGS.

The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

DIETITIANS ADVISORY BOARD MEETING

February 19, 2016
North Campus, 1st Floor Public Meeting Room #125E
1106 Clayton Lane, Austin, Texas

Summary of Meeting Minutes

Presiding Officer, Janet Suzanne Hall called the meeting to order at 1:08 pm.

Presiding Officer, Janet Suzanne Hall moved to agenda item B., Roll Call, Certification of Quorum, and introductions. Board members Janet Suzanne Hall, Irma Gutierrez, Cynthia J. Comparin, Matilde Ladnier, Aida Moreno-Brown, LeAnne Skinner, and Mary Kate Weems were present. A quorum of the board was present.

Presiding Officer, Janet Suzanne Hall moved to agenda item C., Public Comment. The Board heard public comment from Debra King.

Presiding Officer, Janet Suzanne Hall moved to agenda item D., Staff Reports - Executive Office. Mary Winston, Office of Strategic Communications Attorney, provided the Executive Office report noting that the funds had been released from the Comptroller to allow for the transfer of the program from Department of State Health Services (DSHS) to TDLR, and that process is scheduled for October 1, 2016. No other TDLR staff reports were provided, but staff was available to answer any questions. Carol Miller, DSHS reported that the Texas State Board of Examiners of Dietitians would not hold any further meetings in preparation of the transfer of the program to TDLR.

Presiding Officer, Janet Suzanne Hall moved to agenda item E., Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 116, Dietitians and regarding comments on the proposed new rules. The proposed new rules implement Senate Bill 202, 84th Legislature, Regular Session (2015), which transfers the Dietitians program from the Department of State Health Services to the Texas Department of Licensing and Regulation. Wendy Pellow, Assistant General Counsel presented the rules comments and staff's recommended responses. The Board engaged in discussions regarding adjusting the rule definitions to meet the national standards, allowing out of state licensure, and requirements for testing. Staff recommended a technical correction to §116.110(g). Board member Irma Gutierrez, seconded by Aida Moreno-Brown, made a motion to recommend the rules to the Commission for adoption with the changes suggested by staff. The motion passed by unanimous vote.

Presiding Officer, Janet Suzanne Hall moved to agenda item F., Discussion and possible appointment of workgroups:

1. Enforcement workgroup to review and make recommendations regarding criminal conviction guidelines, the penalty matrix, other enforcement related matters and rules.
   Presiding Officer, Janet Suzanne Hall appointed the following members to the above referenced workgroup: **Mary Kate Weems, LeAnne Skinner, and Irma Gutierrez**.
2. Licensing workgroup to review and make recommendations regarding licensing requirements and rules, inspections and compliance, and other administrative matters. Presiding Officer, Janet Suzanne Hall appointed the following members to the above referenced workgroup: **Irma Gutierrez, Matilde Ladnier, and LeAnne Skinner**.
3. Education and Examination workgroup to review and make recommendations regarding education and examination, continuing education requirements, and rules. Presiding Officer,

DRAFT

Janet Suzanne Hall appointed the following members to the above referenced workgroup: **Mary Kate Weems, Cynthia J. Comparin, and Aida Moreno-Brown**.

4. Standard of Care workgroup to review and make recommendations regarding standard of care matters and rules. Presiding Officer, Janet Suzanne Hall appointed the following members to the above referenced workgroup: **Janet Suzanne Hall, Matilde Ladnier, and Aida Moreno-Brown**.

Presiding Officer, Janet Suzanne Hall moved to agenda item I. Recommendations for agenda items for next Board meeting: Work group reports and update on the transition plan.

Presiding Officer, Janet Suzanne Hall moved to agenda item J. Discussion of date, time, and location of next Board meeting. The Board agreed to hold the next meetings June 17, 2016, and September 15, 2016, at 1:00 p.m.

Presiding Officer, Janet Suzanne Hall adjourned the meeting at 1:47 p.m.

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Janet Suzanne Hall, Presiding Officer
Dietitians Advisory Board

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Chapter 116
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.
[**Double-underlined text**] is recommended proposed new language from published rules.
[~~**Double-strike-thru text**~~] is recommended proposed deleted language from published rules.

SUBCHAPTER A. GENERAL PROVISIONS.

§116.1. Authority.

The sections in this chapter are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 701.

§116.2. Definitions.

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

(1) Academy--The Academy of Nutrition and Dietetics, which is the national professional association of dietitians.

(2) Accredited facilities--Facilities accredited by the Joint Commission on Accreditation of Health Care Organizations.

(3) Act--The Licensed Dietitian Act, Texas Occupations Code, Chapter 701.

(4) Advisory Board--Dietitians Advisory Board.

(5) Certified facilities, agencies, or organizations--Facilities, agencies, or organizations certified by federal agencies.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Commission on Dietetic Registration (CDR)--The Commission on Dietetic Registration, the credentialing agency for the Academy of Nutrition and Dietetics, is the agency that evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies. The Commission on Dietetic Registration also approves continuing education activities.

(8) CPE--Continuing Professional Experience.

(9) Department --The Texas Department of Licensing and Regulation.

(10) Dietitian--A person licensed under the Act.

(11) Dietetics--The professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes, without limitation, the development, management, and provision of nutrition services.

(12) Executive director--The executive director of the department.

(13) Licensed dietitian (LD)--A person licensed under the Act.

(14) Licensed facilities, agencies, or organizations--Facilities, agencies, or organizations licensed by state agencies.

(15) Licensee--A person who holds a current license as a dietitian or provisional licensed dietitian issued under the Act.

(16) Nutrition assessment--The evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition. Nutrition assessment is an important component of medical nutrition therapy.

(17) Nutrition counseling--Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status. Nutrition counseling is an important component of medical nutrition therapy.

(18) Nutrition services--This term means:

(A) assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice;

(B) establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutrition care systems; or

(E) evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(19) Provisional licensed dietitian (PLD)--A person provisionally licensed under the Act.

(20) Registered dietitian (RD)--A person who is currently registered as a dietitian by the Commission on Dietetic Registration.

SUBCHAPTER B. DIETITIANS ADVISORY BOARD.

§116.10. Membership.

The Dietitians Advisory Board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six licensed dietitian members, each of whom has been licensed under the Act for not less than three years before the member's date of appointment; and

(2) three members who represent the public.

§116.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

§116.12. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§116.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§116.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

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

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board action shall require a majority vote of those members present and voting.

SUBCHAPTER C. EDUCATION REQUIREMENTS.

§116.20. Degrees and Course Work.

(a) The department shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees and course work received from United States colleges or universities which held accreditation, at the time the degree was conferred or the course work was taken, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign colleges and universities shall be acceptable only if such course work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(c) Persons applying for licensure or provisional licensure must possess a baccalaureate or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, nutrition education dietetics, or food systems management.

(d) In place of the requirements in subsection (c), a person may have an equivalent major course of study defined as either:

(1) a baccalaureate or post-baccalaureate degree or course work including a minimum of thirty (30) semester hours in the following areas:

(A) twelve (12) semester hours must be specifically designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle;

(B) six (6) semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management; and

(C) twelve (12) semester hours must be from four of the following three-hour

courses:

(i) upper-division human nutrition related to disease;

(ii) upper-division food service systems management;

(iii) bio- or physiological chemistry, or advanced normal human nutrition;

(iv) food science; or

(v) upper-division nutrition education; or

(2) a baccalaureate or post-baccalaureate degree, including a major course of study meeting the minimum academic requirements to qualify for examination by the Commission on Dietetic Registration.

(e) The relevance to licensure of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the department.

(f) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the department before the application will be voided and the applicant will be required to reapply and to pay additional application fees.

(g) The semester hours may be part of a degree plan or in addition to a degree.

§116.21. Transcripts.

(a) Applicants must submit official transcripts of all relevant academic credit.

(b) The department will not accept a course for which an applicant's transcript indicates was not completed with a passing grade for credit.

(c) A course completed more than once within a five-year period will not be counted more than once to meet the academic requirements as specified in subsection (d).

(d) In evaluating transcripts, the department shall consider a quarter hour of academic credit as two-thirds of a semester hour.

SUBCHAPTER D. EXPERIENCE REQUIREMENTS.

§116.30. Preplanned Professional Experience Programs and Internships.

(a) Applicants for examination must have satisfactorily completed an approved preplanned professional experience program or internship in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian.

(b) The preplanned professional experience program or internship must be approved by the department as prescribed under subsections (c) and (d).

(c) A preplanned professional experience program shall be:

(1) a preplanned professional experience program approved or recognized by the Commission on Dietetic Registration; or

(2) an individualized program, beyond the undergraduate level, that is planned and supervised by at least one licensed or registered dietitian, and is completed within three years after commencement of the program.

(d) An internship shall:

(1) be a dietetic internship, a coordinated undergraduate program in dietetics, or a professional experience program in dietetics; and

(2) have a signed statement submitted from the director of the program with the application.

(e) A person who participates in a department-approved preplanned professional experience program or internship must:

(1) be provisionally licensed under this chapter; and

(2) have a supervision agreement under this chapter.

(f) Documentation of the preplanned professional experience program or internship must be provided to the department on a department-approved form or in a manner prescribed by the department.

(g) Applicants who are registered in active status by the Commission on Dietetic Registration at the time of making application shall submit a photocopy of the registration card issued by the Commission on Dietetic Registration or submit the registration card number. The applicant's internship or preplanned professional experience program accepted for registration by the Commission on Dietetic Registration shall be acceptable for licensure by the department. No further proof of completion of an internship or preplanned professional experience program shall be required from the applicant.

(h) Provisional licensed dietitians shall be deemed to have met the academic requirements for admission into department approved preplanned professional experience and internship programs.

SUBCHAPTER E. EXAMINATION REQUIREMENTS.

§116.40. License Examination Requirements--General.

(a) Except as provided by subsection (c), an applicant must pass a license examination to qualify for a dietitian license under this chapter.

(b) Pursuant to Texas Occupations Code §701.253, the examination required for licensure as a Licensed Dietitian is the examination given by the Commission on Dietetic Registration.

(c) The department shall waive the examination requirement for an applicant who, at the time of application, is a dietitian registered by the Commission on Dietetic Registration and whose registration is in active status.

§116.41. License Examination Qualifications.

(a) An applicant must meet the education and experience requirements under Texas Occupations Code §701.254 in order to qualify to take the licensing examination.

(b) Pursuant to Texas Occupations Code §701.255, the department will review an applicant's application and other submitted documentation as prescribed under §116.50 to determine whether the applicant qualifies to take the examination.

(c) The department shall notify the applicant in writing of the department's determination of whether the applicant has qualified to take the examination. If the applicant has not qualified, the notice shall state the reasons for the applicant's failure to qualify.

(d) Upon notice of qualification, the applicant may take the examination given by the Commission on Dietetic Registration.

§116.42. License Examination Process.

(a) An applicant who wishes to take the examination is responsible for completing the examination registration form and submitting it with the appropriate fee to the Commission on Dietetic Registration (CDR) or its designee.

(b) Examinations administered by the CDR or its designee will be held in locations to be announced by the CDR or its designee.

(c) Examinations administered by the CDR or its designee shall be graded by the CDR or its designee. The passing grade is determined by the CDR.

(d) The CDR or its designee shall notify the applicant of the examination results. Applicants must provide documentation showing examination passage to the department.

§116.43. Examination Failures.

Pursuant to Texas Occupations Code §701.257, an applicant who fails the licensing examination three times must provide evidence to the department, in a manner prescribed by the department, that the applicant has successfully completed credit hours in the applicant's areas of weakness before the applicant may apply for reexamination.

§116.44. Texas Jurisprudence Examination.

(a) An applicant for licensure as a licensed dietitian or provisional licensed dietitian shall pass the Texas Jurisprudence Examination prescribed by the department.

(b) The Texas Jurisprudence Examination is separate from the license examination under §§116.40 - 116.43. The Texas Jurisprudence Examination tests the applicant's knowledge of the statute, rules and any other applicable law affecting the applicant's dietetics practice.

(c) The applicant must register online and pay the Texas Jurisprudence Examination fee to the third-party provider. The applicant does not need to qualify through the department to take the Texas Jurisprudence Examination.

(d) The applicant must successfully complete the Texas Jurisprudence Examination and submit a certificate of completion prior to receiving a license as a licensed dietitian or a provisional licensed dietitian.

SUBCHAPTER F. LICENSED DIETITIANS.

§116.50. Licensed Dietitians--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the internship or preplanned professional experience program documentation form;

(3) official transcript(s) of all relevant college work showing successful completion of education requirements under §701.254(1);

(4) copy of registration issued by Commission of Dietetic Registration, if applicable;

(5) the form providing information regarding other state licenses, certificates or registrations that an applicant holds or held, if applicable;

(6) proof of successfully completing the Texas Jurisprudence Examination; and

(7) the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under §116.51.

(e) The department will notify the applicant pursuant to §116.41, regarding whether the applicant qualifies to take the license examination.

(f) Pursuant to Texas Occupations Code §701.151, the commission or the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.

§116.51. Licensed Dietitians--Fitness of Applicants for Licensure.

(a) Pursuant to Texas Occupations Code §701.151(b)(3), this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the skills and abilities of an applicant to provide adequate nutrition services; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of an applicant for licensure the department may request and consider any of the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) transcripts or findings from official court, hearing, or investigative proceedings; and

(5) any other information which the commission or department considers pertinent to determining the fitness of an applicant.

(d) The substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate nutrition services;

(2) misrepresentation of professional qualifications or affiliations with associations;

(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(4) use of misleading or false advertising;

(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(7) any misrepresentation in application or other materials submitted to the department; and

(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.

§116.52. Licensed Dietitians--Issuing Licenses and Identification Cards.

(a) The department will send each applicant, who meets the requirements of the Act and this chapter, a license certificate and identification card containing the licensee's name, license number, and expiration date.

(b) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the duplicate/replacement license fee under §116.110.

§116.53. Licensed Dietitians--License Term; Renewals.

(a) A license held by a licensed dietitian is valid for two years after the date of issuance and may be renewed biennially.

(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a license, a licensed dietitian must:

(1) submit a completed renewal application on a department-approved form;

(2) submit proof of successfully completing the Texas Jurisprudence Examination;

(3) successfully pass a criminal history background check;

(4) meet the fitness requirements under §116.51;

(5) complete twelve (12) hours of continuing education as required under §116.80;

(6) comply with the continuing education audit process described under §116.82, as applicable; and

(7) submit the fee required under §116.110.

(d) The commission or department shall renew the license of the licensee who has met all requirements for renewal, except as provided in the following sections.

(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.

(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(g) A person whose license has expired may late renew the license in accordance with §60.31 and §60.83.

(h) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed dietitian" or use the letters "LD", and may not use any facsimile of those titles in any manner.

SUBCHAPTER G. PROVISIONAL LICENSED DIETITIANS.

§116.60. Provisional Licensed Dietitians--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) official transcript(s) of all relevant college work showing successful completion of education requirements under §701.254(1);

(3) designation of the licensed dietitian that will supervise the provisional licensed dietitian;

(4) a signed and completed supervision agreement;

(5) proof of successfully completing the Texas Jurisprudence Examination; and

(6) the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under §116.61.

(e) Pursuant to Texas Occupations Code §701.151, the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.

§116.61. Provisional Licensed Dietitians--Fitness of Applicants for Licensure.

(a) Pursuant to Texas Occupations Code §701.151(b)(3), this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the skills and abilities of an applicant to provide adequate nutrition services; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of applicants for licensure the department may request and consider any of the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) transcripts or findings from official court, hearing, or investigative proceedings; and

(5) any other information which the commission or department considers pertinent to determining the fitness of an applicant.

(d) The substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate nutrition services;

(2) misrepresentation of professional qualifications or affiliations with associations;

(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(4) use of misleading or false advertising;

(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(7) any misrepresentation in application or other materials submitted to the department; and

(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.

§116.62. Provisional Licensed Dietitians--Issuing Licenses and Identification Cards.

(a) The department will send each applicant, who meets the requirements of the Act and this chapter, a license certificate and identification card containing the licensee's name, license number, and expiration date.

(b) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the duplicate/replacement license fee under §116.110.

§116.63. Provisional Licensed Dietitians--License Term; Renewals.

(a) A provisional license is valid for one year and may be renewed annually. A provisional license may only be renewed twice.

(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a license, a provisional licensed dietitian must:

(1) submit a completed renewal application on a department-approved form;

(2) submit a supervision agreement that is signed by the licensed dietitian and that indicates whether the supervisor and the provisional licensed dietitian have complied with §116.65;

(3) submit proof of successfully completing the Texas Jurisprudence Examination;

(4) successfully pass a criminal history background check;

(5) meet the fitness requirements under §116.61;

(6) complete six (6) hours of continuing education as required under §116.80;

(7) comply with the continuing education audit process described under §116.82, as applicable; and

(8) submit the fee required under §116.110.

(d) The commission or department shall renew the license of the licensee who has met all requirements for renewal, except as provided in the following sections.

(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.

(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(g) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(h) A person whose license has expired may not use the title or represent or imply that he or she has the title of "provisional licensed dietitian" or use the letters "PLD", and may not use any facsimile of those titles in any manner.

§116.64. Provisional Licensed Dietitians--Upgrading to Licensed Dietitian.

(a) The purpose of this section is to set out the procedure to upgrade from a provisional licensed dietitian to a licensed dietitian.

(b) The provisional licensed dietitian who has completed a department-approved preplanned professional experience program or internship in accordance with §116.30, must submit to the department a letter from the supervisor indicating the date the provisional licensed dietitian completed the program or internship.

(c) A provisional licensed dietitian who becomes registered by the Commission on Dietetic Registration must submit proof of current registration status.

(d) A provisional licensed dietitian must submit:

(1) a written request to upgrade on a department-approved form; and

(2) pay the required fee under §116.110 to upgrade to a licensed dietitian.

(e) The requirements of supervision under §116.65, shall continue until the provisional licensed dietitian becomes a licensed dietitian.

§116.65. Provisional Licensed Dietitians--Supervision.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for a provisional licensed dietitian (PLD). The supervisor shall be a licensed dietitian.

(b) Supervision Agreement. The PLD must submit an agreement on a department-approved form to the department prior to the date that supervision is to begin. The agreement shall include:

(1) the name and signature of the supervisor and the name and signature of the PLD;

(2) the license number of the supervisor and the license number of the PLD if applicable;

(3) the primary location and address where nutrition services are to be rendered;

(4) a description of nutrition services to be rendered by the PLD;

(5) a statement that the supervisor and the PLD have read and agree to adhere to the requirements of the Act and this chapter; and

(6) the date that the supervisor and the PLD signed the agreement.

(c) Agreement Termination. The supervisor must submit a written notification of termination of supervision to the department and the PLD within fourteen (14) days of when supervision has ceased. The PLD shall make a good faith effort to ensure that the supervisor submits the appropriate notification. The notification of termination of supervision shall include:

(1) the name, license number, and signature of the supervisor and the name and license number of the PLD;

(2) a statement that supervision has terminated;

(3) the reason for termination;

(4) the date of termination of supervision; and

(5) a statement indicating whether the supervisor and the PLD have complied with the requirements of the Act and this chapter.

(d) Changes. Any change in the supervision agreement shall require submission of a new agreement.

(e) Requirements of supervision.

(1) The supervisor must have adequate training, knowledge, and skill to render competently any nutrition services that the PLD undertakes. The supervisor shall have discretion to refer the PLD for specific supervision from another licensed dietitian.

(2) The supervisor is responsible for determining the adequacy of the PLD's ability to perform the nutrition services.

(3) The supervisor may not supervise more than three (3) PLDs concurrently unless department approval is provided in advance.

(4) The PLD must clearly state the supervised status to patients, clients, and other interested parties and must provide the name, address, and telephone number of the supervisor.

(5) The supervisor may not be employed by the PLD, may not lease or rent space from the PLD, and must avoid any dual relationship with the PLD which could impair the supervisor's professional judgment.

(6) The supervisor must provide each PLD with no less than one hour of regularly scheduled one-to-one, face-to-face meetings weekly, regardless of the number of hours employed per week, or no less than four hours monthly. Group meetings are not a substitute for one-to-one meetings. A written record of the scheduled meetings must be maintained by the supervisor and include a summary of the PLD's work activities. The record shall be provided to the department on request.

(7) The supervisor must be available for discussion of any problems encountered by the PLD at reasonable times in addition to the scheduled meetings.

(8) The supervisor will provide an alternate licensed dietitian to provide supervision for the PLD in circumstances when the supervisor is not available for more than four continuous weeks.

(f) Payment. A PLD may not pay for supervision.

(g) Required supervisor. A PLD must have a supervising licensed dietitian at all times whether or not the PLD is actively employed.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

SUBCHAPTER H. TEMPORARY LICENSED DIETITIANS.

§116.70. Temporary Licensed Dietitians--Application and Eligibility Requirements; License Term.

(a) This section sets out the application procedures for a temporary license, which may be issued to a person licensed in good standing as a dietitian in another state, territory, or jurisdiction of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act and this chapter.

(b) An applicant for a temporary license shall submit:

(1) a completed application on a department-approved form;

(2) a current copy of the law and rules of the other state, District of Columbia, or territory of the United States governing its licensing and regulation of dietitians;

(3) verification acceptable to the department that the applicant has passed the Commission of Dietetic Registration's examination or an examination offered by another state, the District of Columbia, or a territory of the United States for licensure as a dietitian;

(4) verification that the licensee is or will be supervised by a licensed dietitian in the same manner as set out in §116.65;

(5) a copy of the applicant's dietitian's license or certificate in the other state, District of Columbia, or territory of the United States and the name, address and telephone number of the licensing or certifying agency;

(6) a letter of good standing from the licensing or certifying agency in the other state, District of Columbia, or territory of the United States; and

(7) the fee required under §116.110.

(c) A temporary license is valid for 180 days from the date of issue, or until the date the department approves or denies the temporary licensee's application for a dietitian license, whichever is earlier. The department may extend the 180-day deadline to receive pending examination results.

(d) A temporary license may not be renewed. A person whose temporary license has expired is not eligible to receive another temporary license.

(e) The department shall issue a dietitian license to the holder of a temporary license after the temporary licensee meets all of the requirements for obtaining a dietitian license as set out in Subchapter F, Licensed Dietitians.

SUBCHAPTER I. CONTINUING EDUCATION.

§116.80. Continuing Education--General Requirements and Hours.

(a) Licensed dietitians and provisional licensed dietitians are required to take continuing education.

(b) A licensed dietitian must complete a minimum of twelve (12) continuing education hours during each two-year licensing period.

(c) A provisional licensed dietitian must complete a minimum of six (6) continuing education hours during each one-year licensing period.

(d) The hours must have been completed prior to the date of expiration of the license.

§116.81. Continuing Education--Approved Courses and Credits.

(a) The department has determined that to meet the continuing education requirements under the Act and this chapter a licensee must take the courses and hours offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

(b) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to dietetics;

(2) clinical courses related to dietetics;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics;

(4) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;

(5) acceptance and participation in poster sessions offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited one hour for six (6) poster sessions with a maximum of two clock hours for twelve (12) poster sessions;

(6) books or articles published by the licensee in relevant professional books and referred journals. A minimum of three (3) continuing education hours will be credited for the publication; or

(7) self-study of professional materials that include self-assessment examinations. Six (6) hours maximum will be credited for self-study during the two-year licensure period.

(c) Activities unacceptable as continuing education for which the department may not grant continuing education credit are:

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

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

(3) any continuing education activity completed before or after the period of time described in subsection (a)(1);

(4) activities described in subsection (b), which have been completed more than once during the continuing education period;

(5) performance of duties that are routine job duties or requirements; or

(6) participation in conference exhibits.

(d) Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit.

(2) An activity which meets the criteria of subsection (b)(2) or (3) shall be credited on a one-for-one basis with CPE as approved by the Academy.

(e) The Texas Jurisprudence Examination shall be required as follows:

(1) The licensee must successfully complete the Texas Jurisprudence Examination for renewal.

(2) Proof of successfully completing the examination must be retained by the licensee as required in §116.82.

(3) One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Examination.

§116.82. Continuing Education--Records and Audits.

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) The audit process shall be as follows:

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until continuing education requirements have been met.

§116.83. Continuing Education--Failure to Complete.

(a) A person who fails to complete continuing education requirements for renewal holds an expired license and may not use the titles “licensed dietitian” or “provisional licensed dietitian.”

(b) A person may renew late after all the continuing education requirements have been met.

SUBCHAPTER J. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT.

§116.90. Registry.

(a) The department shall publish a registry of current license holders that includes the name, mailing address, and telephone number of current licensees.

(b) The registry will be available on the department’s website.

§116.91. Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Dietitians program. Pursuant to 16 Texas Administrative Code (TAC) §60.22, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules without being proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

SUBCHAPTER K. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS.

§116.100. Display of License.

(a) This section applies to licensed dietitians and provisional licensed dietitians.

(b) The license certificate must be displayed in an appropriate and public manner as follows.

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

(2) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(c) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of an identification card in lieu of the original document. A file copy shall be clearly marked as a copy across the face of the document.

(d) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.

(e) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

§116.101. Changes of Name or Address.

(a) This section applies to licensed dietitians and provisional licensed dietitians.

(b) The licensee shall notify the department of changes in name or mailing address within thirty (30) days of such change(s) on a department-approved form or using a department-approved method.

(c) Notification of name changes must be mailed or faxed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The licensee shall submit the duplicate/replacement fee required under §116.110.

§116.103. Disclosure.

(a) A licensee shall notify each client of the name, mailing address, telephone number, and website address of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a licensee;

(2) on a sign prominently displayed in the primary place of business of each licensee; or

(3) in a bill for service provided by a licensee to a client or third party.

(b) A provisional licensed dietitian must include the name and telephone number of his or her supervisor in all advertising and announcements of services including business cards and applications for employment.

§116.104. Unlawful, False, Misleading, or Deceptive Advertising.

(a) A licensee shall use factual information to inform the public and colleagues of his/her services. A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or

copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) As used in this section, a "health care professional" includes a licensed dietitian, provisional licensed dietitian, temporary licensed dietitian, or any other person licensed, certified, or registered by the state in a health-related profession.

§116.105. Code of Ethics.

(a) Professional representation and responsibilities.

(1) A licensee shall conduct himself/herself with honesty, integrity and fairness.

(2) A licensee shall not misrepresent any professional qualifications or credentials. A licensee shall not make any false or misleading claims about the efficacy of any nutrition services or dietary supplements.

(3) A licensee shall not permit the use of his/her name for the purpose of certifying that nutrition services have been rendered unless that licensee has provided or supervised the provision of those services.

(4) A licensee shall not promote or endorse products in a manner that is false or misleading.

(5) A licensee shall disclose to a client, a person supervised by the licensee, or an associate any personal gain or profit from any item, procedure, or service used by the licensee with the client, supervisee, or associate.

(6) A licensee shall maintain knowledge and skills required for professional competence. A licensee shall provide nutrition services based on scientific principles and current information. A licensee shall present substantiated information and interpret controversial information without bias.

(7) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutrition services.

(8) A licensee shall comply with the provisions of the Texas Controlled Substances Act,

the Health and Safety Code, Chapter 481 and Chapter 483, relating to dangerous drugs; and any rules of the department or the Texas State Board of Pharmacy implementing those chapters.

(9) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of commission rules to the department.

(10) A licensee shall comply with any order relating to the licensee which is issued by the commission or the executive director.

(11) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(12) A licensed dietitian shall supervise a provisional licensed dietitian in accordance with §116.65.

(13) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation relating to the services of the licensee, any person supervised by the licensee or any dietary supplement.

(14) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the Academy or Commission on Dietetic Registration, and other professional or governmental bodies. A licensee shall recognize and exercise professional judgment within the limits of his/her qualifications and collaborate with others, seek counsel, or make referrals as appropriate.

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

(16) A licensee shall report information if required by the following statutes:

(A) Texas Family Code, Chapter 261, concerning abuse or neglect of minors; or

(B) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons.

(b) Professional relationships.

(1) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship. A licensee shall bill a client or a third party in the manner agreed to by the licensee and in accordance with state and federal law.

(2) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(3) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(4) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(5) A licensee shall provide nutrition services without discrimination based on race, creed, gender, religion, national origin, or age.

(6) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records. A licensee shall protect confidential information and make full disclosure about any limitations on his/her ability to guarantee full confidentiality.

(7) A licensee shall not engage in sexual contact with a client. The term "sexual contact" means any type of sexual behavior described in the Texas Penal Code, §21.01, and includes sexual intercourse. A licensee shall not engage in sexual harassment in connection with professional practice.

(8) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services provided.

(9) A licensee shall not provide services to a client or the public if by reason of any mental or physical condition of the licensee, the services cannot be provided with reasonable skill or safety to the client or the public.

(10) A licensee shall not provide any services which result in mental or physical injury to a client or which create an unreasonable risk that the client may be mentally or physically harmed.

(11) A licensee shall provide sufficient information to enable clients and others to make their own informed decision regarding nutritional services.

(12) A licensee shall be alert to situations that might cause a conflict of interest or have the appearance of a conflict. A licensee shall make full disclosure when a real or potential conflict of interest arises.

(c) A licensed dietitian shall supervise a provisional licensed dietitian or a temporary licensed dietitian for whom the licensee has assumed supervisory responsibility.

(d) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for client

nutrition services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(e) A licensee may not persistently or flagrantly overcharge or overtreat a client.

(f) Sanctions. A licensee shall be subject to disciplinary action by the commission or department if under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31, the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has been convicted and ordered to pay court costs under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Chapter 56, Subchapter B, Article 56.55.

(g) Applicants. A violation of any provision of this section by a person who is an applicant or who subsequently applies for a license (even though the person was not a licensee at the time of the violation) may be a basis for disapproval of the application.

SUBCHAPTER L. FEES.

§116.110. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensed Dietitian Fees:

(1) Initial application fee (includes two-year initial license)--$108;

(2) License fee for upgrade of provisional licensed dietitian to licensed dietitian--$20;

(3) Renewal application fee (for two-year license)--$90; and

(4) Application processing fee for preplanned professional experience approval--$350.

(c) Provisional Licensed Dietitian Fees:

(1) Initial application fee (includes one-year initial license)--$54;

(2) License fee for upgrade of provisional licensed dietitian to licensed dietitian--$20;

(3) Renewal application fee (for one-year license; may only be renewed twice)--$45; and

(4) Application processing fee for preplanned professional experience approval--$350.

(d) Temporary Licensed Dietitian Fees. Initial application fee (includes initial license)--$54.

(e) A duplicate/replacement fee for licenses issued under this chapter is $25.

(f) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title

(relating to Late Renewal Fees).

(g) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored **Payment Device [~~Check Fee~~]**).

(h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

SUBCHAPTER M. COMPLAINTS.

§116.120. Complaints Regarding Standard of Care.

The commission will adopt rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

SUBCHAPTER N. ENFORCEMENT PROVISIONS.

§116.130. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 701, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 701 and any associated rules.

§116.131. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 701 and any associated rules may be used to enforce Texas Occupations Code, Chapter 701 and this chapter.

§116.132. License Surrender.

Pursuant to Texas Occupations Code §701.351(b), a license issued by the department is the property of the department and shall be surrendered on demand.

SUBCHAPTER O. THE DIETETIC PROFESSION.

§116.140. Areas of Expertise.

The profession of dietetics includes six primary areas of expertise: clinical, educational, management, consultation, community and research; and includes without limitation the development, management, and provision of nutrition services, as follows:

(1) planning, developing, controlling, and evaluating food service systems;

(2) coordinating and integrating clinical and administrative aspects of dietetics to provide quality nutrition care;

(3) establishing and maintaining standards of food production, service, sanitation, safety, and security;

(4) planning, conducting, and evaluating educational programs relating to nutrition care;

(5) developing menu patterns and evaluating them for nutritional adequacy;

(6) planning layout designs and determining equipment requirements for food service facilities;

(7) developing specifications for the procurement of food and food service equipment and supplies;

(8) developing and implementing plans of nutrition care for individuals based on assessment of nutrition needs;

(9) counseling individuals, families, and groups in nutrition principles, dietary plans, and food selection and economics;

(10) communicating appropriate diet history and nutrition intervention data through medical record systems;

(11) participating with physicians and allied health personnel as the provider of nutrition care;

(12) planning, conducting or participating in, and interpreting, evaluating, and utilizing pertinent current research related to nutrition care;

(13) providing consultation and nutrition care to community groups and identifying and evaluating needs to establish priorities for community nutrition programs;

(14) publishing and evaluating technical and lay food and nutrition publications for all age, socioeconomic, and ethnic groups; and

(15) planning, conducting, and evaluating dietary studies and participating in nutrition and epidemiologic studies with a nutrition component.

§116.141. Provider of Nutrition Services.

(a) A person licensed by the department is designated as a health care provider of nutrition services.

(b) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may accept, transcribe into a patient's medical record or transmit verbal or electronically-transmitted orders, including medication

orders, from a physician to other authorized health care professionals relating to the implementation or provision of medical nutrition therapy and related medical protocols for an individual patient or group of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided, as appropriate, through the physician's order, standing medical order, or standing delegation order of a referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(c) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols for individual patients or groups of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol, issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided through the physician's order, standing medical order, or a standing delegation order of the referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

§116.142. Licensed Dietitians Providing Diabetes Self-Management Training.

(a) This section implements the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055.

(b) Diabetes self-management training. Diabetes self-management training covers the following training:

(1) training provided to a qualified enrollee after the initial diagnosis of diabetes in the care and management of that condition, including nutrition counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified enrollee's symptoms or condition that

requires changes in the qualified enrollee's self-management regimen; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(c) Providing diabetes self-management training as a member of a multi-disciplinary team.

(1) Prior to beginning to provide diabetes self-management training as member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall complete at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(3) A licensed dietitian who is not a Certified Diabetes Educator and who is providing diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), shall confine his or her professional services to nutrition education and/or counseling, lifestyle modifications, the application of self-management skills, reinforcing diabetes self-management training, and other acts within the scope of his or her professional education and training which are conducted under the supervision of the coordinator of the multi-disciplinary team.

(d) Providing the nutrition component of diabetes self-management training.

(1) Prior to beginning to provide the nutrition component of diabetes self-management training under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(4), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall show proof to the department completion of at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(e) Continuing education. The continuing education completed under this section shall meet the requirements described in Subchapter I, Continuing Education. The continuing education completed under this section may be part of the credits required for renewal of a license.

(f) Submission of continuing education to the department. Upon written request by the department, the licensed dietitian shall submit to the department proof of completion of the continuing education completed under this section. The licensed dietitian shall submit the proof of completion in a manner and a timeframe acceptable to the department.

(g) Provisional Licensed Dietitians. A provisional licensed dietitian shall not provide diabetes

self-management training under these rules.

(h) Certified Diabetes Educator. This section does not apply to a licensed dietitian who is a diabetes educator certified by the National Certification Board for Diabetes Educators.

(i) Non-application of rules. This section does not pertain to or restrict a licensed dietitian who does not qualify under this section from providing the nutrition component of diabetes self-management training within the scope of the license issued by the department, to a person:

(1) who is not a qualified enrollee as defined in the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.051;

(2) who does not intend to seek payment for or reimbursement for diabetes self-management training; or

(3) without the written order of a licensed physician or other healthcare practitioner.

DRIVER TRAINING and TRAFFIC SAFETY
Texas Education Code, Chapter 29
Effective 9/1/2015

SUBCHAPTER B. ADVISORY COMMITTEE

Sec. 1001.058. ADVISORY COMMITTEE.

(a) The commission shall establish an advisory committee to advise the commission and department on rules and educational and technical matters relevant to the administration of this chapter.

(b) The advisory committee consists of eleven members appointed for staggered six-year terms by the presiding officer of the commission, with the approval of the commission, as follows:

(1) one member representing a driver education school that offers a traditional classroom course and in-car training;

(2) one member representing a driver education school that offers a traditional classroom course, alternative methods of instruction, or in-car training;

(3) one member representing a driving safety school offering a traditional classroom course or providing an alternative method of instruction;

(4) one member representing a driving safety course provider approved for a traditional classroom course and for an alternative method of instruction;

(5) one member representing a driving safety course provider approved for a traditional classroom course or for an alternative method of instruction;

(6) one licensed instructor;

(7) one representative of the Department of Public Safety;

(8) one member representing a drug and alcohol driving awareness program course provider;

(9) one member representing a parent-taught course provider; and

(10) two members representing the public.

(c) The presiding officer of the commission shall appoint the presiding officer of the advisory committee. The presiding officer of the advisory committee may vote on any matter before the advisory committee.

(d) A member may not serve two consecutive full terms.

(e) If a vacancy occurs during a term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

(f) A member of the advisory committee may be removed from the advisory committee as provided by Section 51.209, Occupations Code.

(g) Members of the advisory committee may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory committee, subject to the General Appropriations Act.

(h) The committee shall meet at the call of the presiding officer of the commission.

(i) Chapter 2110, Government Code, does not apply to the advisory committee.

DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE MEETING

April 21, 2016
North Campus, 1st Floor Public Meeting Room #125E
1106 Clayton Lane, Austin, Texas

Summary of Meeting Minutes

Presiding Officer, Ricardo Benavides called the meeting to order at 9:16 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Board Members Ricardo Benavides, David Bruce, Blake Garrett, Kevin Knapp, Nina Jo Saint, Frances Gomez, and Glenn Winningham were present. Board Member Patricia Larke, was absent. A quorum of the board was present.

Motion by Board Member Nina Jo Saint, seconded by Glen Winningham to approve the absence of Dr. Patricia Larke. Motion passes unanimously.

Presiding Officer Ricardo Benavides informs the public that Board Members Carlos Reyna and Cindy Jo Garrett are running late.

Presiding Officer, Ricardo Benavides moved to agenda item C. Approval of the Minutes – February 25, 2016.

Motion by Kevin Knapp, seconded by Glenn Winningham, moved to approve the Minutes of February 25, 2016. Motion passed unanimously.

Presiding Officer, Ricardo Benavides moved to agenda item D. Public Comment. Public comments were provided by Patrick Garrett with Driver Ed in a Box, presented documentation to the Committee and wants every school be consistent with what is required to submit to TDLR to be fair across the board; Jeff Adams, Cypress Driving School, commented on certificates for course 101 and suggests that all rules that they have to abide by should also be abide by parent-taught licensees and spoke about refunds; Charles Laws, owner, Driving by Laws, spoke on legislative intent issues and submitted documentation to the Committee; Tom Pennington spoke on contracts and asks that the contracts have a beginning and an ending time. Also spoke on drive-time Eric Givilance, owner of Roadworthy Driving Academy and he is also an on-line provider. He spoke on accountability with all schools and parent-taught course providers, wants consistency across the board and asks that it be in the proposed rules.

Executive Director, Bill Kuntz arrives at 9:32 a.m.
Committee Members Carlos Reyna and Cindi Jo Garrett arrive at 9:35 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item E.2. Compliance Division. Kathy Phillips, Compliance Division Program Specialists, gave the Compliance Division report and reported on Staff and Program Updates; Projects; Public Outreach and Statistics and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item E.3. Education and Examination Division. Cari Hodges, Program Specialist with the Education and Examination Division presented the staff report and updated the Committee on Staff and Program Updates; Schools Statistics; and Update on

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Inspection Process and informs the Committee of the new program packet that has been prepared with the help from TDLR employees and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item E.4. Enforcement Division. Robert Rennich, Prosecutor, Enforcement Division presented the Enforcement Division report and updated the Committee on Projects and Statistics, Criminal Conviction guidelines are now in process and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item E.5. Licensing Division. Chloe Adkins, Program Specialist, Licensing Division, presented the staff report and updated the Committee on Statistics and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item E.1. Staff Reports. Executive Office. Bill Kuntz, Executive Director and Brian Francis, Deputy Executive Director presented the Executive Staff reports and reported on Update on the transfer of the Driver Training and Traffic Safety Program to TDLR; Overview of the Rule Making Process; Contact Center Statistics and Operations; Overview of the Strategic Planning Sessions; and Presentations, Outreach, and Meetings with Constituent Groups of the House Committee on Homeland Security and Public Safety Hearing of March 29, 2016 and answered questions from the Committee.

Break at 10:20 a.m
Reconvene at 10:41 a.m.

Brian Francis, Deputy Executive Director commended Nina Jo Saint for attending 4 strategic planning sessions and commended her for being a great asset to TDLR and her expertise in the driver education program. He also announced that Kevin Knapp was a new grandpa. Also announced that Executive Director Bill Kuntz will be retiring the end of August.

Presiding Officer, Ricardo Benavides moved to agenda item F. Discussion and possible action on the strategy for reorganization of administrative rules for 16 TAC Chapter 84, including a recommended outline of the Chapter. Deputy General Counsel, Della Lindquist informs the Committee that three agencies got together and have been working on a goal to combine the rules to make them work better and more efficient. She commends the work group and Cari Hodges on working together and putting the pieces together and making them work. Regulation part and curriculum. She suggests that the Committee work on the rule making on two phases; first work on the regulation part and leave the curriculum section for the second phase. Kevin Knapp likes the concept but doesn't like the time-line. Brian Francis informs the Committee that they would like to have a Summit discussion on curriculum in August for the Committee, TDLR staff and the industry. Nina Jo Saint would like TDLR to invite traffic safety related state agencies to the Summit. Della Lindquist proposes the proposed outline of Chapter 84 Rule Structure and answers questions from the Committee.

Motion by Kevin Knapp, seconded by Cindi Jo Garrett to allow TDLR to move forward with the concept as presented. Motion passes unanimously.

Presiding Officer, Ricardo Benavides moved to agenda item G. Discussion and overview of the following work groups' evaluation of 16 TAC, Chapter 84, the rules for the Driver Education and Safety program:

1. Driver Training and Driving Safety Schools, Instructors - duties include operations, inspections, license renewal requirement, standards of conduct

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2. CE, Curriculum and Course Providers - approval standards, hours for CE, guidelines for alternative delivery courses, and all other educational matters
3. Enforcement/Compliance - criminal conviction guidelines, penalty matrix and all other enforcement matters

Cari Hodges provided the Committee with the proposed workgroup reports and rules, and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item H. Discussion regarding the parent-taught on-line process. Kevin Knapp informs the Committee that this item has been resolved.

Presiding Officer, Ricardo Benavides moved to agenda item I. Recommendations for agenda items for next Committee meeting: Staff reports, external presentations, Cari Hodges' progress with her course, re-aligned version of the rules,

Presiding Officer, Ricardo Benavides moved to agenda item J. Discussion of date, time, and location of next Committee meeting. The Committee agreed to hold the next meetings on July 12, 2016, and September 22, 2016. Summit Meeting is scheduled for August 25, 2016. All meetings will start at 9:00 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item J. Adjournment. The meeting was adjourned at 11:26 a.m.

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Ricardo Benavides, Presiding Officer
Driver Training and Traffic Safety Advisory Committee

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DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE MEETING

February 25, 2016
North Campus, 1st Floor Public Meeting Room #125E
1106 Clayton Lane, Austin, Texas

Summary of Meeting Minutes

Presiding Officer, Ricardo Benavides called the meeting to order at 9:06 am.

Presiding Officer, Ricardo Benavides moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Board Members Ricardo Benavides, David Bruce, Blake Garrett, Kevin Knapp, Carlos Reyna, Nina Jo Saint, and Glenn Winningham were present. Board Member Frances Gomez, Patricia Larke, and Cindi Jo Garrett were absent. A quorum of the board was present.

Presiding Officer Ricardo Benavides excused the absences of Frances Gomez and Cindi Jo Garrett and announced that Patricia Larke would be arriving late.

Presiding Officer, Ricardo Benavides moved to agenda item C. Approval of the Minutes – November 19, 2015.

Motion by Presiding Officer Ricardo Benavides, seconded by Carlos Reyna moved to approve the Minutes of November 19, 2015. Motion passed unanimously.

Presiding Officer, Ricardo Benavides moved to agenda item D. Public Comment. Public comments were provided by Patrick Garrett with Driver Ed in a Box, who presented documentation to the Committee, and Marco Benavides, owner of PTDE Course.

Presiding Officer, Ricardo Benavides moved to agenda item E.1. Staff Reports. Executive Office. Brian Francis, Deputy Executive Director presented the Executive Staff reports and reported on the Overview of Executive Office; Update on Driver Training and Traffic Safety Program Transfer to TDLR; Overview of the Rule Making Process; and Contact Center Statistics and Operation.

Presiding Officer, Ricardo Benavides moved to agenda item E.2. Compliance Division. Kathy Phillips and Gaye Estes, Compliance Division Program Specialists, gave the Compliance Division report and reported on Staff and Program Updates; Projects; Public Outreach and Key Statistics – Fiscal Year 2016.

Presiding Officer, Ricardo Benavides moved to agenda item E.3. Education and Examination Division. Cari Hodges, Program Specialist with the Education and Examination Division presented the staff report and updated the Committee on Staff and Program Updates; Schools Statistics; and Update on Inspection Process and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item E.4. Enforcement Division. Robert Rennich, Prosecutor, Enforcement Division presented the Enforcement Division report and updated the Committee on Projects and Key Statistics – Fiscal Year 2016 and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item E.5. Licensing Division. Chloe Adkins, Program Specialist, Licensing Division, presented the staff report and updated the Committee on Key Statistics – Fiscal Year 2016 and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item F. Discussion and possible action to recommend approval of the criminal conviction guidelines. Christina Kaiser, Director of the Enforcement Division, presented the criminal conviction guidelines and thanked the Committee Members who were on the workgroup for criminal conviction guidelines; and answered questions from the Committee.

Motion by Presiding Officer Ricardo Benavides, seconded by Blake Garrett to approve the criminal conviction guidelines with the two changes that were made and to present them to the Commission for adoption. Motion passes unanimously.

The Committee recessed at 10:21 a.m.
The Committee reconvened at 10:37 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item G. Discussion and possible recommendation regarding the following work group reports and activities which consist of the work groups' evaluation of 16 TAC, Chapter 84, the rules for the Driver Education and Safety program:

1. Driver Training and Driving Safety Schools, Instructors - duties include operations, inspections, license renewal requirement, standards of conduct
2. CE, Curriculum and Course Providers - approval standards, hours for CE, guidelines for alternative delivery courses, and all other educational matters
3. Enforcement/Compliance - criminal conviction guidelines, penalty matrix and all other enforcement matters

Cari Hodges provided the Committee with the proposed workgroup reports and rules, and answered questions from the Committee.

Presiding Officer, Ricardo Benavides moved to agenda item H. Recommendations for agenda items for next Committee meeting: Staff Reports, workgroup discussion, outreach efforts, Parent-taught on-line process, and an update on the Strategic Planning sessions.

Committee member Patricia Larke joined the dais at 11:35 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item I. Discussion of date, time, and location of next Committee meeting. The Committee agreed to hold the next meetings on April 21, 2016, June 30, 2016, and September 1, 2016. All meetings will start at 9:00 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item J. Adjournment. The meeting was adjourned at 11:37 a.m.

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Ricardo Benavides, Presiding Officer
Driver Training and Traffic Safety Advisory Committee

DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE MEETING

November 19, 2015
North Campus, 1st Floor Public Meeting Room #125E
1106 Clayton Lane, Austin, Texas

Summary of Meeting Minutes

Presiding Officer, Ricardo Benavides called the meeting to order at 9:02 am.

Presiding Officer, Ricardo Benavides moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Board members Ricardo Benavides, David Bruce, Blake Garrett, Cindi Jo Garrett, Frances Gomez, Kevin Knapp, Patricia Larke, Carlos Reyna, Nina Jo Saint, and Glenn Winningham. A quorum of the board was present.

Presiding Officer, Ricardo Benavides moved to agenda item C. Training for Committee Members, Della Lindquist, Deputy General Counsel provided an overview of the Open Meetings Act, Public Information Act, and Administrative Procedures Act.

Presiding Officer, Ricardo Benavides moved to agenda item D. TDLR Video Presentation on Public Comment Process.

Presiding Officer, Ricardo Benavides moved to agenda item E. Public Comment. There was no public comment.

Presiding Officer, Ricardo Benavides moved to agenda item F. Discussion on History and Overview of the Driver Training and Traffic Safety Program Transfer. Carlos Reyna and Nina Jo Saint provided an overview of the history of the Driver Training and Traffic Safety Program.

Presiding Officer, Ricardo Benavides moved to agenda item G.1., Staff Reports - Executive Office. William Kuntz, Executive Director provided an overview of the recent speaking engagements and training/education/outreach presentations, Update on Driver Training and Traffic Safety Program Transfer to TDLR, and contact center operations and statistics. Brian Francis, Deputy Executive Director provided an Introduction and Overview of Executive Office and Overview of the Rule Making Process. Chairman Mike Arismendez, thanked the board members for their service and reminded them of their requirements for service.

Presiding Officer, Ricardo Benavides moved to agenda item G.2., Staff Reports - Compliance Division. George Ferrie, Director of Compliance Division introduced the Compliance Division and provided an overview of department duties. Gay Estes and Cathy Phillips, Program Specialists provided an overview of the program duties and opportunities for outreach efforts. Mr. Ferrie reported that no statistics are currently available but the department will provide this information in the future.

Presiding Officer, Ricardo Benavides moved to agenda item G.3., Staff Reports - Education and Examination Division. Ray Pizarro, Director of Education and Examination Division, provided an introduction and overview of the Education and Examination Division, contacting the department, department resources and online and innovation to address industry issues.

Presiding Officer, Ricardo Benavides moved to agenda item G.4., Staff Report - Enforcement Division. Christina Kaiser, Director of Enforcement Division provided an overview of the complaints categories, the Department sections that process these complaints, and indicated that future meeting will review and discuss the criminal conviction guidelines and the penalty matrix.

Presiding Officer, Ricardo Benavides called for a break at 10:30 a.m. and reconvened at 10:53 a.m.

Presiding Officer, Ricardo Benavides moved to agenda item G.5., Staff Reports - Licensing Division. Dede McEachern, Director of Licensing Division reported on Introduction and Overview of the Licensing Division, Statistics, and recent speaking engagements and training/education/outreach presentations. Chloe Adkins, Program Supervisor reported on statistics and provided a handout and answered questions from the Board.

Presiding Officer, Ricardo Benavides moved to agenda item H. Discussion and possible recommendation regarding proposed new, amended, and repealed rules at 16 Texas Administrative Code, Chapter 84 to implement the transfer of the

driver education and safety program from the Texas Education Agency and the Department of Public Safety to TDLR pursuant to H.B. 1786, 84th Legislature, Regular Session (2015). Della Lindquist presented the proposed rules and answered questions from the board. Discussions on limiting hours that a driver trainer can work; amount of students enrolled in a class or a school; translation matters; and parent taught driver training and transfer students and hours.

Presiding Officer Ricardo Benavides called for a lunch break at 11:45 a.m. and reconvened the meeting at 1:05 p.m.

Presiding Officer, Ricardo Benavides assigned the following board members to the following workgroups:

School Instructor: **Nina Jo Saint, Cindi Jo Garrett, Kevin Knapp, Carlos Reyna and Ricardo Benavides**

CE, Curriculum and Course Providers: **David Bruce, Nina Jo Saint, Blake Garrett, Carlos Reyna, Kevin Knapp**

Enforcement/Compliance: **Carlos Reyna, Patricia Larke, Nina Jo Saint, Ricardo Benavides, Frances Gomez**

Rule Alignment: **Ricardo Benavides; Patricia Larke, Glenn Winningham, Kevin Knapp and Blake Garrett**

Presiding Officer, Ricardo Benavides moved to agenda item E. Public Comment. Public comment from Tom Pennington with Green Light Driving Academy.

Presiding Officer, Ricardo Benavides moved to agenda item I. Recommendations for agenda items for next Committee meeting. Work group discussions, review of the rules and comments.

Presiding Officer, Ricardo Benavides moved to agenda item J. Discussion of date, time, and location of next Committee meeting. The Committee agreed to hold the next meeting on Thursday, February 25, 2016.

Presiding Officer, Ricardo Benavides adjourned the meeting at 2:53 p.m.

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Ricardo Benavides, Presiding Officer
Driver Training and Traffic Safety Advisory Committee

DRIVER EDUCATION AND SAFETY

Crimes against the person such as homicide, kidnapping, and assault.

Reasons:

1. Under Section 1001.2514(b) of the Texas Education Code, the agency SHALL suspend or revoke the license of a driver education instructor, or refuse to issue or renew a license to a driver education instructor applicant, if the licensee or applicant has been convicted of a felony offense under Title 5, Texas Penal Code.

2. Licensees interact with adults and children in an instructor/student role. Individuals who have committed crimes against the person would pose a potential danger to the students.

3. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Under Section 1001.2514(b) of the Texas Education Code, the agency SHALL suspend or revoke the license of a driver education instructor, or refuse to issue or renew a license to a driver education instructor applicant, if the licensee or applicant has been convicted of an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

2. Licensees interact with adults and children in an instructor/student role. Individuals who have committed crimes involving prohibited sexual conduct would pose a potential danger to the students.

3. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

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Crimes involving children as victims.

Reasons:

1. Licensees interact with children in an instructor/student role. Individuals who have committed crimes involving children as victims would pose a potential danger.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes against property such as theft, trespass, or burglary.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees will often be involved in assessing the performance of students. Licensees would have access to the property of students in classrooms and vehicles.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving fraud, forgery, or deceptive trade practices.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees will often be involved in assessing the performance of students. Licensees would have the opportunity to prepare and submit false documents pertaining to the coursework or qualifications of students.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

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Crimes involving the possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees are in a position to pressure and/or influence students to possess, deliver or distribute drugs. Licensees involved in such crimes could be under the influence of drugs while in the presence of students.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving the operation of a motor vehicle, including driving while intoxicated, intoxication assault, intoxication manslaughter, reckless driving, and fleeing or evading a police officer.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees teach proper driving. Persons with a history of operating a motor vehicle in a dangerous manner would not be appropriate persons to teach proper driving.

2. Criminal activity of this type reveals a lack of regard for the safety of others.

3. A person with a predisposition for criminal activity of this type would pose a risk to the public.

4. The in car instructor license would provide the opportunity to engage in or encourage others to engage in further similar conduct.

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Dyslexia Therapists and Practitioners
Texas Administrative Code
Chapter 120

§120.65. Dyslexia Therapists and Practitioners Advisory Committee; Membership.

(a) The Dyslexia Therapists and Practitioners Advisory Committee shall be appointed under and governed by the Act and this section. The committee is established under the authority of Occupations Code, §403.051.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(c) The purpose of the committee is to provide advice to the department regarding the administration of the Act.

(d) The committee shall be composed of five members appointed by the presiding officer of the commission with the approval of the commission. The composition of the committee shall include:

(1) two dyslexia therapists licensed under the Act;

(2) one dyslexia practitioner licensed under the Act; and

(3) two consumer or public members, one of whom must be a person with dyslexia or the parent of a person with dyslexia.

§120.66. Duties.

The committee shall advise the department regarding rules relating to the licensure and regulation of dyslexia therapists and dyslexia practitioners, including continuing education requirements and the approved examinations for licensure.

§120.67. Terms; Vacancies.

The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31st of each odd-numbered year.

(2) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(3) A member of the advisory committee may be removed from the advisory committee pursuant to Texas Occupations Code §**51.209, Advisory Boards; Removal of Advisory Board Member.**

§120.68. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory committee as the presiding officer of the advisory committee to serve for a term of one year.

(b) The presiding officer of the advisory committee shall preside at all committee meetings at which he or she is in attendance. The presiding officer of the advisory committee may vote on any matter before the advisory committee.

§120.69. Meetings.

(a) The advisory committee shall meet at the call of the presiding officer of the commission or the executive director.

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

(c) A quorum of the advisory committee is necessary to conduct official business. A quorum is three members.

(d) Advisory committee action shall require a majority vote of those members present and voting.

Electricians
Occupations Code, Title 8, Chapter 1305
Effective June 14, 2014

Sec. 1305.051. Electrical Safety and Licensing Advisory Board.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three master electrician members;
(2) three journeyman electrician members;
(3) one master sign electrician; and
(3) two public members.

(b) The advisory board members must include:

(1) two members who are affiliated with a statewide association of electrical contractors not affiliated with a labor organization;
(2) three members who are affiliated with a labor organization;
(3) one member who is not affiliated with a statewide association of electrical contractors or with a labor organization;
(4) one member who is affiliated with a historically underutilized business, as that term is defined by Section 2161.001, Government Code; and
(5) one public member who is a building contractor principally engaged in home construction and is a member of a statewide building trade association.

(c) A licensed electrical engineer or an electrical inspector may be appointed as a public member of the advisory board.

(d) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 1305.052. Terms; Vacancies.

(a) Advisory board members serve terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) A member may not consecutively serve more than two full terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 1305.053. Presiding Officer.

The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 1305.054. Compensation; Reimbursement of Expenses.

Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 1305.055. Meetings.

The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission.

Sec. 1305.104. Powers and Duties of Advisory Board.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, electrical code requirements, and continuing education requirements.

Electrical Safety and Licensing Advisory Board

Meeting of October 6, 2015
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Keith Bell called the meeting to order at 9:03 a.m.

Presiding Officer Keith Bell moved to agenda item B, Roll Call and Certification of Quorum. Board members Keith Bell, Brad Boyer, Michael Gremillion, Randy Pomikahl, , John Sparrow, Gary Strouz, and Chris Wagner were present. Mark Roach joined the meeting at 9:06 a.m. A quorum was present.

Presiding Officer Keith Bell moved to agenda item C, Approval of minutes – December 4, 2014. Board member, John Sparrow, seconded by Michael Norcutt, moved to approve the minutes as presented. The motion passed by unanimous vote.

Presiding Officer Keith Bell moved to agenda item D, TDLR Video presentation on public comment process.

Presiding Officer Keith Bell moved to agenda item E Public Comment. There was no public comment.

Presiding Officer Keith Bell moved to agenda item F, Staff Reports. Brian Francis, Deputy Executive Director reported on the Legislative Session and agency re-organization. Jerry Daniel, Compliance Division, reported on license sweeps, disaster assistance and answered questions regarding training activities. John Medlock, Enforcement Division, provided case statistics and highlighted cases of note. Ray Pizarro, Education and Examination Director, reported on the Exam Review Committee, the exam provider contract, technology update and exam statistics. Lisa Houdek, Licensing Division reported on licensing statistics.

Presiding Officer Keith Bell moved to agenda item G, Discussion and possible action to recommend changes to the penalty matrix for Electricians. Christina Kaiser and Chris Russy provided an overview the changes to the penalty matrix. Board approved the changes suggested by staff to the penalty matrices for Electricians

Presiding Officer Keith Bell moved to agenda item I, Recommendations for agenda items for next meeting. The Board requested the following items on its next agenda: staff reports.

Presiding Officer Keith Bell moved to agenda item J, Discussion of date, time, and location of next Board meeting. The next Board meeting date will be determined at a later time.

Presiding Officer Keith Bell moved to agenda item K, Adjournment. The meeting was adjourned at 10:32 a.m.

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Keith Bell, Presiding Officer
Electrical Safety and Licensing Advisory Board

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Electrical Safety and Licensing Advisory Board

Meeting of December 4, 2014
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Keith Bell called the meeting to order at 9:05 a.m.

Presiding Officer Keith Bell moved to agenda item B, Roll Call and Certification of Quorum. Board members Keith Bell, Brad Boyer, Michael Gremillion, Randy Pomikahl, Mark Roach, John Sparrow, Gary Strouz, and Chris Wagner were present. A quorum was present.

Presiding Officer Keith Bell moved to agenda item C, Approval of minutes – November 7, 2013. Board member, Mark Roach, seconded by Gary Strouz, moved to approve the minutes as presented. The motion passed by unanimous vote.

Presiding Officer Keith Bell moved to agenda item D, Training for Board Members. Lynn Latombe, Assistant General Counsel, provided training on Open Government to the Board.

Presiding Officer Keith Bell moved to agenda item E Public Comment. Public comments were heard from: Lydell Toye with the Texas Sign Association regarding enforcement for unlicensed activity; Jimmy Burke, with the Lumberton Municipal Utility Board, regarding opposition to lowering the pass score on the electrical exam; John Fisher, President of the Associated Builders and Contractors of Texas regarding onsite supervision and the need for a high threshold for regulation; Joaquin Jiminez with the City of Waco, regarding opposition to lowering the pass score and support for onsite supervision; David Mintz, Vice-President of Government Affairs with the TX Apartment Association, concerning onsite supervision; Ned Munoz with the TX Association of Builders, in opposition of onsite supervision; and Michael Cunningham with the TX Building Trade Council against lowering test scores.

Presiding Officer Keith Bell moved to agenda item F, Staff Reports. Bill Kuntz, Executive Director reported on the upcoming Legislative Session and enforcement statistics. Jerry Daniel, Compliance Division, reported on license sweeps and electrical programs in schools. John Medlock, Enforcement Division, reported on training and outreach, and key enforcement statistics. Lisa Houdek, Licensing Division reported on licensing statistics. Ray Pizarro, Education and Examination Director, reported that the Exam Review Committee met on Nov. 13th & 14th and discussed the exam pass rate and is recommending the pass rate drop to 70% (from 75%) and that TDLR has begun to use the new pass rate as of September 1, 2014.

The meeting was recessed at 10:30 a.m.

The meeting was reconvened at 10:43 a.m.

Presiding Officer Keith Bell moved to agenda item G, Discussion of workforce development in the electrical industry. Keith Bell noted that the number of journeyman electricians have decreased over the past several years while the number of apprentice electricians have increased. Board member Mark Roach discussed the passage of HB 5 (which allows school districts to pursue vocational education) having a future effect on the licensing population; also that there is an image problem with the electrical field. The Eagle Ford Shale industry has had a huge impact on the

electrical field along with the recession and economics of the time. Board member John Sparrow discussed increasing the opportunities to learn the profession in schools. Chris Wagner noted that there are impediments to those coming from other states trying to become a Master electrician in Texas.

Presiding Officer Keith Bell moved to agenda item H, Discussion and possible recommendation concerning the passing score on state electrical exams. Since this item was discussed earlier in the meeting the Board had a brief discussion of this item. Board member, Brad Boyer noted that it appears that the bar is set at the right level for the exam pass rate and the pass rate depends on who is taking the test. Those coming out of apprenticeship school will have a higher pass rate.

Presiding Officer Keith Bell moved to agenda item I, Discussion and possible recommendation concerning the hour requirement to take a state electrical exam. Keith Bell noted that 8,000 hours are required to take the test, 1 year of experience equals 2,000 hours. He would like to discuss the possibility of pulling that requirement back to 6,000 hours. Brian Francis said that is a possibility and that the agency just needs guidance from the Board. Jerry Daniel, Compliance Division, noted that there would be concerns with the other states we have reciprocity with in making changes. A workgroup will be formed at a future date to review these issues.

Presiding Officer Keith Bell moved to agenda item J, Discussion and possible recommendation of onsite supervision with a residential exemption. The Board passed on this item.

Presiding Officer Keith Bell moved to agenda item K, Update on National Electrical Reciprocity Association agreements. Lynn Latombe, Assistant General Counsel, reported that we currently have Master Electrician reciprocity agreements with Louisiana and North Carolina and Journeyman Electrician reciprocity agreements with Arkansas, Idaho, Montana, Nebraska, New Mexico, Oklahoma, South Dakota and Wyoming.

Presiding Officer Keith Bell moved to agenda item L, Discussion and possible action concerning the electrician license reciprocity process. Lisa Houdek, Licensing Division, and Jerry Daniel, Compliance Division, explained the processes each of their respective divisions take when applying for a license through reciprocity.

Presiding Officer Keith Bell moved to agenda item M, Recommendations for agenda items for next meeting. The Board requested the following items on its next agenda: staff reports, workgroup reports (exam & workforce development), sign task force report.

Presiding Officer Keith Bell moved to agenda item N, Discussion of date, time, and location of next Board meeting. The next Board meeting date will be determined at a later time.

Presiding Officer Keith Bell moved to agenda item O, Adjournment. The meeting was adjourned at 12:10 a.m.

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Keith Bell, Presiding Officer
Electrical Safety and Licensing Advisory Board

Electrical Safety and Licensing Advisory Board

Meeting of November 7, 2013
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Keith Bell called the meeting to order at 9:15 a.m.

Presiding Officer Keith Bell moved to agenda item B, Roll Call and Certification of Quorum. Board members Keith Bell, Brad Boyer, Michael Gremillion, Michael Northcutt, Randy Pomikahl, Mark Roach, John Sparrow, Gary Strouz, and Chris Wagner were present. A quorum was present.

Presiding Officer Keith Bell introduced new board members, John Sparrow and Chris Wagner.

Presiding Officer Keith Bell moved to agenda item C, Approval of minutes – September 19, 2013. Board member, Mark Roach, seconded by Randy Pomikahl, moved to approve the minutes as presented. The motion passed by unanimous vote with Chris Wagner and John Sparrow abstaining.

Presiding Officer Keith Bell moved to agenda item D, Public Comment. There were no public comments.

Presiding Officer Keith Bell moved to agenda item E, Staff Reports. Brad Bowman, General Counsel, gave a brief report for the Executive Office and welcomed the new board members. Jerry Daniel provided a report on behalf of the Compliance Division. Ray Pizarro and Don Dudley provided a report on behalf of the Education and Examination Division. Molly Fudell provided a report on behalf of the Enforcement Division. Lisa Houdek provided a report on behalf of the Licensing Division.

Presiding Officer Keith Bell moved to agenda item F, Work Group Reports. No workgroups had met and no workgroup reports were given.

Presiding Officer Keith Bell moved to agenda item G, Electrical Sign Task Force Report on current issues. There was no report.

Presiding Officer Keith Bell moved to agenda item H, Update on National Electrical Reciprocity Association agreements. Lynn Latombe, Assistant General Counsel, reported that we currently have Master Electrician reciprocity agreements with Louisiana and North Carolina and Journeyman Electrician reciprocity agreements with Arkansas, Idaho, Montana, Nebraska, New Mexico, Oklahoma and Wyoming. We now also have an agreement with South Dakota.

Presiding Officer Keith Bell moved to agenda item I, Discussion and possible recommendation regarding proposed rule amendments, new rules, and/or repeals at 16 Texas Administrative Code, Chapter 73, to implement House Bill 796, 83rd Legislature, Regular Session (2013), updating the technical requirements to the 2014 edition of the National Electric Code, and the Commission's general rulemaking authority to administer the electrician's program. Lynn Latombe, Assistant General Counsel, presented the rules to the Board. Brad Boyer, seconded by Gary Strouz, moved to recommend posting the rules for public comment in the Texas Register including the amendments discussed (deletion of §73.24(d)). The motion was passed by unanimous vote.

Presiding Officer Keith Bell moved to agenda item J, Discussion and possible recommendation on proposed amendments to 16 Texas Administrative Code, Section 73.80, including reducing fees based on the Department's annual fee review. Lynn Latombe, Assistant General Counsel, presented the rule to the Board. Mark Roach, seconded by Gary Strouz, moved to recommend posting the rule to the Texas Register. The motion was passed by unanimous vote.

Presiding Officer Keith Bell moved to agenda item K, Recommendations for agenda items for next meeting. The Board requested the following items on its next agenda: open meeting refresher, minutes, update on reciprocity, update from the sign task force, update on exam statistics, and staff reports.

Presiding Officer Keith Bell moved to agenda item L, Discussion of date, time, and location of next Board meeting. The next Board meeting date will be determined later for some time in November.

Presiding Officer Keith Bell moved to agenda item M, Adjournment. The meeting was adjourned at 10:37 a.m.

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Keith Bell, Presiding Officer
Electrical Safety and Licensing Advisory Board

Electricians
(ELC)

Texas Occupations Code, Chapter 1305 **16 Texas Administration Code, Chapter 73**

Class A:

1st Violation	2nd Violation	3rd Violation
~~Reprimand~~ Up to $1,000	$500 to $2,000	$1,000 to $4,000 per day not corrected and/or 6-month probated suspension to 1-year full suspension.

Administrative Violations

• Failed to notify the Department when a new licensee of record is assigned	73.51(a)(1), 73.52(a)(1), 73.54(a)(1)
• Failed to notify the Department within 30 days that the licensee of record is no longer employed	73.51(a)(1), 73.52(a)(1), 73.54(a)(1)

Advertising Violations

• Failed to include contractor name and license number in advertising	73.51(e), 73.52(e), 73.54(d), 73.70(g)

Public Notice Violations

• Failed to permanently affix license number and business name in conspicuous place on both sides of ~~company~~ each vehicle	1305.166(b)(2)
• Failed to display business name and contractor license number on each ~~company~~ vehicle used in the conduct of electrical work	1305.166(a), 73.51(d)~~(a)~~, 73.52(d)~~(a)~~, 73.54(c)
• Failed to display license number and business name on each vehicle in characters at least two inches high and in color that contrasts with background	1305.166(b)(1), 73.51(d)~~(a)~~, 73.52(d)~~(a)~~, 73.54(c)
• Failed to include name, address, phone number and license number of contractor on all proposals, invoices, and written contracts	73.51(f)~~(c)~~, 73.52(f)~~(c)~~, 73.54(e)
• Failed to include Department information on all proposals, invoices and written contracts	73.51(f)~~(c)~~, 73.52(f)~~(c)~~, 73.54(e)

Class B:

1st Violation	2nd Violation	3rd Violation
$500 to $3,000 and/or up to 6-month probated suspension	$1,500 to $5,000 plus 1-year probated suspension to 1-year full suspension	$3,000 to $5,000 per day not corrected plus 1-year full suspension to revocation

• ~~Engaged in advertising that did not clearly display the licensee's license number~~	~~73.70(g)~~
• ~~Performing or offering to perform electrical work without a license~~	~~1305.151, 73.22(b), 73.23(d)~~

Records Violations

• Failed to maintain employee records and records of all work performed for four years	73.51(a)(2), 73.52(a)(2), 73.54(a)(2)
• Failed to make employee records or records of all work performed available to the Department upon request	73.51(a)(2), 73.52(a)(2), 73.54(a)(2)

Insurance Violations

• Failed to maintain the minimum general liability insurance	73.40(a), ~~73.40(e)~~
• Failed to provide a certificate of insurance to the Department upon request	73.40(b)
• Failed to provide name of insurance carrier to a customer upon request	73.40(d)
• Failed to obtain insurance from an appropriate company	73.40(e)

Unlicensed Activity

• Performed or offered to perform electrical work with an expired license	73.22(b), 73.23(d)
• Failed to ensure all electrical work was performed by licensed individuals ~~Contractor allowing an unlicensed person to perform non-exempt electrical work~~	73.51(b)(4), 73.52(b)(4), 73.54(b)(4)
• Failed to provide all electrical work through a licensed contractor	73.70(a)

Improper Use of a License

• ~~Using~~ Used a license number not assigned to the ~~company~~ contractor by the Department	73.22(d), 73.51(h), 73.52(h), 73.54(g)
• Used ~~Using~~ a license belonging to another person	73.22(h)
• Licensee ~~allowing~~ allowed another person to use his license	73.22(h)

Class C:

1st Violation	2nd Violation	3rd Violation
$1000 to $5,000 and/or 1-year probated suspension up to revocation	$2000 to $5,000 plus 1-year probated suspension to revocation	$3,500 to $5,000 per day not corrected plus revocation

• ~~Failed to inform the consumer of the facts that gave rise to the duty to withdraw~~	~~73.70(f)~~

Administrative Violations

• Altered ~~Altering~~ a license	73.22(f)~~(d)~~
• Failed to provide to the Department documentation of on-the-job training for an applicant	73.26(b)

Quality of Work

• Within a municipality, performed electrical work that was not in compliance with all applicable local ordinances	1305.201(d), 73.53, 73.60(a)
• In an unincorporated area of the state, performed non-exempt electrical work that was not in compliance with the National Electrical Code adopted by the Department	1305.201(e), 73.53, 73.60(a), 73.100
• Performed electrical work and failed to provide safe and proper installation and service	73.51(b)(1), 73.52(b)(1), 73.54(b)(1)
• Performed electrical work and failed to assure electro-mechanical integrity of the work	73.51(b)(1), 73.52(b)(1), 73.54(b)(1)

• Failed to supervise all licensees to assure compliance with applicable statutes, rules, and standards of conduct	73.51(g), 73.52(g), 73.54(f)
• Performed electrical work that did not ~~and failed to~~ comply with all applicable codes and ordinances	~~73.51(b), 73.52(b),~~ 73.53 ~~73.60(a)~~
• ~~Performed duties or work in a negligent or incompetent manner;~~ Failed ~~failure~~ to exercise reasonable judgment and skill	73.60(a)~~, 73.60(d)(4)~~
• Performed or offered to perform services for which ~~he~~ the licensee was not qualified by education or experience	73.70(c)

Standards of Conduct

• Misrepresented the need for services, services to be provided, or services that have been provided	73.51(b)(2), 73.52(b)(2), 73.54(b)(2)
• Made a fraudulent promise or false statement to influence, persuade, or induce contracting of services	73.51(b)(3), 73.52(b)(3), 73.54(b)(3)
• Engaged in acts or practices that constitute dishonesty, misrepresentation, or fraud	73.60(b), 73.60(d)(3)
• Engaged in acts or practices that constitute threats, coercion, or extortion	73.60(b)
• Engaged in acts intending to evade the Act, rules, or standards adopted by the Commission	73.60(d)(1)
• ~~Knowingly~~ Furnished ~~furnished~~ inaccurate, deceitful, or misleading information to the Department, a consumer, or other person	73.60(d)(2)
• Failed to accurately and truthfully represent to client or employer the licensee's qualifications to perform the services to be rendered	73.70(b)
• Evaded responsibility to a client or employer	73.70(d)
• Agreed to perform services when significant financial or other interests were in conflict with obligation to render faithful discharge of services	73.70(e)(1)
• Agreed to perform services when significant financial or other interests would impair independent judgment in rendering services	73.70(e)(2)
• Failed to withdraw from employment when it became apparent that it was impossible to faithfully discharge duty and services owed the client or employer	73.70(f)
• Failed to give reasonable notice of necessity of withdrawing from employment or services	73.70(f)
• Engaged in advertising that was false, misleading, or deceptive	73.70(g)

• Misrepresented the amount or extent of prior education or experience	73.70(h)
• Held self out as being engaged in partnership or association with a person when the partnership or association did not exist	73.70(i)

Unlicensed Activity

• Performed ~~Performing~~ or offered ~~offering~~ to perform electrical work without ~~a~~ the appropriate license	1305.151 (extra)
• Designed an electrical system without the appropriate license	73.51(c), 73.52(c)
• Subcontracted the design of an electrical system to an unlicensed person	73.51(c), 73.52(c)

Class D:

1st Violation	2nd Violation	3rd Violation
Revocation and/or up to $5,000	Revocation and/or up to $5,000	Revocation and/or up to $5,000

• Violated a previous order of Commission or Executive Director	1305.251(2), 51.353(a)
• Violated examination security requirements	60.52(a)
• ~~Obtaining~~ Obtained a license by fraud or false representations	60.23(a)(1), 73.22(c) ~~73.20(f), 60.63(b)~~
• Failed to pay the Department for a dishonored ~~check~~ payment	60.82
• Falsified ~~Falsification~~ of information on an application	73.22(c)
• ~~Cheating~~ Cheated on an examination	73.22(c),

Elevators, Escalators, and Related Equipment
Health and Safety Code, Chapter 754.
Effective 9/1/2011

Sec. 754.012. ELEVATOR ADVISORY BOARD.

(a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) a representative of the insurance industry or a certified elevator inspector;

(2) a representative of equipment constructors;

(3) a representative of owners or managers of a building having fewer than six stories and having equipment;

(4) a representative of owners or managers of a building having six stories or more and having equipment;

(5) a representative of independent equipment maintenance companies;

(6) a representative of equipment manufacturers;

(7) a licensed or registered engineer or architect;

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the commission.

(c) The presiding officer of the commission, with the commission's approval, shall appoint a presiding officer of the board to serve for two years.

(d) The board shall meet at least twice each calendar year.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act.

Sec. 754.013. BOARD DUTIES.

To protect public safety and to identify and correct potential hazards, the board shall advise the commission on:

(1) the adoption of appropriate standards for the installation, alteration, operation, and inspection of equipment;

(2) the status of equipment used by the public in this state;

(3) sources of information relating to equipment safety;

(3) public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and

(4) any other matter considered relevant by the commission.

§**74.65. Advisory Board.** (*New section adopted effective July 1, 2012, 37 TexReg 4590*)

(a) Board members will serve for staggered three year terms with two regulated industry positions and two consumer positions expiring in each of the first, second, and third years and one consumer position expiring in the third year. Terms shall expire November 1 of the third year of the member's term.

(b) If with the advice of the Elevator Advisory Board, the executive director determines that the standards of inspection and certification of a municipal inspection and certification program are at least equivalent to those contained in the Act, the municipal ordinance shall apply.

(c) Board meetings may be called by the executive director or the presiding officer of the commission.

ELEVATOR ADVISORY BOARD

Meeting of December 15, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Bryan Morris called the meeting of the Elevator Advisory Board to order at 1:01 p.m.

Presiding Officer, Bryan Morris called roll. Members present were Bryan Morris, Scott Anderson and Grayson Gill. Nancy Crumley, Lawrence Taylor, John McGraw, Board Members absent were Ronnie Niemtschk and Greg Tamez. A quorum was present and seated.

Presiding Officer, Bryan Morris moved to agenda item C., Training for Board Members. Charles Johnson, Assistant General Counsel trained the board on the Open Meetings Act, Public Information Act and the Administrative Procedures Act.

Presiding Officer, Bryan Morris moved to agenda item D., Approval of minutes – Meeting of October 7, 2013. Motion by Board Member John McGraw, seconded by Board Member Nancy Crumley to approve the Minutes of October 7, 2013. Motion passes unanimously.

Presiding Officer, Bryan Morris moved to agenda item E – TDLR Video Presentation on Public Comment Process. – No video presentation.

Presiding Officer, Bryan Morris moved to agenda item F., Public Comment. No public comment.

Presiding Officer, Bryan Morris moved to agenda item G1, Staff Reports. Deputy Executive Director, Brian Francis reported on the Executive Office Report and spoke of Legislative Updates and informs the Board of several new programs that were transferred from Department State Health Services and the Driver Training program from DPS. Discussion of agency reorganization, Legislative session rules and bill implementation timeline;

Presiding Officer, Bryan Morris moved to agenda item G2, Compliance Division. George Ferrie, Director of Compliance, David Gonzales, Regulatory Manager for the Compliance Division, and Jim Murnan, Chief Inspector presented the Compliance Division staff report and introduced the new Compliance employees, Jerod Bledsoe, Deputy Chief Inspector Keitha Chester and Shirley Rogers, administrative support group. Jim Murnan, Chief Building Inspector continued with the Compliance Division Report and reports on technical assistance projects/efforts; speaking engagements and training/education/outreach presentations, plan reviews, waivers, delays, variances and reported incidents and recent developments and presented an update on the New Technology Variances in 2015 and answered questions from the Board.

Presiding Officer, Bryan Morris moved to agenda item G3, Education and Examination Division. Kim Whitt gave the Education and Examination Staff report on Technology and innovation update, personnel changes, continuing education provider registration and fee

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changes and continuing education statistics and answered questions from Board Member Nancy Crumley.

Presiding Officer Bryan Morris moved to agenda item G4, Enforcement Division. John Medlock, Prosecutor in the Enforcement Division presented the Enforcement Division staff report and spoke on statistics on cases, orders, penalties, and trends; highlights of selected cases and procedures for default order in "No Inspection" cases and answered questions from the Board.

Presiding Officer Bryan Morris moved to agenda item G5, Licensing Division. Tarsha Redd, Licensing Manager for the Elevator program provided the Licensing Division Staff report and reported in licensing statistics on elevator contractors, inspectors, equipment, trends and recent developments and answered questions from the Board. Board Member Lawrence Taylor in reference to different categories of licenses issued and Board Member Bryan Morris wants an asterisk that it does not include the city of Houston.

Presiding Officer Bryan Morris took a break at 2:43 p.m. and reconvened at 2:58 p.m.

Presiding Officer, Bryan Morris moved to agenda item H., Discussion and possible recommendation regarding proposed new rules and proposed amendments to existing rules at 16 Texas Administrative Code, Chapter 74, Elevators, Escalators and Related Equipment, to implement House Bill 3741, 84th Legislature, Regular Session (2015). The proposed changes add new definitions and rules that establish standards to remove equipment from service, and make other minor rule clarifications. Presiding Officer Bryan Morris wants an explanation of what "out of service" and "remove from service" – Jim Murnan gives an explanation of what they both mean. Brian Francis suggests that the explanation be in the FAQ's and gets an approval from the Board. Lawrence Taylor filed a comment with regard to the proposed rules that were published in the Register. The comments were for editorial changes and proceeds to read the changes he proposes.

Presiding Officer Bryan Morris asked for a vote that changes to #29 and #37 of Section 74.10 be approved as presented. All Board Members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that changes as requested by Board Member Lawrence Taylor be approved as presented. All board members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that changes to 74.50 presented by staff be approved. All board members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that 74.55 be approved as presented. All board members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that 74.69 be approved as presented. All board members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that for 74.74 to strike comment 6 be approved as presented. All board members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that 74.80.i to add "remove from service" be approved as presented. All board members present voted unanimously to approve as presented.

Presiding Officer Bryan Morris asked for a vote that 74.105 be approved as presented. All board members present voted unanimously to approve as presented.

Presiding Officer, Bryan Morris moved to agenda item I., Discussion and possible action to recommend changes to three penalty matrices in the Elevators, Escalators and Related Equipment program, for:

a. Inspectors
b. Contractors
c. Building Owners

Director of Enforcement, Christina Kaiser presented the matrices for the Elevators, Escalators and Related Equipment program and answers questions from the board. She gave a history of the changes made by the Legislature relating to the elevator laws and noted that they have been amended five times since 2007 and the Rules have been amended six times since 2007.

Board Member Grayson Gill left the dais at 3:53 p.m.

Presiding Officer, Bryan Morris asked for a vote that in Class A: Cases against Inspectors be approved with the change as presented. All board members present voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote that in Class B be approved with the change to remove "Unlicensed Activity" violation to Class C. All Board Members present voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote that Class C be approved as presented. All board members present voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote that Class D be approved as presented. All board members present voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote that in Cases Against Contractors: Class A be approved as presented. All board members present voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote that Class B be approved as presented. All board members present voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote that Class C – Safety Violation to remove "elevator" and add "equipment" installation, repair or maintenance in a negligent or incompetent manner be approved with the change. All board members present voted unanimously to approve with change.

Presiding Officer, Bryan Morris asked for a vote that Class D be approved with recommended changes. All board members present voted unanimously to approve.

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Presiding Officer, Bryan Morris asked for a vote in Cases Against Building Owners – Class A be approved as presented and to add the brackets per each unit of equipment to contractors and inspectors. All board members voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote in Class B be approved as presented and to move the first bullet - Inspection Violation to Class A. All board members voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote to approve Class C as presented. All board members voted unanimously to approve.

Presiding Officer, Bryan Morris asked for a vote to approve Class D as recommended. All board members voted unanimously to approve.

Presiding Officer, Bryan Morris moved to agenda item J., Discussion and possible recommendation regarding the appointment of an Advisory Board Workgroup to review elevator equipment inspection related forms and make recommendations to the department on revisions to increase efficiencies in data collection and processing. David Gonzalez, Compliance Division requests workgroup for volunteers to help change all elevator program forms and update them. **Lawrence Taylor, Nancy Crumley, and Bryan Morris** volunteered for the workgroup. Compliance will contact the workgroup volunteers.

Presiding Officer, Bryan Morris moved to agenda item K., Recommendations for agenda items for next Board meeting. Workgroup report, staff reports, strategic planning, adoption of 2013 Elevator Code.

Presiding Officer, Bryan Morris moved to agenda item L., Discussion of date, time, and location of upcoming Board meeting. April/May 2016.

Presiding Officer, Bryan Morris moved to agenda item M., Adjournment. Presiding Officer, Bryan Morris adjourned the meeting at 5:05 p.m.

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Bryan R. Morris, Presiding Officer
Elevator Advisory Board

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ELEVATOR ADVISORY BOARD

Meeting of October 19, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Compliance Director George Ferrie informs the public and board members that because a quorum is not present, the board cannot act on any agenda items.

Presiding Officer, Bryan Morris called the meeting of the Elevator Advisory Board to order at 1:12 p.m.

Presiding Officer, Bryan Morris called roll. Members present were Bryan Morris, Scott Anderson and Grayson Gill. Absent: Nancy Crumley, Lawrence Taylor, John McGraw, Ronnie Niemtschk and Greg Tamez. A quorum was not present.

Presiding Officer, Bryan Morris moved to agenda item I., Discussion and possible recommendation regarding proposed new rules and proposed amendments to existing rules at 16 Texas Administrative Code, Chapter 74, Elevators, Escalators and Related Equipment, to implement House Bill 3741, 84th Legislature, Regular Session (2015). The proposed changes add new definitions and rules that establish standards to remove equipment from service, and make other minor rule clarifications. Charles Johnson gave the proposed rule amendments and answered questions from the board.

Approval of minutes – Meeting of August 14, `2013. Board member, Scott Anderson, seconded by Ron Menard, made a motion to accept the minutes as presented. The motion passed with a unanimous vote in favor.

Presiding Officer, Bryan Morris moved to agenda item D., Public Comment. There was no public comment.

Presiding Officer, Bryan Morris moved to agenda item E., Staff Reports. Executive Office: Brad Bowman General Counsel provided the Executive staff report; and staff provided reports and answered questions from the Board members.

Presiding Officer, Bryan Morris moved to agenda item F., Work group report and possible recommendation regarding proposed new rule Section 74.68, Responsibilities of the Owner—Other Documents, as published in the Texas Register on August 30, 2013. This proposed rule was discussed at August 14, 2013, board meeting as draft proposed rule Section 74.703, Responsibilities of the Owner—Other Documents. Work Group members: Bryan Morris, John McGraw, and Grayson Gill meet and discussed language that was presented to the Board for review. John McGraw provided a report and the Board took up item G from the agenda for a further the discussion on the proposed rules.

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Presiding Officer, Bryan Morris moved to agenda item G., Discussion of the public comments submitted to the Department, and discussion and possible recommendation on the proposed amendments to existing rules, proposed new rules, and proposed repeal of existing rules at 16 Texas Administrative Code, Chapter 74, Elevators, Escalators and Related Equipment, to implement Senate Bills 540 and 673, 83rd Legislature, Regular Session (2013) and general rule clean up. Wendy Pellow, Assistant General Counsel, provided an overview of the proposed changes to the rules and one public comment received regarding the published rules. The Board discussed the proposed rule changes, public comment, and recommendations from the work group. The Board asked questions of the staff on the impact of the proposed changes. Scott Anderson, seconded by Greg Tamez, made a motion to recommend the proposed rules and changes suggested under public comment and from the work group. The motion passed by a unanimous vote.

Presiding Officer, Bryan Morris moved to agenda item H., Recommendations for agenda items for the next meeting. The Board will here an update regarding Enforcement response to defaults in no inspection cases from the Enforcement Division on the next agenda.

Presiding Officer, Bryan Morris moved to agenda item I., Discussion of date, time, and location of next Board meeting. The Board decided to hold the next meeting December next year or as necessary.

Presiding Officer, Bryan Morris moved to agenda item J., Adjournment. Presiding Officer, Bryan Morris adjourned the meeting at 1:41 p.m.

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Bryan R. Morris, Presiding Officer
Elevator Advisory Board

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ELEVATOR ADVISORY BOARD

Meeting of October 7, 2013
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Bryan Morris called the meeting of the Elevator Advisory Board to order at 1:03 p.m.

Presiding Officer, Bryan Morris called roll. Members present were Bryan Morris, Scott Anderson, Nancy Crumley, John McGraw, Ronnie Niemtschk Greg Tamez and Ronald Menard. Absent: Grayson Gill. A quorum was present.

Presiding Officer, Bryan Morris moved to agenda item C., Approval of minutes – Meeting of August 14, 2013. Board member, Scott Anderson, seconded by Ron Menard, made a motion to accept the minutes as presented. The motion passed with a unanimous vote in favor.

Presiding Officer, Bryan Morris moved to agenda item D., Public Comment. There was no public comment.

Presiding Officer, Bryan Morris moved to agenda item E., Staff Reports. Executive Office: Brad Bowman General Counsel provided the Executive staff report; and staff provided reports and answered questions from the Board members.

Presiding Officer, Bryan Morris moved to agenda item F., Work group report and possible recommendation regarding proposed new rule Section 74.68, Responsibilities of the Owner—Other Documents, as published in the Texas Register on August 30, 2013. This proposed rule was discussed at August 14, 2013, board meeting as draft proposed rule Section 74.703, Responsibilities of the Owner—Other Documents. Work Group members: Bryan Morris, John McGraw, and Grayson Gill met and discussed language that was presented to the Board for review. John McGraw provided a report and the Board took up item G from the agenda for a further discussion on the proposed rules.

Presiding Officer, Bryan Morris moved to agenda item G., Discussion of the public comments submitted to the Department, and discussion and possible recommendation on the proposed amendments to existing rules, proposed new rules, and proposed repeal of existing rules at 16 Texas Administrative Code, Chapter 74, Elevators, Escalators and Related Equipment, to implement Senate Bills 540 and 673, 83rd Legislature, Regular Session (2013) and general rule clean up. Wendy Pellow, Assistant General Counsel, provided an overview of the proposed changes to the rules and one public comment received regarding the published rules. The Board discussed the proposed rule changes, public comment, and recommendations from the work group. The Board asked questions of the staff on the impact of the proposed changes. Scott Anderson, seconded by Greg Tamez, made a motion to recommend the proposed rules and changes suggested under public comment and from the work group. The motion passed by a unanimous vote.

Presiding Officer, Bryan Morris moved to agenda item H., Recommendations for agenda items for the next meeting. The Board will hear an update regarding Enforcement response to

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defaults in no-inspection cases from the Enforcement Division on the next agenda.

Presiding Officer, Bryan Morris moved to agenda item I., Discussion of date, time, and location of next Board meeting. The Board decided to hold the next meeting next year or as necessary.

Presiding Officer, Bryan Morris moved to agenda item J., Adjournment. Presiding Officer, Bryan Morris adjourned the meeting at 1:41 p.m.

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Bryan R. Morris, Presiding Officer
Elevator Advisory Board

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Elevators, Escalators and Related Equipment

(ELE)

Texas Health & Safety Code, Chapter 754 **16 Texas Administration Code, Chapter 74**

Cases Against Building Owners

Class A (per unit of equipment):

1st Violation	2nd Violation	3rd Violation
~~Warning letter~~ Up to $1,000	$500 to ~~1,500~~ $2,000	$1,000 to $~~2~~3,000

• ~~Failed to display inspection report~~	~~754.019(a)(5), 74.70(l)~~

Posting Violations

• Failed to display certificate of compliance in a publicly visible area of the building	754.019(a)(4), 74.67(a)(3) ~~74.70(k)~~
• Failed to follow all placement and other requirements for a certificate of compliance or identifying plaque	74.67(b),74.67(c)
• Failed to display proof of inspection when equipment is inspected for the first time	74.66(d)(1)
• Failed to display proof of inspection at the required location	74.66(d)(1)
• Failed to display certificate of compliance when equipment is inspected on an annual basis	74.66(d)(2)
• Failed to display certificate of compliance at the required location	74.66(d)(2)
• Failed to have copies of all current Department-issued waivers, delays, and new technology variances posted in the required accessible and visible locations	74.68(c)

Reporting Violations

• Failed to notify Department in writing within 30 days that equipment was placed out of service	74.50(b)~~(c)~~
• Failed to notify Department in writing within 30 days that equipment was converted to a material lift	74.50(c)~~(d)~~
• Failed to notify Department in writing within 30 days that a material lift was altered and converted to an elevator	74.50(d)~~(e)~~
• *Failed to notify Department in writing within 30 days that equipment was removed from service*	*74.50(f)***

Class B (per unit of equipment):

1st Violation	2nd Violation	3rd Violation
$500 to $3,000 plus file required documents and pay applicable fees	$1,500 to $4,000 plus file required documents and pay applicable fees	$2,500 to $5,000 plus file required documents and pay applicable fees

• ~~Failed to submit verification that deficiencies have been corrected or are under contract to be corrected~~	~~754.019(b)(1), 74.50~~
• ~~Failed to report an accident to the Department within 72 hours~~	~~754.019(e),~~ ~~74.70(d)~~
• ~~Failed to obtain an annual Certificate of Compliance~~	~~74.70(j)~~

Inspection Violations

• Failed to sign and date the inspection report	74.74(d)
• Failed to obtain inspection report from inspector	754.019(a)(2)
• Failed to obtain the services of an inspector registered with the Department to perform inspections	74.66(a)(3)
• Failed to file inspection report and pay filing fees within 30 ~~60~~ days after the inspection	754.019(a)(3), ~~74.50~~, 74.80(b)

Plan Review Violations

•	
• Failed to have new equipment installation plans and other documents reviewed by the Department before placing equipment in service	74.66(b)
• Failed to have altered equipment plans and other documents reviewed by the Department before placing equipment in service	74.66(c)

Class C (per unit of equipment):

1st Violation	2nd Violation	3rd Violation
$1,000 to $~~3~~5,000 plus obtain inspection	$2,000 to $~~4~~5,000 plus obtain inspection	$4,000 to $5,000 plus obtain inspection

• ~~Failed to correct existing deficiencies that have continued after expiration of a granted delay~~	~~754.015 (c)(3),~~ ~~74.70(m)(4)~~
• ~~Failed to obtain inspection report from inspector~~	~~754.019(a)(2)~~
• ~~Failed to ensure that all tests required by ASME A17.1 – 2000, Part 8, are performed by a qualified person, and in the presence of the inspector~~	~~74.70(e)~~

Record Keeping and Administrative Violations

• Failed to grant the Department access to a non-public location in order to conduct an inspection or investigation	754.0231(a)
• Failed to grant the Executive Director or his designee access to a non-public location in order to conduct an inspection or investigation	754.0231(b)
• Failed to make required records available to the Department	74.68(a)
• Failed to make required records available to contracted elevator personnel	74.68(a)
• Failed to store records in the written or electronic format in the required locations	74.68(b)

Reporting Violations

• Failed to submit verification that deficiencies have been corrected or are under contract to be corrected, or have an approved waiver or delay ~~Failed to correct deficiencies noted in an inspection report~~	754.019(b)(1), 74.66(a)(6)
• Failed to report an accident to the Department within 24 hours	754.019(e), 74.69(a)
• Failed to notify the Department in writing within 30 days of correction after a delay	74.50(e)
• Failed to notify the Department in writing of ~~unsafe~~ equipment with a reportable condition within 24 ~~48~~ hours	74.69(c) ~~74.70(f)~~
• Failed to submit written verification to the Department after ~~unsafe~~ reportable conditions have been corrected before returning the equipment to service	74.69(c) ~~74.70(f)~~

Inspection Violations

• Failed to have each unit of equipment inspected annually	754.019(a)(1), 74.66(a)(2) ~~74.70(b), 74.70(i)~~
• Failed to have equipment with a reportable condition re-inspected and re-certified before returning the equipment to service	74.69(c), 74.66(e)(2) ~~74.70(f)~~
• Failed to have new equipment inspected and tested before being placed into service	74.66(b) ~~74.70(g)~~
• Failed to have altered equipment inspected and tested before being placed back in service	74.66(c) ~~74.70(h)~~
• Failed to have equipment re-inspected and re-certified after it has been altered	74.66(e)(1)
• Failed to have equipment re-inspected and re-certified when a violation has continued longer than authorized in a delay	74.66(e)(3)

• Failed to obtain an annual certificate of compliance for each unit of equipment in the building	74.67(a)(1)

Safety Violations

• Failed to maintain the equipment in safe operating condition and in compliance with the standards and codes	754.019(a)(5), 74.66(a)(1)
• Failed to have each unit of equipment tested for safety and compliance with codes and standards	74.66(a)(4)
• Failed to ensure that all required tests were performed	74.66(a)(5)
• Failed to remove equipment from service after a reported accident	74.69(b)
• Failed to place ~~unsafe~~ equipment with a reportable condition out of operation until repairs are completed	74.69(c) ~~74.70(f)~~
• Placed new equipment which had violations into service but did not have a waiver, delay or new technology variance	74.66(b)
• Placed altered equipment which had violations into service but did not have a waiver, delay or new technology variance	74.66(c)
• Operated regulated equipment without a current certificate of compliance	74.67(a)(2)
• Moved or returned equipment to service after an accident without department approval	74.69(b)
• *Restored power to equipment that had been removed from service without authorization*	*74.105(b)****
• *Returned to service equipment that had been removed from service without an approved acceptance or annual inspection*	*74.105(d)****

Class D (per unit of equipment):

1st Violation	2nd Violation	3rd Violation
$5,000	$5,000	$5,000

• Violated an emergency order of Commission or Executive Director	754.0235(a), 74.90

Elevators, Escalators and Related Equipment

(ELE)

Texas Health & Safety Code, Chapter 754 **16 Texas Administration Code, Chapter 74**

Cases against Contractors

Class A:

1st Violation	2nd Violation	3rd Violation
~~warning letter~~ Up to $1,000	$500 to ~~1,500~~ ~~$~~3,000	$1,000 to $~~2~~3,000 and/or 6-month probated suspension to 1-year full suspension

• ~~Failed to submit initial jobs report~~	~~754.0171(d), 74.25(d)(1)~~
• ~~Failed to submit quarterly jobs report~~	~~754.0171(e), 74.25(d)(2)~~

Administrative and Reporting Violations

• Failed to re-designate a responsible party within 30 days of the previous responsible party becoming unavailable	74.24(c)
• Failed to retain a copy of the certificate of completion from a continuing education course	74.25(e)
• Failed to notify Department within 30 days of changes to registrant information	74.72(j) ~~74.25(c)~~
• Failed to report to the Department and owner within 72 hours of discovering equipment that did not have a decal number	74.57(b)

Insurance Violations

• Failed to file proof of insurance with the Department	74.40(c)
• Failed to furnish insurance information to any customer who requests it	74.40(d)

Class B:

1st Violation	2nd Violation	3rd Violation
$1,000 to $3,000 and/or up to 6-month probated suspension	$1,500 to $4,000 plus 1-year probated suspension to 1-year full suspension	$2,500 to $5,000 plus 1-year full suspension to revocation

Unlicensed Activity

• Acted as a contractor without registering ~~Failed to register~~ with the Department ~~as a contractor~~	754.0171(a), 74.22 (a) ~~74.25~~

Documentation Violations

• Failed to provide the inspector a copy of the approved application and plans	74.78(b)
• Failed to leave a copy of the approved application and plans in the required location	74.78(b)
• Failed to provide required documents to owner when installing or altering equipment	74.79(a)
• Failed provide owner with required documents as part of the contract to install or alter equipment	74.79(b)
• Placed equipment into operation before an inspector verified required documents were on site	74.79(c)

Plan Review Violations

• Failed to submit to the Department for review the application and plans of new equipment before beginning installation	74.110(a), 74.111(a)
• Failed to submit to the Department for review the application and plans of existing equipment before beginning alterations	74.110(a), 74.112(a)
• Failed to resubmit for approval changes to an approved application and plans	74.114(a)

Standards of Conduct Violations

• Required the owner to sign a confidentiality or non-disclosure agreement in order to receive required documents	74.79(d)
• Failed to accurately and truthfully represent to a prospective client the contractor's capabilities and qualifications, including the extent of prior education or experience	74.72(c), 74.72(f)(9)
• Stated or implied to the building owner that the Department will grant a delay or waiver	74.72(f)(3)
• Held self out as being engaged in a partnership or association when said partnership or association did not exist	74.72(f)(10)
• Failed to withdraw from employment when required	74.72(h)
• Failed to provide reasonable notice to client upon withdrawal	74.72(h)

Class C:

1st Violation	2nd Violation	3rd Violation
$1,000 to $~~3~~5,000 and/or 1-year probated suspension up to revocation	$2,000 to $~~4~~ 5,000 plus 1-year probated suspension to revocation	$4,000 to $5,000 plus revocation

• ~~Failed to be consistent with installation, repair, alteration, and maintenance standards for contractors, specifically ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.~~	~~754.0171(f)~~
• ~~Completed an equipment contract in a building or facility where the inspector is an owner, part owner, or an employee of an owner~~	~~74.60(e)(6)~~
• ~~Failed to accurately and truthfully represent to a prospective client the contractor's capabilities and qualifications, including the extent of prior education or experience~~	~~74.60(b),~~ ~~74.60(e)(9)~~
• ~~Stated or implied to the building owner that the Department will grant a delay or waiver~~	~~74.60(e)(3)~~
• ~~Held self out as being engaged in a partnership or association when said partnership or association does not in fact exist~~	~~74.60(e)(10)~~

Insurance Violations

• Failed to maintain general liability insurance	74.40(a)

Reporting Violations

• Falsified a report submitted to the Executive Director	754.0232(a)(2)
• Failed to notify the owner and department in writing within 24 hours of discovering equipment with a reportable condition	74.57(a)

Standards of Conduct Violations

• Engaged in activity that constitutes dishonesty, misrepresentation, or fraud	74.72(c) ~~74.60(b)~~, 74.72(f)(4) ~~74.60(e)(4)~~
• Engaged in acts or practices that constitute threats, coercion, or extortion	74.72(c) ~~74.60(b)~~
• Failed to maintain primary interest of ensuring compliance with the ~~Act, the Rules~~ law and the ASME Safety Code or ASCE Standards ~~Code~~	74.72(d) ~~74.60(c)~~
• Failed to avoid conflict of interest or the appearance of a conflict of interest	74.72(e) ~~74.60(d)~~
• Participated in a plan, scheme, or arrangement attempting or having at its purpose the evasion of any provision of the ~~Act,~~ law or the standards adopted by the Commission	74.72(f)(1) ~~74.60(e)(1)~~
• Knowingly furnished inaccurate, deceitful, or misleading information to the Department, a building owner, or other person	74.72(f)(2) ~~74.60(e)(2)~~

• Engaged in false, misleading, or deceptive advertising	74.72(f)(8) ~~74.60(e)(8)~~

Safety Violations

• Performed elevator installation, repair or maintenance in a negligent or incompetent manner	74.72(b) ~~74.60(a)~~, 74.72(f)(5) ~~74.60(e)(5)~~
• Failed to apply for new technology variance before installing device, equipment or technology not permitted by current standards	74.120(a)

Class D:

1st Violation	2nd Violation	3rd Violation
$5,000 and/or Revocation	$5,000 and/or Revocation	$5,000 and/or Revocation

• Violated a previous order of Commission or Executive Director	51.353(a), 74.90
• ~~Obtaining~~ Obtained or attempted to obtain a registration ~~license~~ by fraud or false representation	754.0232(a)(1), 60.23(a)(1) ~~60.63(b)~~
• Failed to pay the Department for a dishonored ~~check~~ payment	60.82

Chapter 74
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§74.10. Definitions.

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

(1) - (28) (No change.)

(29) Out of Service--Equipment rendered inoperative in accordance with ASME Code A17.1.

(30) [~~(29)~~] Owner--A person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to a building or facility in which equipment regulated by the Act is located. For purposes under this chapter and the Act, an owner may designate an agent. The term "owner" when used in the chapter shall be construed to include the owner's agent.

(31) [~~(30)~~] Owner's Agent--The person, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that has been authorized by the owner to act on the behalf of the owner as relates to a building or facility in which equipment regulated by the Act is located.

(32) [~~(31)~~] Proof of Inspection--A document provided to the owner by the registered inspector after the completion of an acceptance inspection of new equipment to inform the public that the equipment has been inspected.

(33) [~~(32)~~] Proof of Inspection Sticker--An adhesive label placed by the registered inspector on the Proof of Inspection or the certificate of compliance indicating the inspection has been performed.

(34) [~~(33)~~] Publicly Visible Area of Building--A location within the building where regulated equipment is located that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any regulated equipment is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(35) [~~(34)~~] Qualified Historic Building or Facility--A building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(36) [~~(35)~~] Related Equipment--The term means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(37) Removed from Service--Equipment rendered inoperative in accordance with standards adopted in §74.105.

(38) [~~(36)~~] Reportable Condition--A condition which exists where a defect requires the equipment to be rendered inoperative in a manner reasonably calculated [~~removed from operation~~] to prevent [~~a risk of~~] injury to passengers, operators, or the general public.

(39) [~~(37)~~] Responsible Party--The person or persons meeting the experience requirements of the Act and designated by the contractor to attend continuing education in compliance with this chapter.

(40) [~~(38)~~] Serious Bodily Injury--A major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(41) [~~(39)~~] Unit of Equipment--One elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(42) [~~(40)~~] Variance, New Technology ("new technology variance")--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100. A new technology variance, once granted, may be applied to all like equipment installed in the state and a separate variance is not required for each installation. A variance applies to only one component, system, sub-system, function, or device. For example, one seeking a variance for a door system, a control system, and a suspension system would be required to file three separate variance applications.

(43) [~~(41)~~] Waiver--Deferral of compliance with a requirement of the applicable ASME Safety Codes for an indefinite period of time.

§74.50. Reporting Requirements--Owner.

(a) - (e) (No change.)

(f) Within thirty (30) days of the date equipment is removed from service, the owner must notify the department by submitting a completed Inspection Report, including the applicable fee required by §74.80.

§74.55. Reporting Requirements--Inspector.

(a) - (d)

(e) Inspectors, using the Online Inspection Reporting System for each piece of equipment inspected, must report to the department within 72 hours of completing an acceptance inspection, [~~or~~] annual inspection or removal from service.

§74.69. Responsibilities of the Owner--Accidents and Reportable Conditions.

(a) (No change.)

(b) For an accident reported under this section, the equipment shall be removed from service and shall not be moved (except as necessary to extricate an injured party), used, [~~or effect a life-saving rescue)~~] or returned to service until a representative of the department completes an investigation and issues an approval to return the unit to service.

(c) (No change.)

§74.74. Responsibilities of the Inspector--Inspection Procedures.

(a) - (i) (No change.)

(j) For equipment removed from service, the inspector must comply with §74.105.

§74.80. Fees.

(a) - (h) (No change.)

(i) The fee for "Removed from Service" is $20 per unit of equipment.

§74.105. Standards for Equipment Removed from Service.

(a) Equipment may only be removed from service by a registered inspector using the following procedures:

(1) Hydraulic elevators must be brought to the lowest landing with the doors closed and the main line disconnect switch locked in the off position.

(2) Electric elevators must be brought to the top landing, with the doors closed and the main line disconnect switch locked in the off position.

(3) Escalators must have their main line disconnect switch locked in the off position and each end of the escalator barricaded.

(4) All other related equipment must have their main line disconnect switch locked in the off

position.

(b) Equipment removed from service may only have the power restored:

(1) by a registered Contractor performing upgrades or alterations;

(2) by a registered Inspector performing an Acceptance or Annual Inspection; or

(3) with approval of the Department.

(c) All other related equipment must have their main line disconnect switch locked in the off position.

(d) Equipment removed from service shall be returned to service after performing an approved acceptance or annual inspection performed in accordance with §74.66.

Elevators, Escalators and Related Equipment
(ELE)

Texas Health & Safety Code, Chapter 754 **16 Texas Administration Code, Chapter 74**

Cases against Inspectors

Class A:

1st Violation	2nd Violation	3rd Violation
~~warning letter~~ Up to $1,000	$500 to ~~1,500~~ $3,000	$1,000 to $~~2~~3,000 and/or 6-month probated suspension to 1-year full suspension

• ~~Failed to sign and date the inspection report~~	~~754.016(b), 74.75(a)(4)~~

Violations in Conducting an Inspection

• Failed to report to the building owner ~~or his agent~~ before beginning an inspection	74.74(c) ~~74.75(a)(3)~~
• Completed an inspection of a new installation or alteration before verifying that required documents were on site and stored in the required location	74.74(i)(3)

Inspection Documentation Violations

• Failed to issue an ~~submit~~ inspection report of a new installation to building owner within five ~~10~~ days of inspection	754.016(b), 74.55(a)~~(c)~~
• Failed to provide an inspection report to the Department and owner within five days of inspection of an alteration	74.55(b)
• Failed to ~~have the qualified person performing the safety tests~~ sign and date or electronically acknowledge the inspection report	74.74 (d) ~~74.75(a)(4)~~
• Failed to properly complete a Department-approved inspection report form	74.75(a), 74.75(b)
• Used the Department inspection form to report inspection results for exempt or construction-use only equipment	74.75(d)

Posting Violations

• Failed to obtain from the Department the label format file for proof of inspection stickers	74.75(e)
• Failed to obtain from the Department the document format file for proof of inspection	74.75(f)

• Failed to display a proof of inspection as required prior to leaving the site of an acceptance inspection	74.75(g)
• Failed to attach proof of inspection sticker to the existing certificate of compliance prior to leaving the site of an annual inspection	74.75(h)

Reporting Violations

• Failed to report to the Department within 72 hours of discovering equipment that did not have a decal number	74.55(c)
• Failed to report each piece of equipment inspected within 72 hours using the Online Inspection Reporting System	74.55(e)
• *Failed to report each piece of equipment removed from service within 72 hours using the Online Inspection Reporting System*	*74.55(e)* ***
• Failed to report the issuance and disposal of decals upon the Department's request	74.77(e)

Administrative Violations

• Failed to attend all mandatory training required by the Executive Director	74.72(i)
• Failed to notify Department within 30 days of changes to registrant information	74.72(j) ~~74.20(e)~~

Test Tags Violations

• Allowed another person to ~~Failed to properly complete and~~ attach Department test tags	74.76(a) ~~74.75(c)(1)~~
• Allowed another person to inscribe required information on a Department test tag	74.76(b)
• Replaced test tag before all spaces were filled	74.76(b)
• Failed to attach Department test tags as required upon completion of an initial acceptance test	74.76(c)
• Failed to use a crimping tool bearing the Department's seal and the inspector's assigned number	74.76(d)
• Failed to seal all devices and adjustments by the adopted standard	74.76(d)
• Returned a unit with a broken seal to service prior to witnessing the required test and providing the prescribed seal	74.76(d)
• Failed to verify that contractor's test tags were properly placed on the equipment	74.76(f)

Decal Violations

• Failed to properly affix decals	74.77(a) ~~74.75(c)(2)~~
• Affixed an additional decal to equipment that has a current decal	74.77(b)

• Failed to properly reference decal number and Department building identification number on inspection reports and correspondence	74.77(c) ~~74.75(e)(2)(C)~~
• Failed to report required information to the Department within ten days of placing new decal on equipment	74.77(d)

Class B:

1st Violation	2nd Violation	3rd Violation
~~Reprimand~~ $1,000 to $3,000 and/or up to 6-month probated suspension	$1,500 to $4,000 plus 1-year probated suspension to 1-year full suspension	$2,500 to $5,000 plus 1-year full suspension to revocation

• ~~Failed to notify the Department of unsafe equipment~~	~~74.55(b)~~
• ~~Failed to use the required manual to conduct inspections~~	~~74.75(a)(2)~~

Unlicensed Activity

• Acted as an inspector without being registered ~~Failed to register~~ with the Department ~~as an inspector~~	754.017(a)(1), 74.20(a)

Standards of Conduct Violations

• Charged an amount for an inspection which was contingent on the existence of a maintenance contract	754.0172
• Performed an inspection in a building or facility where the inspector, for compensation, participated in obtaining an equipment contract for the building	74.72(e) 74.72(f)(7)
• Stated or implied to the building owner that the Department will grant a delay or waiver	74.72(f)(3)
• Performed an inspection in a building or facility where the inspector's employer also has a contract to perform services on that equipment	74.72(g)
• Failed to accurately and truthfully represent to a prospective client the inspector's capabilities and qualifications, including the extent of prior education or experience	74.72(c) 74.72(f)(9)
• Held self out as being engaged in a partnership or association when said partnership or association did not exist	74.72(f)(10)
• Failed to withdraw from employment when required	74.72(h)
• Failed to provide reasonable notice to client upon withdrawal	74.72(h)

Class C:

1st Violation	2nd Violation	3rd Violation
$1,000 to $~~3~~5,000 and/or 1-year probated suspension up to revocation	$2,000 to $~~4~~ 5,000 plus 1-year probated suspension to revocation	$4,000 to $5,000 plus revocation

• ~~Failed to accurately and truthfully represent to a prospective client the inspector's capabilities and qualifications, including the extent of prior education or experience~~	~~74.60(b), 74.60(e)(9)~~
• ~~Held self out as being engaged in a partnership or association when said partnership or association does not in fact exist~~	~~74.60(e)(10)~~
• ~~Performed an inspection in a building or facility where the inspector, for compensation, participated in obtaining an equipment contract for the building~~	~~74.60(d), 74.60(e)(7)~~
• ~~Stated or implied to the building owner that the Department will grant a delay or waiver~~	~~74.60(e)(3)~~

Violations in Conducting an Inspection

• Performed an inspection in a negligent or incompetent manner	74.72(b) ~~74.60(a)~~, 74.72(f)(5) ~~74.60(e)(5)~~
• Failed to inspect all equipment for compliance with the applicable standards	74.74(a) ~~74.75(a)(1)~~
• Failed to use the latest edition of the ASME A17.2 to conduct inspections and witness tests for compliance with standards	74.74(b) ~~74.75(a)(2)~~
• Performed inspection for a new installation or altered equipment without verifying applications and plans had been approved	74.74(g)
• Failed to verify that installations or alterations comply with the approved application and plans	74.74(h)
• Failed to compare the installation to the approved application and plans	74.74(i)(1)
• Performed ~~Performing safety~~ tests~~, rather than having them performed by a qualified person~~ when prohibited	74.74(e) ~~74.75(a)(5)~~

Safety Violations

• Placed a unit in-service that failed to comply with the approved applications and plans without the approval of the Department	74.74(i), 74.74(i)(2)
• *Failed to properly remove equipment from service*	*74.105(a)****

Inspection Documentation Violations

• Falsifying an inspection report	~~754.023(c)(2)~~ 754.0232(a)(2)
• Failed to note reportable condition on an inspection report	74.55(d)
• Failed to list violations by code number and edition for each unit inspected	74.75(c)
• Failed to include a written description of each violation on the inspection report	74.75(c)

Reporting Violations

• Failed to report equipment with a reportable condition to the owner immediately	74.55(d)
• Failed to notify the department of a reportable condition within 24 hours	74.55(d)

Standards of Conduct Violations

• Engaged in activity that constitutes dishonesty, misrepresentation, or fraud	74.72(c) ~~74.60(b)~~, 74.72(f)(4) ~~74.60(e)(4)~~
• Engaged in acts or practices that constitute threats, coercion, or extortion	74.72(c) ~~74.60(b)~~
• Failed to maintain primary interest of ensuring compliance with the ~~Act, the Rules~~ law and the ASME Safety Code or ASCE Standards ~~Code~~	74.72(d) ~~74.60(c)~~
• Failed to avoid conflict of interest or the appearance of a conflict of interest	754.017(d), 74.72(e) ~~74.60(d)~~
• Performed an inspection in a building or facility where the inspector is an owner, part owner, or an employee of an owner	74.72(e) ~~74.60(d)~~, 74.72(f)(6) ~~74.60(e)(6)~~
• Participated in a plan, scheme, or arrangement attempting or having at its purpose the evasion of any provision of the ~~Act~~ law or the standards adopted by the Commission	74.72(f)(1) ~~74.60(e)(1)~~
• Knowingly furnished inaccurate, deceitful, or misleading information to the Department, a building owner, or other person involved in the inspection	74.72(f)(2) ~~74.60(e)(2)~~
• Engaged in false, misleading, or deceptive advertising	74.72(f)(8) ~~74.60(e)(8)~~

Class D:

1st Violation	2nd Violation	3rd Violation
$5,000 and/or Revocation	$5,000 and/or Revocation	$5,000 and/or Revocation

• Violated a previous order of Commission or Executive Director	51.353(a) , 74.90
• Obtained or attempted to obtain a registration by fraud or false representation	754.0232(a)(1), ~~754.023(c)(1),~~ 60.23(a)(1) ~~60.63(b)~~
• Failed to pay the Department for a dishonored ~~check~~ payment	60.82

HEARING INSTRUMENT FITTERS AND DISPENSERS
Occupations Code, Chapter 402
Effective 9/1/2015

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

Sec. 402.051. ADVISORY BOARD MEMBERSHIP.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six members licensed under this chapter who have been residents of this state actually engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas Medical Board and who:

(A) has been a resident of this state for at least two years preceding appointment;

(B) is a citizen of the United States; and

(C) specializes in the practice of otolaryngology; and

(3) two members of the public.

(b) Appointments to the advisory board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Sec. 402.0511. DUTIES OF ADVISORY BOARD.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Sec. 402.055. TERMS; VACANCIES.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Sec. 402.057. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 402.058. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Hearing Instrument Fitters and Dispensers Advisory Board

Meeting of February 26, 2016
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Ben Norris called the meeting to order at 9:03 a.m.

Presiding Officer Ben Norris moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Board Members Ben Norris, Jackie Cooper, Richard Davila, Gary Haun, Jesus Rangel, and Amy Trost were present. A quorum was present.

Presiding Officer Ben Norris moved to agenda item C., Public Comment. There was no public comment.

Presiding Officer Ben Norris moved to agenda item D., Staff Reports. Brian Francis, Deputy Executive Director, reported that the Comptroller has approved the release of funding to cover the cost of transferring the program and that the transfer will be completed October 1, 2016. William Kuntz, Executive Director, provided an overview of the upcoming strategic planning process and dates. Brian Francis, Deputy Executive Director, explained that the remaining staff reports listed on the agenda were duplicates from the previous agenda and remained as place holders if the Board had questions. Katie Brice, Department of State Health Services, reported licensing statistics, upcoming meetings, and the work with TDLR and DSHS staff to transfer the programs.

Presiding Officer Ben Norris moved to agenda item E., Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 112, Hearing Instrument Fitters and Dispensers and regarding comments on the proposed new rules. The proposed new rules implement Senate Bill 202, 84th Legislature, Regular Session (2015), which transfers the Hearing Instrument Fitters and Dispensers program from the Department of State Health Services to the Texas Department of Licensing and Regulation. Wendy Pellow, Assistant General Counsel, provided a summary of the comments and the Department's proposed responses. The Board discussed several comments and agreed with the proposed amendments suggested by staff with a few changes discussed in the meeting. Board member Richard Davila, seconded by Gary Haun made a motion to recommend the rules be adopted by the Commission with the proposed changes agreed in the meeting. The motion passed by a unanimous vote.

Presiding Officer Ben Norris moved to agenda item F., Discussion and possible appointment of workgroups:

1. Enforcement workgroup to review and make recommendations regarding criminal conviction guidelines, the penalty matrix, other enforcement related matters and rules

Presiding Officer Ben Morris appointed the following members to the above referenced work group: Richard Davila, Jackie Cooper, and Jesus Rangel. Christina Kaiser, Director of Enforcement, will be the staff contact for this workgroup.

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2. Licensing workgroup to review and make recommendations regarding licensing requirements and rules, inspections and compliance, and other administrative matters

Presiding Officer Ben Norris appointed the following members to the above referenced work group: Richard Davila, Gary Haun, and Jesus Rangel. Dede McEachern, Director of Licensing, will be the staff contact for this workgroup.

3. Education and Examination workgroup to review and make recommendations regarding education and examination, continuing education requirements, and rules

Presiding Officer Ben Norris appointed the following members to the above referenced work group: Amy Trost, Jackie Cooper, and Ben Norris. Ray Pizarro, Director of Education and Examination, will be the staff contact for this workgroup.

4. Standard of Care workgroup to review and make recommendations regarding standard of care matters and rules

Presiding Officer Ben Norris appointed the following members to the above referenced work group: Gary Haun, Amy Trost, and Ben Norris. George Ferrie, Director of Compliance, will be the staff contact for this workgroup.

Presiding Officer Ben Norris moved to agenda item G., Recommendations for Agenda Items for Next Meeting. The Board requested the following items on its next agenda: staff reports, personnel updates, workgroup reports, criminal conviction guidelines, penalty matrix, and update on the Commission adoption of the proposed rules.

Presiding Officer Ben Norris moved to agenda item H., Discussion of Date, Time, and Location of next Board meeting. The next Board meetings will be May 24, 2016, and August 17, 2016, at 10:00 a.m. in Austin, Texas.

Presiding Officer Ben Norris moved to agenda item I., Adjournment. Presiding Officer Ben Norris adjourned the meeting at 11:14 a.m.

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Ben Norris, Presiding Officer
Hearing Instrument Fitters and Dispensers Advisory Board

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Chapter 112
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.

SUBCHAPTER A. GENERAL PROVISIONS.

§112.1. Authority.

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable.

§112.2. 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 402, concerning the licensing of persons authorized to fit and dispense hearing instruments.

(2) Advisory board--The Hearing Instrument Fitters and Dispensers Advisory Board.

(3) Applicant--An individual who applies for a license or permit under the Act.

(4) Apprentice permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, §402.207 and this chapter, and which authorizes the permit holder to fit and dispense hearing instruments under appropriate supervision from an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(5) Certification, proof of--A certificate of calibration, compliance, conformance, or performance.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Contact hour--A period of time equal to 55 minutes.

(8) Continuing education hour--A period of time equal to 50 minutes.

(9) Contract--See definition for "written contract for services."

(10) Continuing education--Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep

licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

(11) Continuing education provider--A provider of a continuing education activity.

(12) Department--The Texas Department of Licensing and Regulation.

(13) Direct supervision--The physical presence with prompt evaluation, review and consultation of a supervisor any time a temporary training permit holder is engaged in the act of fitting and dispensing of hearing instruments.

(14) Executive director--The executive director of the department.

(15) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

(16) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving, or correcting defective human hearing. The term includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(17) Indirect supervision--The daily evaluation, review, and prompt consultation of a supervisor any time a permit holder is engaged in the act of fitting and dispensing hearing instruments.

(18) License--A license issued by the department under the Act and this chapter to a person authorized to fit and dispense hearing instruments.

(19) Licensee--Any person licensed or permitted by the department under Texas Occupations Code Chapter 401 or 402.

(20) Manufacturer--The term includes a person who applies to be a continuing education provider who is employed by, compensated by, or represents an entity, business, or corporation engaged in any of the activities described in this paragraph. An entity, business, or corporation that:

(A) is engaged in manufacturing, producing, or assembling hearing instruments for wholesale to a licensee or other hearing instrument provider;

(B) is engaged in manufacturing, producing, or assembling hearing instruments for sale to the public;

(C) is a subsidiary of, or held by, an entity that is engaged in manufacturing, producing, or assembling hearing instruments as described in this definition;

(D) holds an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition; or

(E) serves as a buying group for an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition.

(21) Non-Manufacturer--Any person, entity, buyer group, or corporation that does not meet the definition of a manufacturer.

(22) Ownership of dispensing practice--A person who owns, maintains, or operates an office or place of business where the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments shall be considered also to be engaged in the practice of fitting and dispensing of hearing instruments under this Act.

(23) Person--An individual, corporation, partnership, or other legal entity.

(24) Sale or sell--A transfer of title or of the right to use by lease, bailment, or other contract. The term does not include a sale at wholesale by a manufacturer to a person licensed under the Act or to a distributor for distribution and sale to a person licensed under the Act.

(25) Selling of hearing instrument by mail--Any time a hearing instrument is not sold, fitted or dispensed in person by a license holder or permit holder.

(26) Specific Product Information--Specific product information shall include, but not be limited to, brand name, model number, shell type, and circuit type.

(27) Supervisor--A supervisor is an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312, and who meets the qualifications established by Texas Occupations Code, §402.255 and this chapter.

(28) Temporary training permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, Chapter 402, Subchapter F, and this chapter, to authorize the permit holder to fit and dispense hearing instruments only under the direct or indirect supervision, as required and as appropriate, of an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(29) Working days--Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(30) Written contract for services--A written contract between the license holder and purchaser of a hearing instrument as set out in §112.140 (relating to Joint Rule Regarding the Sale of Hearing Instruments).

(31) 30-day trial period--The period in which a person may cancel the purchase of a hearing instrument.

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD.

§112.10. Membership.

The advisory board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) six members licensed under this chapter who have been residents of this state actually engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas Medical Board and who:

(A) has been a resident of this state for at least two years preceding appointment;

(B) is a citizen of the United States; and

(C) specializes in the practice of otolaryngology; and

(3) two members of the public.

§112.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

§112.12. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§112.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(b) The presiding officer shall preside at all meetings at which he or she is in attendance.

§112.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

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

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board action shall require a majority vote of those members present and voting.

SUBCHAPTER C. EXAMINATIONS.

§112.20. Examination Requirements--General.

(a) Except as provided under subsection (b), an individual must pass an examination required by the department to qualify for a hearing instrument fitter and dispenser license or an apprentice permit under this chapter.

(b) An individual licensed under Chapter 401, as an audiologist or an audiology intern who is applying for a license under this chapter, is exempt from the examination required under this chapter but must comply with all other requirements under this chapter.

§112.21. Examination Qualifications.

(a) An applicant must qualify to take the written examination and the practical examination. The applicant must also take the Jurisprudence Examination as described under §112.26, but the applicant does not need to qualify to take the Jurisprudence Examination.

(b) The department will review an applicant's application and other submitted documentation as prescribed under §112.40 (apprentice permit) or §112.33 (out of state license) to determine whether the applicant qualifies to take the written and practical examinations.

(c) Pursuant to Texas Occupations Code §402.203(c), the department may refuse to examine an applicant who has been convicted of a misdemeanor that involves moral turpitude or a felony.

(d) The department or department's designee will notify the applicant who qualifies to take the examinations.

(e) An applicant must take and pass the examinations and complete all licensing requirements within one year after the date the application is received by the department.

§112.22. Examination Tests and Contents.

(a) The examination required under the Act shall consist of a written examination, a practical examination, and a Jurisprudence Examination as described under §112.26.

(b) The department shall administer or arrange for the administration of the examination.

(1) The written examination is the International Licensing Examination for Hearing Instrument Dispenser, a national examination administered by the International Hearing Society.

(2) The practical examination is administered by the department or the department's designee.

(3) The Jurisprudence Examination is developed by the department and administered by the department's designee.

(c) The examination under subsection (a), will test the following areas as they relate to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

(2) structure and function of hearing instruments;

(3) fitting of hearing instruments;

(4) pure tone audiometry, including air conduction testing and bone conduction testing;

(5) live voice and recorded voice speech audiometry;

(6) masking when indicated for air conduction, bone conduction, and speech;

(7) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;

(8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(9) taking of earmold impressions;

(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(11) anatomy and physiology of the ear;

(12) post-counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal; and

(14) laws, rules, and regulations of this state and the United States.

(d) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

§112.23. Examination Scores and Results.

(a) The applicant must pass all parts of the examination with a score of 70 percent or greater.

(b) The department will notify the applicant in writing regarding the applicant's examination scores or results for the written and practical examinations. The department's designee will provide a certificate of completion to the applicant upon passage of the Jurisprudence Examination.

§112.24. Failure of Examination.

An applicant who fails the examination may retake the failed portion or portions of the examination after payment of an additional examination fee. An applicant must hold a current temporary training permit in order to be re-examined.

§112.25. Examination Proctors.

(a) The practical examination must be administered by one or more qualified proctors selected and assigned by the department.

(b) Qualifications for Examination Proctor.

(1) A proctor must be licensed in good standing as a hearing instrument fitter and dispenser under the Act.

(2) A proctor must have held the license for at least three years prior to the examination date.

(3) A proctor must have observed at least five full practical examination sessions prior to serving as a proctor.

(4) Disciplinary actions or other actions that may disqualify a license holder from serving as a proctor are:

(A) suspension or probated suspension under this chapter;

(B) any action requiring supervision by another person licensed under this chapter; or

(C) an administrative penalty or reprimand under this chapter within three years prior to the examination date.

§112.26. Jurisprudence Examination.

(a) To fulfill the requirements under Texas Occupations Code §402.204(b)(14), an applicant must pass the Jurisprudence Examination prescribed by the department.

(b) The Jurisprudence Examination is separate from the written and practical examinations under §112.22. The Jurisprudence Examination tests the applicant's knowledge of the laws, rules and regulations of Texas and of the United States relating to the fitting and dispensing of hearing instruments.

(c) The applicant must register online and pay the Jurisprudence Examination fee to the third-party provider. The applicant does not need to qualify through the department to take the Jurisprudence Examination.

(d) The applicant must successfully complete the Jurisprudence Examination and submit a certificate of completion prior to receiving a hearing instrument fitter and dispenser license or an apprentice permit.

SUBCHAPTER D. HEARING INSTRUMENT FITTER AND DISPENSER LICENSE.

§112.30. Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the supervisor's agreement form that has been completed by the apprentice permit holder and the supervisor(s), unless previously submitted to the department;

(3) one of the following education records, unless previously submitted to the department;

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

(B) certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained; and

(4) the fee required under §112.110.

(d) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(e) The commission or executive director may deny an application based on the grounds for denial under Texas Occupations Code §402.501.

§112.31. Hearing Instrument Fitter and Dispenser License--Issuance of License.

(a) The department will issue each applicant, whose application has been approved, a license certificate containing the license holder's name, license number, and expiration date.

(b) Any license certificate or renewal card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or renewal card upon a written request from the license holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

(d) Upon the written request from the license holder using a department-approved form and payment of the duplicate/replacement fee under §112.110, the department will provide a license holder with a duplicate certificate for a second place of practice which is designated in a license holder's file.

§112.32. Hearing Instrument Fitter and Dispenser License--License Term; Renewals.

(a) A hearing instrument fitter and dispenser license is valid for two years after the date of issuance and may be renewed every two years.

(b) Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a hearing instrument fitter and dispenser license, a license holder must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete twenty (20) hours of continuing education as required under §112.70;

(4) comply with the continuing education audit process described under §112.71, if selected for an audit;

(5) provide proof that all equipment that is used by the license holder to produce a measurement in the testing of hearing acuity has been properly calibrated or certified by a qualified technician within one year prior to the renewal date; and

(6) submit the fee required under §112.110.

(d) The commission or department may deny the renewal of the license pursuant to Texas Occupations Code §402.501.

(e) Except as provided under subsection (d), a license that is not revoked or suspended shall be renewed provided that all other requirements are met.

(f) A person whose license has expired may renew the license in accordance with §60.31 and §60.83 of this title.

(g) A person whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(h) The department shall issue a renewal card to a license holder who has met all the requirements for renewal. The license holder must display the renewal card in association with the license.

§112.33. Application by License Holder From Another State.

(a) A person licensed to fit and dispense hearing instruments in another state may apply for a hearing instrument fitter and dispenser license under this chapter by meeting the requirements under this section.

(b) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(c) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(d) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state and has held the license for at least three years preceding the date of application;

(3) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed include passing the International Licensing Examination for Hearing Instrument Dispenser (ILE) written examination; or

(B) the applicant holds a certification issued by the Board of Certification for Hearing Instrument Sciences (BC-HIS); and

(4) a written statement from the licensing entity in the state in which the applicant is licensed that details any disciplinary action taken by the entity against the applicant; and

(5) a statement of the applicant's criminal history acceptable to the department.

(e) The department may deny an application under this section based on the applicant's criminal history or an applicant's history of disciplinary action.

(f) If the department approves an application, the applicant must take the practical examination and the Jurisprudence Examination required under §112.22 and §112.26. If the applicant passes the examinations required under this section, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(g) The department may allow an applicant under this section who satisfies all application requirements other than the requirement under subsection (d)(3), to take all sections of the examination required under Texas Occupations Code §402.202. If the applicant passes the examination, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(h) Pursuant to Texas Occupations Code §402.209(h), an applicant under this section who fails an examination may not retake the examination under this section. The person must comply with the requirements for an applicant for a temporary trainee permit.

(i) The department may not issue a license under this section to an applicant who is a licensed audiologist in another state. The department shall inform the applicant of the licensing requirements of Chapter 401.

SUBCHAPTER E. APPRENTICE PERMIT.

§112.40. Apprentice Permit--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for an apprentice permit must:

(1) hold a current temporary training permit;

(2) provide documentation that the applicant is at least 18 years of age;

(3) submit a completed application on a department-approved form;

(4) submit one of the following education records:

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

(B) certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained; and

(5) submit the supervisor's agreement form that has been completed by the applicant and the supervisor(s);

(6) pass all parts of the examination required under §112.22;

(7) submit a certificate of completion of the Jurisprudence Examination under §112.26; and

(8) pay the apprentice permit fee required under §112.110.

(d) An applicant for an apprentice permit must successfully pass a criminal history background check.

(e) The department will review the applicant's apprentice permit application and will notify the applicant who qualifies to take the examination.

(f) The applicant who qualifies to take the examination must comply with the examination requirements under Subchapter C, Examinations.

§112.41. Apprentice Permit--Issuance of Permit.

(a) The department will issue a permit containing the permit holder's name, permit number, and expiration date to an applicant who meets all of the requirements for obtaining an apprentice permit under the Act and this chapter.

(b) Any permit issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed permit upon a written request from the permit holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

§112.42. Apprentice Permit--Permit Term; Extension.

(a) An apprentice permit is valid for one year. The department may extend the apprentice permit for an additional period not to exceed one year.

(b) To extend an apprentice permit, the apprentice permit holder must:

(1) submit an extension request on a department-approved form;

(2) submit a new or renewed supervision agreement for the extension period; and

(3) pay the permit extension fee required under §112.110.

(c) A person whose permit has expired shall not practice the fitting and dispensing of hearing instruments.

§112.43. Apprentice Permit--Supervision Requirements.

(a) An apprentice permit holder shall work under the supervision of a license holder for at least one year.

(b) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(c) A supervisor of an apprentice permit holder is responsible for services to the client that may be performed by the apprentice permit holder. The supervisor must ensure that all services

provided are in compliance with the Act and this chapter.

(d) The apprenticeship must be done under the supervision of an individual authorized to supervise permit holders who holds a valid license to fit and dispense hearing instruments in the State of Texas under Texas Occupations Code, Chapter 401 or 402, other than a person licensed under §401.311 or §401.312.

(e) The supervisor must submit written notification of cessation of supervision to the department and the apprentice permit holder within ten (10) days of cessation of supervision on a department-approved form or in a manner prescribed by the department.

(f) The apprentice permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor on a department-approved form or in a manner prescribed by the department.

(g) The supervisor's agreement form must be completed by the apprentice permit holder and the supervisor or supervisors on a department-approved form or in a manner prescribed by the department.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§112.44. Apprentice Permit--Continuing Education.

(a) Pursuant to Texas Occupations Code §402.207, the apprentice permit holder must complete twenty (20) hours of classroom continuing education during the apprentice year.

(b) The apprentice permit holder must complete the continuing education in one or more of the following approved subjects relating to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

(2) structure and function of hearing instruments;

(3) fitting of hearing instruments;

(4) pure tone audiometry, including air conduction testing and bone conduction testing;

(5) live voice and recorded voice speech audiometry;

(6) masking when indicated for air conduction, bone conduction, and speech;

(7) recording and evaluation of audiogram and speech audiometry to determine the candidacy for hearing instruments;

(8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(9) taking of earmold impressions;

(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(11) anatomy and physiology of the ear;

(12) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal;

(14) laws, rules, and regulations of this state and the United States; and

(15) the proper procedures for sound level measurements.

(c) The apprentice must provide written proof of attendance or completion of an approved course on a department-approved form or in a manner prescribed by the department.

SUBCHAPTER F. TEMPORARY TRAINING PERMIT.

§112.50. Temporary Training Permit--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for a temporary training permit must:

(1) have never taken the examination administered under this chapter;

(2) provide documentation that the applicant is at least 18 years of age;

(3) submit a completed application on a department-approved form;

(4) submit one of the following education records:

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

(B) a certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained;

(5) submit the supervisor statement required under Texas Occupations Code §402.252, on a department-approved form; and

(6) pay the temporary training permit fee required under §112.110.

(d) An applicant for a temporary training permit must successfully pass a criminal history background check.

§112.51. Temporary Training Permit--Issuance of Permit.

(a) The department will issue a permit containing the permit holder's name, permit number, and expiration date to an applicant who meets all of the requirements for obtaining a temporary training permit under the Act and this chapter.

(b) Any permit issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed permit upon a written request from the permit holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

§112.52. Temporary Training Permit--Permit Term; Extension.

(a) A temporary training permit is valid for one year. The department may extend the temporary training permit for an additional period not to exceed one year. A temporary training permit may not be extended more than once.

(b) To extend a temporary training permit, the temporary training permit holder must:

(1) submit an extension request on a department-approved form;

(2) submit a new or renewed supervision agreement for the extension period; and

(3) pay the permit extension fee required under §112.110.

(c) A person whose permit has expired, shall not practice the fitting and dispensing of hearing instruments.

§112.53. Temporary Training Permit--Supervision and Temporary Training Requirements.

(a) The training of a temporary training permit holder must be done under the supervision of an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(b) A supervisor licensed under Texas Occupations Code, Chapter 401, shall comply with all provisions of Texas Occupations Code, Chapter 402, and this chapter that relate to the supervision and training of a temporary permit holder. A supervisor licensed under Texas Occupations Code, Chapter 402, shall comply with all provisions of the Act and this chapter.

(c) A person must obtain a temporary training permit prior to beginning the supervision and must maintain a valid temporary training permit during his or her supervised practicum experience.

(d) A temporary training permit holder only has the authority prescribed under Texas Occupations Code §402.256.

(e) The supervisor must submit a written notification of termination of supervision to the department and the temporary training permit holder within ten (10) days of cessation of supervision on a department-approved form or in a manner prescribed by the department.

(f) Pursuant to Texas Occupations Code §402.257, the temporary training permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor using a department-approved form or in a manner prescribed by the department.

(g) A temporary training permit holder shall have at least 150 hours of directly supervised practicum that shall include the following:

(1) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice, with 15 of the required hours being with actual clients;

(2) 25 client contact hours of hearing instrument evaluations, including sound-field measurements with recorded and live voice;

(3) 20 contact hours of instrument fittings with actual clients;

(4) 10 contact hours of earmold orientation types, uses, and terminology;

(5) five contact hours of earmold impressions and otoscopic examinations of the ear;

(6) 15 contact hours of troubleshooting of defective hearing instruments;

(7) 20 contact hours of case history with actual clients;

(8) 10 contact hours regarding the laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(9) 20 contact hours of supplemental work in one or more of the areas described by paragraphs (1) through (8).

(h) Pursuant to Texas Occupations Code §402.254, in addition to the contact hours under subsection (g), a temporary training permit holder shall complete at least 10 contact hours of masking under the direct supervision of the supervisor.

(i) Pursuant to Texas Occupations Code §402.255(d), the supervisor shall maintain a log of the contact hours by practicum category on a form and in a manner prescribed by the department. After the temporary training permit holder has completed the 150 contact hours under subsection (g), the supervisor and the permit holder shall sign the form, and the form shall be notarized and mailed to the department.

(j) Pursuant to Texas Occupations Code §402.255(e), a supervisor may not supervise more than two temporary training permit holders at one time.

(k) A supervisor may delegate training activities of a temporary training permit holder to another license holder. The supervisor shall be responsible for the day-to-day supervision of a temporary training permit holder. The supervisor shall also be ultimately responsible for services provided to a client by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

(l) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

SUBCHAPTER G. FINANCIAL SECURITY REQUIREMENTS.

§112.60. Filing Surety Bond or Other Form of Financial Security.

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments must file with the department financial security in a form provided by subsection (b), in the amount of $10,000 and conditioned on the promise to pay all:

(1) taxes and contributions due to the state and political subdivisions of the state by the sole proprietor, partnership, corporation, or other legal entity; and

(2) judgments that the sole proprietor, partnership, corporation, or other legal entity may be required to pay for negligently or improperly dispensed hearing instruments or for breaching a contract relating to the dispensing of hearing instruments.

(b) A sole proprietor, partnership, corporation, or other legal entity must file with the department one of the following acceptable forms of financial security in the amount required in subsection (a):

(1) a surety bond issued by an authorized entity;

(2) a deposit of cash;

(3) a certificate of deposit that is issued by a qualified financial institution, assigned to the executive director, and for the benefit of the department; or

(4) an original letter of credit acceptable to the department that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the license holder;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the license holder or other party.

(c) The surety bond or other accepted form of financial security must be received on or before the date of issuance of the license.

(d) A person to whom the Act does not apply pursuant to Texas Occupations Code §402.003 is not required to file a bond under this section.

(e) Financial security required under this section remains in effect until canceled by action of the surety, the principal, or the department. Notice of cancellation must be provided to the department no later than thirty (30) days prior to cancellation.

§112.61. Recovery on Surety Bond or Other Form of Financial Security.

(a) The purchaser of a hearing instrument may rescind the purchase and recover funds as provided by Texas Occupations Code §402.404 and §402.405.

(b) The purchaser of a hearing instrument must file a claim with the department to recover funds from the financial security submitted to the department under §112.60.

SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS.

§112.70. Continuing Education--Hours and Courses.

(a) This section applies to a hearing instrument fitter and dispenser license holder.

(b) A license holder must complete 20 continuing education hours of continuing education during each two-year renewal period. A two-year renewal period begins on the first day after the previous license expiration date and ends on the new license expiration date.

(c) Pursuant to 16 Texas Administrative Code (TAC), Chapter 59, a continuing education hour shall be 50 minutes of attendance in an approved continuing education course.

(d) No more than 10 continuing education hours per renewal period may be earned from an approved online continuing education course offered by an approved continuing education provider.

(e) No more than 5 continuing education hours per renewal period may be earned from an approved continuing education course offered by an approved manufacturer continuing education provider.

(f) Pursuant to Texas Occupations Code §402.304, a license holder may take all three parts of the licensing examination referenced under §112.22, on written request to the department. A license holder who pays the examination fees and passes the examination is exempt from the continuing education requirement for the renewal period in which the examination is taken.

(g) A license holder may be credited with continuing education hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The department may approve credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments. No more than 5 contact hours per renewal period may be approved for preparation of a publication.

(h) Continuing education shall be acceptable if the education is described in subsection (f) or (g), or falls in one or more of the following categories:

(1) participation in approved continuing education courses offered by approved continuing education providers;

(2) completion of academic courses at an accredited college or university in areas directly supporting development of skills and competence in the fitting and dispensing of hearing instruments; and/or

(3) participation or teaching in programs directly related to the fitting and dispensing of hearing instruments (e.g., institutes, seminars, workshops, or conferences), which are approved or offered by an accredited college or university.

(i) To receive credit for completion of academic work the license holder must submit an official transcript(s) from accredited school(s) showing completion of hours in appropriate areas for which the license holder received a passing grade.

(j) The department will not approve continuing education credit for any license holder for:

(1) education incidental to the regular professional activities of a license holder such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization; and

(3) any program which is not described in, or in compliance with, this section.

(k) Pursuant to Texas Occupations Code §402.305, the department may renew the license of a license holder who has not complied with the continuing education requirements if the license holder:

(1) has served in the regular armed forces of the United States during any part of the twenty-four (24) months before the end of the two-year renewal period;

(2) submits proof from an attending physician that the license holder suffered a serious disabling illness or physical disability that prevented compliance with the continuing education requirements during the twenty-four (24) months before the end of the two-year renewal period; or

(3) was licensed for the first time during the twenty-four (24) months before the end of the two-year renewal period.

§112.71. Continuing Education--Records and Audits.

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license

holder's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A license holder who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until the continuing education requirements have been met.

(c) The license holder shall be responsible for maintaining a record of his or her continuing education experiences until the next renewal is completed.

§112.72. Continuing Education--Providers.

(a) In accordance with the Act, continuing education courses must be provided by a department-approved continuing education provider. An individual or organization may request approval as a continuing education provider by submitting an application to the department. The department may consult as needed with an advisory board member.

(b) After review of the continuing education provider application, the applicant may be approved by the department as either a manufacturer continuing education provider or a non-manufacturer continuing education provider.

(c) Upon approval, the continuing education provider applicant shall pay the continuing education provider fee prescribed under §112.110. The approved provider status shall be effective for one year from the date of issuance of provider approval.

(d) Continuing education providers must renew their approved provider status annually by completing and returning to the department the provider renewal form and the continuing education provider fee. If not renewed on or before the expiration date, the continuing education provider must reapply for approved sponsor status.

(e) Each continuing education course offered by an approved provider must be submitted to the department on the required course approval form.

(f) The department is responsible for the review and approval of all continuing education courses submitted by approved providers. The department may consult as needed with an advisory board member.

(g) Each continuing education course will be evaluated by the department on the basis of the

following criteria:

(1) relevance of the subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in studies or disciplines related to fitting and dispensing of hearing instruments;

(2) objectives of specific information and skills to be learned; and

(3) subject matter, educational methods, materials, qualifications of instructors and presenters, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives.

(h) Approved providers who offer online continuing education must submit each course for approval.

(i) Approved continuing education courses and providers will be listed on the department's website.

(j) An organization or individual who meets the required criteria and is approved by the department may advertise as an approved provider of continuing education for licensed fitters and dispensers of hearing instruments.

(k) Each continuing education provider shall provide each participant with a certificate of completion that documents the participant's name, the continuing education course number, the number of approved continuing education hours, the title and date(s) of the program as approved by the department, and the name of the approved continuing education provider.

SUBCHAPTER I. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT.

§112.80. Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Hearing Instrument Fitters and Dispensers program. Pursuant to §60.22 of this title, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules unless proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

SUBCHAPTER J. RESPONSIBILITIES OF THE LICENSEE.

§112.90. General Responsibilities of the Licensee.

(a) All licensees are bound by the provisions of the Act and this chapter.

(b) A licensee shall report alleged violations of the Act or this chapter to the department.

(c) A licensee shall cooperate with the department by furnishing required documents or information and by responding to a request for information from a subpoena issued by the executive director or the department.

(d) A licensee shall comply with any order issued by the commission or the department relating to the licensee.

(e) A licensee shall not interfere with an investigation by the willful misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

§112.91. Change of Name, Address or Other Information.

A licensee must notify the department in writing within thirty (30) days of any changes of name, address, telephone number, or employment.

§112.92. Consumer Information.

A licensee shall inform each client of the name, address, email address, and telephone number of the department for the purpose of filing a complaint or reporting violations of the Act or this chapter on:

(1) each written contract for services; and

(2) a sign prominently displayed in the primary place of business.

§112.93. Display of License.

(a) A licensee shall:

(1) prominently display the current license issued by the department in the primary place of business;

(2) not display a license issued by the department which has been reproduced or is expired, suspended, or revoked; and

(3) not make any alterations on a license issued by the department.

(b) The department shall issue a renewal card to a licensee who has met all the requirements for renewal. The licensee must display the renewal card in association with the license.

§112.94. False, Misleading or Deceptive Advertising.

A licensee may not engage in false, misleading or deceptive advertising in accordance with Texas Occupations Code §402.103.

§112.95. Information on Prospective Amplification Candidates.

A license holder shall obtain information on each prospective candidate for amplification in accordance with Texas Occupations Code §402.352.

§112.96. Conditions of Sale.

A license holder or permit holder shall comply with the federal regulations adopted by the U.S. Food and Drug Administration at Title 21 Code of Federal Regulations §801.420 and §801.421. A link to the federal regulations will be available online through the department's website.

§112.97. Sound-Level Measurements - Audiometers and Audiometric Testing.

(a) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute (ANSI) or the International Electrotechnical Commission.

(b) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure. Sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current ANSI "ear covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing, or the test environment shall have a maximum allowable ambient noise level of 42 dBA.

(2) Ambient noise level of the location of the audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) type(s) of equipment used to determine ambient noise level;

(B) model and serial number of equipment used to determine ambient noise level;

(C) date of last calibration of equipment used to determine ambient noise level; and

(D) the ambient noise level of the test environment.

(c) Audiometric testing conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.

(2) A stationary acoustical enclosure includes, but is not limited to, an audiometric test room.

(A) An audiometric test room is any enclosed space in which a listener is located for the purpose of testing hearing. An audiometric test room may also be known as:

(i) an audiometric test area;

(ii) a hearing test space; or

(iii) a hearing test room.

(B) An example of an audiometric test room would be a prefabricated room known as:

(i) an audiometric test booth;

(ii) a suite; or

(iii) a sound treated room.

§112.98. Code of Ethics.

(a) The purpose of this section is to establish the standards of professional and ethical conduct required of a license holder or permit holder and constitutes a code of ethics. It is the responsibility of all license holders and permit holders to uphold the highest standards of integrity and ethical principles.

(b) A license holder or permit holder of hearing instruments must observe and comply with the code of ethics and standards of practice set forth in this chapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits the profession of the dispensing and fitting of hearing instruments and is grounds for disciplinary action.

(c) A license holder or permit holder shall:

(1) offer only those services that are within his or her professional competency;

(2) comply with client confidentiality rights within the limits established by the law;

(3) refer a client for those services that the license holder or permit holder is unable to provide;

(4) comply with the requirements of the Health Insurance Portability and Accountability

Act of 1996 (HIPAA);

(5) ensure that all equipment used is in proper working order and is properly calibrated; and

(6) comply with any order relating to the license holder or permit holder which is issued by the commission or executive director.

(d) A license holder or permit holder shall not:

(1) falsify records;

(2) refuse to provide services solely on the basis of a client's age, gender, race, color, religion, national origin, or disability;

(3) misrepresent his or her professional credentials and/or qualifications;

(4) engage in sexual contact or sexual exploitation with a client. Sexual contact means the behaviors and activities described in the Texas Penal Code, §21.01 (relating to Sexual Offenses; Definitions). Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal, sexual gratification, or sexual abuse;

(5) provide services while impaired due to the use of medication, drugs, or alcohol, or a physical or mental health condition; or

(6) interfere with an investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or the department's designee or by the use of threats or harassment against any person.

SUBCHAPTER L. FEES.

§112.110. Fees.

(a) Fees paid to the department are nonrefundable.

(b) Hearing Instrument Fitter and Dispenser License:

(1) Initial application fee (includes two-year initial license)--$205;

(2) Renewal application fee (for two-year license)--$205;

(c) Apprentice Permit:

(1) Initial application fee (includes one-year permit)--$205;

(2) Extension fee (one-year term, may only be extended once)--$25;

(d) Temporary Training Permit:

(1) Initial application fee (includes one-year permit)--$205;

(2) Extension fee (one-year term, may only be extended once)--$25;

(e) Examination Fees:

(1) Initial practical examination fee--$100;

(2) Retake practical examination fee--$100;

(3) Jurisprudence Examination fee--the fee in the amount charged by the department's designee.

(f) Continuing education provider fee--$200 annually.

(g) A duplicate/replacement fee for a license or permit issued under this chapter is $25.

(h) Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(i) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(j) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

SUBCHAPTER M. COMPLAINTS.

§112.120. Complaints Regarding Standard of Care.

The commission will adopt rules related to handling complaints regarding standards of care pursuant to Texas Occupations Code §51.2031.

SUBCHAPTER N. ENFORCEMENT PROVISIONS.

§112.130. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 402, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 402 and any associated rules.

§112.131. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 402 and any associated rules may be used to enforce Texas Occupations Code, Chapter 402 and this chapter.

§112.132. Refund for Hearing Instrument.

The commission or executive director may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period described in the Act and in this chapter.

§112.133. Civil Penalty.

(a) A person who violates this chapter or a rule adopted or order issued under this chapter is liable for a civil penalty not to exceed $5,000 a day.

(b) An action under this section shall be implemented in accordance with Texas Occupations Code §51.352, Injunctive Relief; Civil Penalty.

§112.134. Surrender of a License or Permit.

(a) Surrender by license holder or permit holder.

(1) A license holder or permit holder may at any time voluntarily offer to surrender his or her license or permit for any reason.

(2) If no complaint is pending, the executive director shall accept and void the surrendered license or permit immediately.

(b) Formal disciplinary action.

(1) When a license holder or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the executive director shall accept and void the surrendered license or permit immediately.

(2) When the executive director has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and an order accepting the surrender may be prepared.

(c) Reinstatement. A license or permit which has been surrendered may not be reinstated; however, a person may apply for a new license or permit in accordance with the Act and this chapter.

SUBCHAPTER O. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS.

§112.140. Requirements Regarding the Sale of Hearing Instruments.

(a) This subchapter constitutes the rules required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the commission with the assistance of the Speech-Language Pathology and Audiology Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board. The requirements of this subchapter shall be repealed or amended only through consultation with, and mutual action by, both advisory boards.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the department.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition to the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive day trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the

hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license or permit holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice;"

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: “If you have a complaint against a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder, you may contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone (512) 463-6599, Toll-Free (in Texas): (800) 803-9202, www.tdlr.texas.gov”;

(9) the printed name, license type, signature and license or permit number of the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder who dispensed the hearing instrument;

(10) the supervisor’s name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within thirty (30) days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b); and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the department's inspection and shall include, but are not limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this subchapter, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE.

§112.150. Requirements Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice.

(a) Pursuant to Texas Occupations Code §401.2022 and §402.1023, the commission, with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, shall adopt rules to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. This subchapter contains rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Client--A consumer or proposed consumer of services.

(3) Client site--The site at which the client is physically located.

(4) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(5) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(6) Provider--An individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision; an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, §401.302; or an individual who holds an audiology intern license under Texas Occupations Code, §401.311.

(7) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(8) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(9) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(10) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(11) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

(c) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the state of Texas, unless the individual qualifies as a provider as that term is defined in this section and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this subchapter.

(d) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(e) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(f) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(g) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(h) The facilitator may perform at the client site only the following tasks:

> (1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption is required by law; and
>
> (2) those tasks for which the individual who is acting as a facilitator otherwise holds and acts in accordance with any license, permit, or other form of authorization or exemption required by law to perform the tasks.

(i) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(j) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(k) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(l) A client's initial professional contact with a provider shall be in person at the same physical location.

(m) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(n) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

INDUSTRIALIZED HOUSING AND BUILDINGS
Chapter 1202, Occupations Code

SUBCHAPTER B. TEXAS INDUSTRIALIZED BUILDING CODE COUNCIL

Section 1202.051. Council Membership

The Texas Industrialized Building Code Council consists of 12 members appointed by the governor as follows:

(1) three members who represent the industrialized housing and building industries;

(2) three members who represent municipal building officials from municipalities with a population of more than 25,000;

(3) three members who represent general contractors who construct housing or buildings on-site;

(4) one member who is an engineer licensed in this state who acts as a structural engineer;

(5) one member who is an engineer licensed in this state who acts as an electrical engineer; and

(6) one member who is an architect registered in this state.

Section 1202.052. Membership Restrictions

An engineer or architect member of the council may not:

(1) be designated as, be employed by, or have an ownership interest in, an entity that is a third-party inspector or design review agency;

(2) have an ownership interest in a business that manufactures or builds industrialized housing or buildings;

(3) in a capacity relating to a matter subject to council review, be employed by or be a paid consultant to a manufacturer or builder of industrialized housing or buildings; or

(4) be an officer, employee, or paid consultant of a trade association that represents the industrialized housing or building industry.

Section 1202.053. Terms.

Council members serve staggered two-year terms, with the terms of half of the members expiring on February 1 of each even-numbered year and the terms of the other half of the members expiring on February 1 of each odd-numbered year.

Section 1202.054. Presiding Officer.

The council shall annually elect one of its members as the council's presiding officer.

Section 1202.055. Secretary; Personnel.

The executive director shall:

(1) act as secretary of the council; and

(2) provide personnel from the department necessary to perform staff functions for the council.

Section 1202.056. Reimbursement.

(a) A council member may be reimbursed for actual costs of travel to attend meetings but may not receive a per diem allowance for food or lodging.

(b) The travel costs shall be paid out of fees collected by the department under Section 1202.104.

Section 1202.057. Quorum.

The vote of at least seven members present at a meeting or the written approval of at least seven members is required for the council to take an action or make a decision.

TEXAS INDUSTRIALIZED BUILDING CODE COUNCIL MEETING

Meeting of March 7, 2014
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer Rolando Rubiano, called the meeting to order at 1:03 p.m.

Presiding Officer, Rolando Rubiano, moved to agenda item B., Roll Call and Certification of Quorum. Members present were Rolando Rubiano, Roland Brown, Randy Childers, Steve Fitzpatrick, William "Dub" Smith, Scott McDonald Eddie Martin, Mark Remmert, Brian Eisenrich, Douglas Robinson, and Larry Wilkinson. Council members Jesse Rider was absent. A roll call verified that a quorum was present.

Presiding Officer, Rolando Rubiano, moved to agenda item C., Approval of minutes-Meeting of March 7, 2015. Council member, Randy Childers seconded by Scott McDonald, made a motion to approve the minutes as presented. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item D., Staff Reports. George Ferrie provided the staff report from the Executive Office. Staff provided reports on the Compliance Division – Donna Lipke; Enforcement Division – Virginia Fields; and Licensing Division – Chloe Adkins.

Presiding Officer, Rolando Rubiano, moved to agenda item E., Discussion and possible action to begin the process of adoption of the 2012 editions of the International codes and the 2014 National Electrical Code. Program Specialist Donna Lipke presented an argument form the adoption of the 2012 International Code. The Board discussed the adoption of the 2012 code and entertained the idea of going to the 2015 International Code. Additionally, Board members discussed the implementation time line. Council member, Scott McDonald, seconded by Eddie Martin, made a motion to recommend a subgroup Chaired by Roland Brown, members: Doug Robinson, Randy Childers, Kevin Walsh, and Burt Kesler; review and compare the 2012 ICC code and the 2015 ICC code and give feedback to the Council. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item F., Discussion and possible action regarding proposed procedures to implement the rules approved by the Council to 16 Texas Administrative Code (TAC) §§70.10, 70.60, and 70.70(c) allowing the department to approve 100% inspection of a house or building under certain conditions. Program Specialist Donna Lipke presented an outline of the procedures of the Department on 100% inspections. Ms. Lipke described the concept and need for 100% inspections. The Council discussed the procedures and made recommendations to staff. Council member, Doug Robinson, seconded by Larry Wilkinson, made a motion to recommend approval of the procedures with a modification to section (c)(2). The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item G., Discussion and possible action regarding approval of third party inspectors, third party inspection agencies, and design

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review agencies. Donna Lipke presented information on the proposed inspectors for final approval of third party inspectors. Council member, Roland Brown, seconded by Doug Robinson, made a motion to approve the third party inspectors as presented. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item H., Public Comments. There was no public comment.

Presiding Officer, Rolando Rubiano moved to agenda item I., Recommendations for agenda items for next Council meeting. The Council recommended that the following items be included on the next meeting agenda: Subgroup report on the code adoption.

Presiding Officer, Rolando Rubiano, moved to agenda item J., Discussion of date, time, and location of next Council meeting. The Council did not set a date for the next meeting but requested the next meeting may be held no later than November.

Presiding Officer, Rolando Rubiano, moved to agenda item K., Adjournment. Council member, Eddie Martin, seconded by Steve Fitzpartick, made a motion to adjourn the meeting. The meeting was adjourned at 2:46 p.m.

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Rolando Rubiano, Presiding Officer
Texas Industrialized Building Code Council

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TEXAS INDUSTRIALIZED BUILDING CODE COUNCIL MEETING

Meeting of March 7, 2014
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer Rolando Rubiano, called the meeting to order at 1:01 p.m.

Presiding Officer, Rolando Rubiano, moved to agenda item B., Roll Call and Certification of Quorum. Members present were Rolando Rubiano, Roland Brown, Randy Childers, Steve Fitzpatrick, William "Dub" Smith, Scott McDonald, Jesse Rider, Douglas Robinson, and Larry Wilkinson. Council members Eddie Martin and Mark Remmert were absent. A roll call verified that a quorum was present. The Council unanimously voted to excuse the absences of Eddie Martin and Mark Remmert.

Presiding Officer, Rolando Rubiano, moved to agenda item C., Approval of minutes-Meeting of August 2, 2013. Council member, Randy Childers seconded by Doug Robinson, made a motion to approve the minutes with a correction to Mark Remmert name from Doug Remmert. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item D., Public Comments. DJ Pendleton asked to present his comments during the rules discussion.

Presiding Officer, Rolando Rubiano, moved to agenda item E., Staff Reports. Executive Office - Bill Kuntz; Compliance Division – Donna Lipke; Enforcement Division – John Medlock; and Licensing Division – Chloe Adkins provided staff reports.

Presiding Officer, Rolando Rubiano, moved to agenda item F., Discussion and possible action, including possible recommendation to the Commission for adoption, proposed amendments to 16 Texas Administrative Code (TAC) Chapter 70, §§70.10, 70.25, 70.50, 70.51, 70.62, 70.70, 70.73, 70.75, and 70.78, relating to the Industrialized Housing and Buildings (IHB) program. This rule proposal is primarily to implement SB 672, 83rd Legislature. Della Lindquist, Assistant General Counsel and Donna Lipke, Program Specialist provided an overview of the proposed rules and outlined the changes:

70.10(14) adds a new definition for Final On-Site Inspection Report;

70.10(20) clarifies the section numbers referenced in the rules;

70.24, 70.25, and 70.70 corrected the section numbers referenced in the rules regarding;

70.50 reformatted for clarity of record keeping requirements for purpose of auditing and to ensure that the Department has the information necessary to calculate the 24 month time limit set by SB 672;

70.51(c)(2) added clarification to the types of reports that can be requested;

70.62 added to the responsibilities of local building officials;

70.73 adds clarification of the registrants responsibilities (several changes for cleanup, clarification, and consistency);

70.75 added a new (9) and (10); and

70.78 added new language at section (c)

Assistant General Counsel, Della Lindquist and Program Specialist, Donna Lipke reviewed the rules and related the comments received during the public comment period.

70.10 - Staff received one comment that the word "successful" was too subjective. Staff indicated that this term already existed in the rules and is defined in Section 70.73; however, staff amended the definition that was found to be part of the definition of successful. Council member, Roland Brown, seconded by Larry Wilkinson, made a motion in support of the proposed change to the rule. Motion passed by a unanimous vote.

Rule Preamble - Staff noted that two commenters stated that there may be a possible economic impact of this rule change. The Board heard public comment from DJ Pendleton.

70.50(b) - Staff received three comments and recommended some changes in response to the comments received. Council heard public comment from Martin Montgomery. Discussions with Council and staff proposed some revisions. Council member, Doug Robinson, seconded by Larry Wilkinson, made a motion to approve language as discussed by Council and read by Della Lindquest. Motion passed by a vote of 8-1, Childers opposed.

70.50(c) – Staff received no public comment. Council and staff discussed the proposed rule and suggested some changes. Council member, Randy Childers, seconded by Jesse Rider, made a motion in support of the proposed change to the rule. Motion passed by a unanimous vote.

70.62(a) – Staff received three comments and recommended new language in response to written comments. Staff and Council discussed the proposed changes and proposed new language. Council member Scott McDonald, seconded by Steve Fitzpatrick, made a motion to accept the language read by staff incorporating the discussed changes. The motion passed by a vote of 8-1 with Wilkinson opposed.

70.73(d) (1) – Staff received three comments but did not propose any changes based on the comments. Staff and Council discussed an amendment to the language and proposed adding "for occupancy" to the last line. Council member, Doug Robinson, seconded by Scott McDonald, made a motion in support of the proposed change to the rule. Motion passed by a unanimous vote.

70.73(f) (7) (c) Staff received 3 comments. Staff and Council discussed proposed changes. Council heard public comment from Martin Montgomery and DJ Pendleton. Council member Doug Robinson, seconded by Jesse Rider, made a motion to amend 5 days to 15 and provide copies of the other onsite inspection reports upon request. Motion passed by a unanimous vote.

70.75(c) (3) – Staff received one comment and did not propose any changes. Council and staff discussed the proposed rule and comment and did not recommend any changes.

70.78 – Staff received three comments and proposed changes based on the comments. Council and staff discussed the change and heard public comment from DJ Pendleton and Martin Montgomery. Council member, Doug Robinson, seconded by Scott McDonald, recommended changes proposed by staff. The motion passed by unanimous vote.

Council member, Dubb Smith, seconded by Jesse Rider, made a notion that the entire rules package as amended be presented to the Commission for adoption. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item G., Discussion and possible action regarding proposed amendments to 16 Texas Administrative Code (TAC) §§70.10, 70.60, and 70.70(c) allowing the department to approve 100% inspection of a house or building under certain

conditions. Donna Lipke, Engineering Specialist, presented the proposed rules changes which would allow the Executive Director to approve 100% inspection of a building. Council member, Scott McDonald, seconded by Randy Childers, made a motion to recommend approval of the proposed rules to the Commission. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item H., Discussion and possible action regarding approval of third party inspectors, third party inspection agencies, and design review agencies. Donna Lipke presented information on the proposed inspectors for final approval as third party inspectors. Council member, William Smith, seconded by Larry Wilkinson, made a motion to approve the third party inspectors as presented. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano moved to agenda item J., Recommendations for agenda items for next Council meeting. The Council recommended that the following items be included on the next meeting agenda: discussion and review procedures for implementing the changes to 16 Texas Administrative Code (TAC) §§70.10, 70.60, and 70.70(c).

Presiding Officer, Rolando Rubiano, moved to agenda item K., Discussion of date, time, and location of next Council meeting. The Council did not set a date for the next meeting but requested that Donna Lipke propose dates for the next meeting when necessary.

Presiding Officer, Rolando Rubiano, moved to agenda item L., Adjournment. Council member, McDonald, seconded by Randy Childers, made a motion to adjourn the meeting. The meeting was adjourned at 5:48 p.m.

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Rolando Rubiano, Presiding Officer
Texas Industrialized Building Code Council

TEXAS INDUSTRIALIZED BUILDING CODE COUNCIL MEETING

Meeting of August 2, 2013
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Vice Presiding Officer Rolando Rubiano, called the meeting to order at 12:30 p.m.

Vice Presiding Officer, Rolando Rubiano, moved to agenda item B., Roll Call and Certification of Quorum. Members present were Roland Brown (joined the meeting at 12:54 p.m.), Joe Campos, Randy Childers, Eddie Martin, Scott McDonald, Mark Remmert, Jesse Rider, Douglas Robinson, Rolando Rubiano, and Larry Wilkinson. Council members Steve Fitzpatrick and William Smith were absent. A roll call verified that a quorum was present.

Vice Presiding Officer, Rolando Rubiano, moved to agenda item C., Approval of minutes – Meeting of December 1, 2011. Council member, Randy Childers made a motion, seconded by Mark Remmert, to approve the minutes as presented. The motion passed by unanimous vote.

Vice Presiding Officer, Rolando Rubiano, moved to agenda item D., Training for Board Members on Open Meetings Act; Public Information Act; and Administrative Procedures Act. Della Lindquist, Assistant General Counsel, provided an overview of the process for maintaining a legal meeting and providing notice in accordance with the rules and the Act. Ms. Lindquist answered questions from the Council Members.

Vice Presiding Officer, Rolando Rubiano, moved to agenda item E., Nomination and vote for a Chair and Vice Chair of the Texas Industrialized Building Code Council. Larry Wilkinson made a motion, seconded by Joe Campos, to nominate Rolando Rubiano as chair. The motion passed by a unanimous vote. Rolando Rubiano made a motion, seconded by Randy Childers, to nominate Larry Wilkinson as vice–chair. The motion passed by a unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item F., Staff Reports - Executive Office: The Council heard a report from Bill Kuntz, Executive Director, and Brian Francis, Deputy Executive Director, on Senate Bill 672 which will require a change in Department Policy and forms; and gave an update on Legislative matters and bill implementation. Staff provided reports and answered questions from the Board.

Presiding Officer, Rolando Rubiano, moved to agenda item G., Discussion and possible action concerning request of manufacturer Koontz-Wagner Custom Controls Holdings for 100% inspection of building in lieu of certification and a compliance control manual in accordance with 16 TAC §70.70(c) of the rules governing industrialized housing and buildings. Donna Lipke, Engineering Specialist, presented a synopsis of the request to the Council. Frank Stec, representing Koontz-Wagner, explained to the Council why they were asking for approval for the 100% inspection. Council members discussed options to address the issues of an alternate inspection process and the 100% inspection process in lieu of the normal plant certification process. Mr. Stec and Ms. Lipke answered questions from the Council on the inspection process. Council member McDonald made a motion to allow Council to waive the compliance control program as set forth in

§70.70(c) of the rules upon the written request as received from Koontz-Wagner. The waiver of the compliance control program shall require that each module or module component be individually inspected at each and every stage prior to being concealed during the manufacturing process and that third party inspections be performed at installation to ensure compliance and that no components will be concealed. Council member, Randy Childers, seconded the motion. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item H., Discussion and possible action regarding proposed revisions to 16 TAC§ §70.60 and 70.70(c) allowing the department to approve 100% inspection of a house or building under certain conditions. Donna Lipke, Engineering Specialist, presented the proposed rules changes and various options of the proposed rules which would allow the Executive Director to approve 100% inspection of a building in lieu of certification and a compliance control manual in accordance with 16 TAC §§70.60 and 70.70(c) of the rules governing industrialized housing and buildings. The purpose of this rule would be to approve projects more timely and without the call of a Council meeting. Council discussed this matter and decided to refer this matter to a work group consisting of Doug Robinson, Roland Brown and Scott McDonald for discussion at a future meeting.

Presiding Officer, Rolando Rubiano, moved to agenda item I., Discussion and possible action regarding approval of third party inspectors, third party inspection agencies, and design review agencies. Donna Lipke presented seven proposed inspectors for final approval as third party inspectors. Council member, Randy Childers, seconded by Larry Wilkinson, made a motion to approve the third party inspectors as presented. The motion passed by unanimous vote.

Presiding Officer, Rolando Rubiano, moved to agenda item J., Explanation of enforcement process. Christina Kaiser, Division Director, and Charlotte Melder, Senior Prosecutor, provided an overview of the Enforcement Department and the process for handling complaints. Ms. Kaiser answered questions from the Council on the time requirements for processing Industrialized Housing cases and the process for investigations and proceeding to a hearing. Ms. Kaiser outlined the complaint categories and noted the highlighted violation types. Staff answered questions regarding the complaint procedures and other matters.

Presiding Officer, Rolando Rubiano, moved to agenda item K., Public Comment. There was no public comment.

Presiding Officer, Rolando Rubiano moved to agenda item L., Recommendations for agenda items for next Council meeting. The Council recommended that the following items be included on the next meeting agenda: Proposed rules under section §§70.60 and 70.70; and overall rule review including rule changes. Council requested that the minutes be provided within 30 – 45 days of this meeting.

Presiding Officer, Rolando Rubiano, moved to agenda item M., Discussion of date, time, and location of next Council meeting. The Council did not set a date for the next meeting. The next meeting may be held in October.

Presiding Officer, Rolando Rubiano, moved to agenda item N., Adjournment. Council member, McDonald, seconded by Randy Childers, made a motion to adjourn the meeting. The meeting was adjourned at 2:38 p.m.

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Rolando Rubiano, Presiding Officer
Texas Industrialized Building Code Council

Texas Industrialized Building Code Council Meeting Document Summary
March 27, 2014

Discussion and possible action to begin the process of adoption of the 2012 editions of the International Codes and the 2014 National Electrical Code (NEC).

Purpose/Explanation

To begin rule proposal and adoption process for newer code editions in accordance with §1202.153 of the Occupations Code (IHB statute).

Overview

§ 1201.153 of the Occupations Code states: "*If a code described by Section 1202.151 is amended after January 1, 1985, the requirements and standards of the amended code shall be used in place of the January 1, 1985, edition if the Council determines that the use of the amended code is: (1) in the public interest; and (2) consistent with the purpose of this chapter.*"

Although the 2015 International Codes are already out, the Department does not advocate skipping adoption of the 2012 International Codes first as the changes from the 2009 International Codes to the 2015 Codes, particularly in regards to the energy code, are significant. The 2009 IECC improved energy efficiency around 12 to 15% relative to the 2006 IECC. The aim of the 2012 International Energy Conservation Code (IECC) was to improve energy efficiency by 30% relative to that obtained from the 2006 IECC, while the aim of the 2015 IECC is to improve energy efficiency by 50% relative to the 2006 IECC.

Council Action Required: Recommend that the Department begin the process for adoption of these later code editions. Also recommend a work group from the Council similar to that used for the last code adoption process to consider and recommend revisions to the 2012 International Codes and 2014 NEC.

The work group for consideration of code amendments for the previous code adoption process consisted of the following people.

- Roland Brown, Chairperson for task force
- Randy Childers, Council Member
- Doug Robinson, Industry Representative (now also a Council Member)
- Kevin Walsh – MBI representative
- Bert Kessler – TMHA representative

Texas Industrialized Building Code Council

March 27, 2015

Discussion and possible action regarding approval of third party inspectors, third party inspection agencies, and design review agencies.

The third party inspectors in the table below have been found to conform to the criteria for approval and were granted interim approval on the dates shown. These inspectors require final approval by the Council.

Third Party Inspection Agency	Reg. #IHI-	Name	Interim Date of Approval	Certifications	Energy Certifications
Pyramid1	182	Jermiah Hunley	9/24/2014	Residential Building Inspector; Residential Mechanical Inspector; Residential Plumbing Inspector; Residential Electrical Inspector	Commercial Energy Inspector
T.R. Arnold & Associates	184	Nicholas Yost	10/16/2014	Residential Combination Inspector; Commercial Building Inspector; Commercial Mechanical Inspector; Commerical Plumbing Inspector; Commerical Electrical Inspector	Residential Energy Inspector & Commercial Energy Inspector
RADCO and HWC	186	Eddie Harris	12/12/2014	Combination Inspector; Building Inspector; Mechanical Inspector; Plumbing Inspector; Electrical Inspector	Residential Energy Inspector & Commercial Energy Inspector
NTA	187	David Hamm	1/20/2015	Residential Building Inspector; Residential Mechanical Inspector; Residential Plumbing Inspector; Residential Electrical Inspector	Residential Energy Inspector
NTA	188	Ronald Batts	2/18/2015	Residential Building Inspector; Residential Mechanical Inspector; Residential Plumbing Inspector; Residential Electrical Inspector	Residential Energy Inspector & Commercial Energy Inspector
TRA	189	Daren Lehman	2/19/2015	Combination Inspector; Building Inspector; Mechanical Inspector; Plumbing Inspector; Electrical Inspector; Combination Commercial Inspector; Commercial Building Inspector; Commercial Mechanical Inspector; Commerical Plumbing Inspector; Commerical Electrical Inspector; Residential Building Inspector; Residential Mechanical Inspector; Residential Plumbing Inspector; Residential Electrical Inspector	Residential Energy Inspector & Commercial Energy Inspector
PFS	190	Adam Holman	2/24/2015	Residential Combination Inspector	Residential Energy Inspector & Commercial Energy Inspector

The agency below has been found to conform to the criteria for approval for Design Review Agencies and Third Party Inspection Agencies and were granted interim approval on the dates shown. These agencies require final approval by the Council.

As a Design Review Agency:	Reg. #IHDRA-23	4/10/2014	Expert Modular Consultants
As a Third Party Inspection Agency:	Reg. #IHIA-16	4/15/2015	Expert Modular Consultants

Texas Industrialized Building Code Council Meeting Document Summary
March 27, 2014

Discussion and possible action regarding proposed procedures to implement the rules approved by the Council to 16 Texas Administrative Code (TAC) §§70.10, 70.60, and 70.70(c) allowing the department to approve 100% inspection of a house or building under certain conditions.

Purpose/Explanation

This document summary provides background information regarding proposed procedures for inspections pursuant to the rules allowing for 100% inspection exceptions in lieu of the certification inspection process for manufacturers.

Overview

The proposed rules were approved by the Council at their meeting of March 7, 2014, but have not yet been adopted. The IHB section did not want the rule amendments to become effective prior to having procedures in place for these inspections.

The proposed procedures are organized as follows.

Section I – Identifies specific references in the IHB law and rules that may be applicable to these inspections.

Section II – Defines 100% inspections.

Section III – Provides the exceptions when 100% inspections may be approved by the Executive Director

Section IV – Identifies application requirements for 100% inspections, going from general to specific for each exception.

Section IV.C. – Identifies specific requirements for housing or buildings required for emergency or disaster relief. The Department would specifically like input for C.2., which requires the applicant to provide documentary evidence that the houses or buildings cannot be supplied by existing inventories. Is this something that an applicant could, or should, be able to provide?

Section V – Identifies the manufacturer's responsibilities prior to scheduling the inspections. If the application is approved, then these are the steps that the manufacturer must take before inspections can begin.

Section VI – Identifies the manufacturer's responsibilities for inspections, including scheduling requirements and requirements that construction cannot be covered before it is inspected and before violations are corrected and re-inspected.

Section VII – Describes requirements for documenting the inspections and providing copies of the reports to the manufacturer and the Department.

Section VIII – Describes requirements for purchasing decals for units constructed under the 100% inspection exceptions.

Council Action Required: Recommend that the Council review and approve the procedures with any changes that the Council may feel are necessary to ensure compliance with the IHB law and rules.

Texas Industrialized Building Code Council Meeting
March 27, 2014

Procedures for 100% Inspections

Hundred percent inspections in lieu of certification as an industrialized housing and building manufacturer may be approved by the Executive Director of TDLR in accordance with § 70.60(c) of the rules governing the Industrialized Housing and Buildings (IHB) program. This document has been developed to provide procedures for these inspections when approved by the Executive Director.

I. References

A. Occupations Code, Chapter 1202, Industrialized Housing and Buildings (IHB) Statute – Specific sections of the IHB statute that are applicable include, but are not limited to, the following.

1. 1202.001, General Definitions
2. 1202.002, Definition of Industrialized Housing
3. 1202.003, Definition of Industrialized Building
4. 1202.151, Building Codes
5. 1202.154, Design Review
6. 1202.201, Inspection Procedures
7. 1202.202, Department Inspections
8. 1202.204, Rules Providing for Decals or Insignia

B. Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 70 (rules) – Specific sections of the rules governing the IHB program that are applicable include, but are not limited to, the following.

1. § 70.10 – Definitions
2. § 70.20 – Registration of Manufacturers, REF Builders, and Industrialized Builders
3. § 70.21 – Registration of Design Review Agencies, Third Party Inspection Agencies and Inspectors, and Third Party Site Inspectors
4. § 70.30 – Exemptions
5. § 70.60 – Responsibilities of the Department – Plant Certification
6. § 70.70 – Responsibilities of the Registrants – Manufacturer's Design Package and REF Builder's Construction Documents
7. § 70.73 – Responsibilities of the Registrants – Building Site Construction and Inspections

II. Definition of 100% inspection – Inspection of each module or modular component at each and every stage of construction, including, but not limited to, framing, mechanical, plumbing, electrical, energy compliance systems, and system testing.

III. 100% Inspections Exception Criteria – 100% inspections may be considered by the Executive Director in lieu of certification only in the following circumstances.

A. **Emergency or Disaster Declaration:** The modular house or building is necessary to aid in an emergency or disaster that has been officially declared by the United States government, the Governor of Texas, or a political subdivision of either.

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B. **Travel Warnings:** If a manufacturer requests a certification for a manufacturing facility located in an area for which the US State Department has established travel warnings or TDLR's Executive Director determines that travel to an area might risk the safety or well-being of TDLR inspectors.

C. **One-Time Project:** If the house or building is a one-time project and the manufacturer certifies to the Department that it will not construct additional housing or buildings for placement in Texas without going through the certification process in accordance with § 70.60 of the IHB rules.

D. **Other Extenuating Circumstances:** The manufacturer can request approval for other extenuating circumstances that prevent strict compliance with the manufacturing certification process established under § 70.60 of the IHB rules.

IV. Application for approval.

A. Applications can only be considered when those unique circumstances exist that meet the exception criteria. The application must be submitted for consideration by the Executive Director prior to shipping or installing the modular housing or buildings.

B. The manufacturer may request consideration for a 100% inspection in lieu of plant certification in accordance with § 70.60 of the IHB rules by completing the Department approved application. The following information is required for all exceptions.

1. Name of manufacturer and physical address of the facility where the units will be constructed.
2. Manufacturer's contact name and contact information (phone number, email address, or both).
3. Circumstance for requesting the inspection in accordance with part III of these procedures.
4. The building's use and installation address or area where building will be installed.
5. Signature of applicant. For a partnership, the applicant's signature must be a managing partner. For a corporation the applicant's signature must be an officer of the corporation.

C. Additional Requirements for Emergency or Disaster Relief

1. Provide documentation from government entity making the declaration, including any preliminary damage assessments, estimates of the amount and severity of damage, and projected impact on the private and public sector.
2. Provide documentary evidence that the houses or buildings cannot be supplied by existing inventory of certified manufacturers or industrialized builders.
3. Provide dates that houses or buildings are needed to address emergency or disaster.

D. Additional Requirements for Travel Warning – Provide name and registration number of approved third party inspection agency that has agreed to perform the inspection.

E. Additional Requirements for One-Time Project - Certify that this is a one-time project in accordance with § 70.60(c)(1)(D) of the IHB rules.

F. Additional Requirements for Other Extenuating Circumstances

1. Provide detailed information regarding the circumstances to support your application
2. Provide documentation to support your claim of the circumstances.

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V. Manufacturer's Responsibilities Prior to Scheduling the Inspection

A. **Registration**: The plant must register as a manufacturer in accordance with § 70.20 of the IHB rules.

B. **Notification to TDLR of Design Review Agency (DRA)**: The manufacturer shall give TDLR written notice of the name and registration number of the DRA selected to perform plan reviews.

C. **Construction Documents to DRA**: The manufacturer shall submit a copy of the construction documents to the DRA for review and approval in accordance with §§ 70.70(b) and (d) of the IHB rules. The construction documentation shall clearly identify the construction to be completed at the plant separately from that to be completed at the installation site.

D. **Approved Documents to TDLR**: The manufacturer's DRA shall submit all approved plans, calculations, specifications, and other pertinent construction documents to the Department within 5 days of approval.

VI. Manufacturer's Responsibilities for Inspections

A. The manufacturer shall schedule inspections with the Department and/or approved Third Party Inspectors designated by the Department to perform the inspections.

B. Inspections cannot be scheduled prior to receipt of the approved construction documents by the Department

C. Inspectors shall be provided a legible copy of the approved construction documents a minimum of 2 weeks prior to the first inspection. The documents may be provided electronically.

D. The manufacturer shall submit copies of pertinent construction documentation to the Department, such as steel mill reports, welder certifications, listing reports, and other applicable documents, prior to the start of the inspection.

E. The manufacturer shall ensure that all construction is inspected by the inspectors designated by the Department before it is covered by other construction. Deviations noted by the inspectors shall be corrected and re-inspected before the construction is covered.

F. The manufacturer shall not ship the units until:

1. All construction has been completed;
2. All violations have been corrected and all inspections have been passed; and
3. Decals have been attached to the units.

VII. Documentation of Inspections

A. Inspections shall be documented on forms approved by the Department.

B. A copy of the inspection report shall be given to the manufacturer at the completion of each inspection.

C. Inspection reports shall be submitted to the Department within 5 days of each inspection.

D. The final inspection report shall also document attachment of the certification decals to the units.

VIII. Certification Decals: Decals shall be purchased for the units in accordance with § 70.77 of the IHB rules with the following exceptions:

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A. Decals will be released only after the manufacturer has provided the industrialized builder registration number or installation permit number of the person responsible for the installation.

B. Decals will be released only after inspection fees have been paid.

C. Decals will be released only to the inspector for attachment to the units upon completion of a successful final inspection.

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Texas Industrialized Building Code Council Meeting
March 27, 2015
Rules for 100% Inspections Approved by Council at Meeting of March 7, 2014

70.10. Definitions.

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

(1) 100% inspection—Inspection of each module or modular component at each and every stage of construction including, but not limited to, framing, mechanical, plumbing, electrical, energy compliance systems, and system testing.

70.70 Responsibilities of the Registrants—Manufacturer's Design Package and REF Builder's Construction Documents

(a) No change

(b) No change

(c) Compliance control program for manufacturers. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual that must be approved by the design review agency. **A 100% inspection of the construction of industrialized housing or buildings may be authorized in lieu of a compliance control program and certification of the manufacturer in accordance with §70.60.** [~~The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process.~~] The manufacturer shall provide the design review agency a compliance control manual that must, at the minimum, contain the following:

70.60. Responsibilities of the Department--Plant Certification.

(a) Each separate manufacturing facility will go through a certification inspection before decals or insignia will be released to the manufacturer.

(b) A change in address of a certified manufacturer will require review and possible recertification or partial certification inspection of the plant at the new location.

(c) The executive director may authorize 100% inspection of industrialized housing or buildings constructed by an uncertified manufacturer in lieu of certification and a compliance control program as required by §70.70(c) in accordance with the following.

(1) The 100% inspection may be approved only in the following circumstances:

(A) the house or building is required to aid in a disaster that has been officially declared by the United States government, a state government, or a political subdivision of either;

(B) the US State Department has issued travel warnings for travel outside of the United States relating to or affecting the location of the plant to be certified;

(C) the industrialized house or building is a one-time project and the manufacturer certifies to the department that it will not construct additional industrialized housing or buildings for placement in this state without going through the certification inspection process; and

(D) other extenuating circumstances if approved by the executive director. If the executive director does not approve a request under this subsection, the manufacturer may ask the council to approve the 100% inspection.

(2) The manufacturer must still register as a manufacturer in accordance with §70.20.

(3) Plan review and approval will still be required in accordance with §70.70.

(4) The manufacturer will purchase decals for the unit or units in accordance with §70.77 with the following exceptions:

(A) the decals will not be released until the manufacturer has provided the industrialized builder registration number or installation permit number of the person who purchased the unit and who will be responsible for the on-site construction;

(B) the decal will not be released until all inspection fees have been paid; and

(C) the decals will be released only to the inspector for attachment to the units upon completion of a successful final inspection.

(5) The 100% inspection will be conducted by inspectors designated by the department and may include department personnel or approved third party inspectors. Inspections will be completed in accordance with procedures approved by the council.

(6) Inspections performed by third party inspectors shall be audited by department staff.

Renumber remaining sections of 70.60.

DOG OR CAT BREEDERS
Occupations Code
Title 4. Professions Related to Animals
Chapter 802

Sec. 802.065. Advisory Committee.

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards adopted under Subchapter E.

(b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed breeders;

(2) two members who are veterinarians;

(3) two members who represent animal welfare organizations each of which has an office based in this state;

(4) two members who represent the public; and

(5) one member who is an animal control officer as defined in Section 829.001, Health and Safety Code.

(c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.

(d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department.

(f) Except for the members described by Subsection (b)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:

(1) is required to be licensed under this chapter;

(2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;

(3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under Subsection (f).

(h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.

(i) A decision of the advisory committee is effective only on a majority vote of the members present.

(j) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding

DOG OR CAT BREEDERS

Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 91

91.65. Advisory Committee. *(New section adopted effective May 1, 2012, 37 TexReg 3075)*

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards.

(b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed breeders;

(2) two members who are veterinarians;

(3) two members who represent animal welfare organizations each of which has an office based in this state;

(4) two members who represent the public; and

(5) one member who is an animal control officer as defined in §829.001, Health and Safety Code.

(c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.

(d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department.

(f) Except for the members described by subsection (b)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:

(1) is required to be licensed under this chapter;

(2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;

(3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under subsection (f).

(h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.

(i) A decision of the advisory committee is effective only on a majority vote of the members present.

(j) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

LICENSED BREEDERS ADVISORY COMMITTEE MEETING

Meeting of January 11, 2016
1106 Clayton Lane - Room 125 E - Austin, Texas

Summary of Minutes

Presiding Officer Steve Epperson called the meeting to order at 9:00a.m.

Presiding Officer Steve Epperson moved to agenda item B. Roll Call, Certification of Quorum. Committee members present were Steve Epperson, Dr. Richard Cordes, Babette Ellis, Natalie Lynch, Joseph Levine, Sherry Ferguson, and Kimberly Papke. Committee member Paul O'Neill joined the meeting at 9:10 am. Committee member Melanie Mercer was absent. A quorum was present.

Presiding Officer Steve Epperson moved to agenda item C. Approval of the minutes – Meeting of July 30, 2013. Committee member Dr. Richard Cordes made a motion to approve the minutes. Committee member Natalie Lynch seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer Steve Epperson moved to agenda item D. Training for Board Members. Assistant General Counsel, Charles Johnson, led the board members through a review and summary of the Open Meetings Act, Administrative Procedures Act, and the Public Information Act as it relates to the board members' functions and duties.

Presiding Officer Steve Epperson moved to agenda item E. Public Comment Video.

Presiding Officer Steve Epperson moved to agenda item F. Public Comment. The Committee heard public comment from Daniel Beard.

Presiding Officer Steve Epperson moved to agenda item G.1. Staff Reports – Executive Office. Bill Kuntz, Executive Director, informed the board of legislative changes including the transfer of programs from the Department of State Health Services, and the transfer of Driver Training programs from DPS and TEA. Mr. Kuntz reported that the Department has increased its advisory board support to include an attorney and an additional Administrative Assistant; and moved school inspectors to the Education and Examination Division to allow Field Operations to focus on facility inspections.

Presiding Officer Steve Epperson moved to agenda item G.2. Staff Reports – Compliance Division. Russ Taulli, Program Specialist, reported that the Department did not receive any legislative changes for this program, and the division has served as a resource for the industry. Mr. Taulli also reported that the annual reporting forms had been sent out to the industry. Mr. Taulli answered questions from the Board regarding contact information.

Presiding Officer Steve Epperson moved to agenda item G.3. Staff Reports – Enforcement Division. Karen Cox, Prosecutor, reported on division outreach efforts including monthly meetings with law enforcement. Also reported on the enforcement process from intake to investigation to prosecution to SOAH. Ms. Cox explained the difference in final orders and agreed orders. Ms. Cox answered questions from the Board regarding unlicensed activity, USDA complaints, the collection of debts, the collection process and the retaliation complaint against a breeder by a breeder. Ms. Cox provided the case highlights and answered questions from the Board on chronic unlicensed activities.

Presiding Officer Steve Epperson moved to agenda item G.4. Staff Reports – Field Operations Division. Tanya Gauthreaux, Director of Field Operations, reported on the route optimization program, new

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inspectors, the most common violations, and statistics.

Presiding Officer Steve Epperson moved to agenda item G.5. Staff Reports – Licensing Division. Tarsha Redd, Program Specialist, provided the statistics and answered questions from the Board regarding requirements for posting a license.

Presiding Officer Steve Epperson moved to agenda item H. Recommendations for agenda items for next meeting. The Committee requested that the following be placed on the next agenda: Investigator safety, annual meetings, lessons learned from cases, education campaigns for the public (advertising), training and tenure of inspectors, timing of inspections, and USDA inspections.

Presiding Officer Steve Epperson moved to agenda item I. Discussion of date, time, and location of next Committee meeting. The Committee agreed to hold the next meeting March 2016.

Presiding Officer Steve Epperson moved to agenda item J. Adjournment. Presiding Officer Steve Epperson adjourned the meeting at 11:19 a.m.

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Steve Epperson, Presiding Officer
Licensed Breeders Advisory Committee

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LICENSED BREEDERS ADVISORY COMMITTEE MEETING

Meeting of July 30, 2013
1106 Clayton Lane - Room 125 E - Austin, Texas

Summary of Minutes

Presiding Officer Gayle Latham called the meeting to order at 9:34 a.m.

Presiding Officer Gayle Latham moved to agenda item B. Roll Call, Certification of Quorum. Committee members present were Gayle Latham, Richard Cordes, Babette Ellis, Steve Epperson, Melanie Mercer, and Stephanie Palmer. Committee members Maggie Dahl, Sherry Ferguson, and Paul O'Neill were absent. A quorum was present.

Presiding Officer Gayle Latham moved to agenda item C. Approval of the minutes – Meeting of August 21, 2012. Committee member Dr. Richard Cordes made a motion to approve the minutes. Committee member Steve Epperson seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer Gayle Latham moved to agenda item D. Public Comment. The Committee heard public comment from Daniel Beard and Skip Trimble.

Presiding Officer Gayle Latham moved to agenda item E.1. Staff Reports – Briefing from agency staff and discussion – Executive Office. Bill Kuntz, Executive Director, introduced Commission Vice-chair, Luann Morgan and gave an update on the 83rd Legislative Session and bill implementation.

Presiding Officer Gayle Latham moved to agenda item E.2. Staff Reports – Briefing from agency staff and discussion – Compliance Division. Russ Taulli, Program Specialist, updated the Committee on pre-license inspections and outreach efforts. There was discussion about what type of material is given out during outreach effort presentations.

Presiding Officer Gayle Latham moved to agenda item E.3. Staff Reports – Briefing from agency staff and discussion – Enforcement Division. Sharesa Alexander, Prosecutor, gave an update on investigations of open cases which mostly consist of unlicensed activity, case statistics and outreach efforts. There was discussions about the case statistics and outcome.

Presiding Officer Gayle Latham moved to agenda item E.4. Staff Reports – Briefing from agency staff and discussion – Licensing Division. Tarsha Redd, Program Specialist, highlighted the applications statistics. There was discussion about the licensing statistics, inspections, inspector training, and the new Field Operations Division.

Presiding Officer Gayle Latham moved to agenda item F. Discussion and possible action on the proposed Licensed Breeders Penalty Matrix and agenda item G. Reports and discussion of Committee Work Group Meetings – 1. Compliance Work Group. Christina Kaiser, Director of Enforcement, gave an overview on how the Licensed Breeders program came about and how we came to this point of the penalty matrix. Ms. Kaiser also explained why we have the penalty matrix, how the penalty matrix was created, the structure of the matrix, and the order process and types of orders. There was Committee discussion about the draft penalty matrix.

Presiding Officer Gayle Latham recessed for a break at 10:23 a.m. The Committee reconvened at 10:35 a.m.

Presiding Officer Gayle Latham returned to agenda item F. Discussion and possible action on the proposed Licensed Breeders Penalty Matrix and agenda item G. Reports and discussion of Committee Work Group Meetings – 1. Compliance Work Group. Christina Kaiser, Director of Enforcement, highlighted the different sections and violations in matrix. There was Committee discussion regarding the placement of violations in the various classes and possibly moving them. Committee member Babette Ellis gave an overview of the debates of the Compliance Work Group and staff and thorough discussions during the Work Group meeting. Ms. Kaiser also highlighted the penalty amounts with the Committee and informed them that there were two

classes that had multiple amounts for them to choose from because the Work Group was not able to agree on amounts. There was Committee discussion regarding the penalty amounts.

Presiding Officer Gayle Latham returned to agenda item D. Public Comment. The Committee heard public comment from Cile Holloway and Skip Trimble.

Presiding Officer Gayle Latham returned to agenda item F. Discussion and possible action on the proposed Licensed Breeders Penalty Matrix and agenda item G. Reports and discussion of Committee Work Group Meetings – 1. Compliance Work Group. Committee member Babette Ellis requested that the Committee discuss the two classes that the Work Group was unable to agree on penalty amounts. There was Committee discussion regarding the Class D recommended penalty amounts.

Presiding Officer Gayle Latham recessed for a break at 12:04 p.m. The Committee reconvened at 12:16 p.m.

Presiding Officer Gayle Latham returned to agenda item F. Discussion and possible action on the proposed Licensed Breeders Penalty Matrix and agenda item G. Reports and discussion of Committee Work Group Meetings – 1. Compliance Work Group. The Committee continued to discuss the Class D penalty amounts. Committee member Dr. Richard Cordes made a motion to have the Class D, 2nd Violation penalty amounts from $1,750 to $2,250 and the 3rd Violation penalty amounts from $2,750 to $3,250 for Commission adoption. Committee member Melanie Mercer seconded the motion. The motion passed with Committee member Steve Epperson voting against the motion. Christina Kaiser, Director of Enforcement reported on the penalty amounts the Work Group could not agree on for the Class E Violations. There was Committee discussion regarding the penalty amounts. Committee member Dr. Richard Cordes made a motion to have the Class E, 1st Violation penalty amount at $2,000, the 2nd Violation penalty amounts from $2,500 to $3,000, and the 3rd Violation penalty amounts from $3,500 to $4,000 for Commission adoption. Committee member Melanie Mercer seconded the motion. The motion passed with Committee member Steve Epperson voting against the motion. Committee member Babette Ellis made a motion to have Class E, 2nd and 3rd Violations read "and/or" for Commission adoption. Committee member Steve Epperson seconded the motion. The motion passed with a unanimous vote in favor. Committee member Dr. Richard Cordes made a motion to keep the Class A violations and penalty amounts as is for Commission adoption. Committee member Babette Ellis seconded the motion. The motion passed with a unanimous vote in favor. Committee member Steve Epperson made a motion to keep the Class B violations and penalty amounts as is for Commission adoption. Committee member Dr. Richard Cordes seconded the motion. The motion passed with a unanimous vote in favor. Committee member Steve Epperson made a motion to keep the Class C violations and penalty amounts as is for Commission adoption with the strike out of "housing facility separated from another facility" and changing "pass" to "passing". Committee member Dr. Richard Cordes seconded the motion. The motion passed with a unanimous vote in favor. Committee member Stephanie Palmer made a motion to move the environmental temperature and elements, not including the transportation elements, from Class D to Class E. The motion died with no second. Committee member Babette Ellis made a motion to keep the Class D violations and penalty amounts as is for Commission adoption. Committee member Steve Epperson seconded the motion. The motion passed with Committee members Dr. Richard Cordes and Stephanie Palmer voting against the motion. Committee member Dr. Richard Cordes made a motion to keep the Class E violations and penalty amounts as is for Commission adoption. Committee member Babette Ellis seconded the motion. The motion passed with Committee member Stephanie Palmer voting against the motion. Committee member Steve Epperson made a motion to keep the Class E violations and penalty amounts as is with the addition of "for attempting to obtain" in bullet two for Commission adoption. Committee member Dr. Richard Cordes seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer Gayle Latham moved to agenda item H. Recommendations for agenda items for next meeting. The Committee requested that inspection statistics for specific areas, a breakdown of inspection results by inspector, a report on input received on how the program is affecting the public purchasing dogs and cats, and education outreach efforts to the public.

Presiding Officer Gayle Latham moved to agenda item I. Discussion of date, time, and location of next Committee meeting. The Committee agreed that dates would be sent to them to determine the next meeting date, time, and location.

Presiding Officer Gayle Latham moved to agenda item J. Adjournment. Presiding Officer Gayle Latham adjourned the meeting at 12:26 p.m.

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Steve Epperson, Presiding Officer
Licensed Breeders Advisory Committee

LICENSED BREEDERS ADVISORY COMMITTEE MEETING

Meeting of August 21, 2012
1106 Clayton Lane - Room 125 E - Austin, Texas

Summary of Minutes

Presiding Officer Gayle Latham called the meeting to order at 10:00 a.m.

Presiding Officer Gayle Latham moved to agenda item B. Roll Call, Certification of Quorum. Committee members present were Gayle Latham, Richard Cordes, Maggie Dahl, Babette Ellis, and Steve Epperson. Committee members Sherry Ferguson, Larry Munchrath, Paul O'Neill, and Lori Teller were absent. A quorum was present.

Presiding Officer Gayle Latham moved to agenda item C. Approval of the minutes – Meeting of March 1, 2012. Committee member Steve Epperson made a motion to approve the minutes. Committee member Babette Ellis seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer Gayle Latham moved to agenda item D. Public Comment. The Board heard public comment from Mary Visser, Daniel Beard, Cile Holloway, Skip Trimble, and Katie Jarl.

Presiding Officer Gayle Latham moved to agenda item E.1. Staff Reports – Briefing from agency staff and discussion – Executive Office. Bill Kuntz, Executive Director, gave an update on the completion of the Strategic Plan. Mr. Kuntz also gave an update on the Legislative Appropriations Request and the Breeders' donation program.

Presiding Officer Gayle Latham moved to agenda item E.2. Staff Reports – Briefing from agency staff and discussion – Compliance Division. Lee Parham, Program Manager, gave an update on the completion of the inspector training, the Breeders' webpage, and outreach efforts. Mr. Parham also reported on the pre-license inspections being conducted.

Presiding Officer Gayle Latham moved to agenda item E.3. Staff Reports – Briefing from agency staff and discussion – Licensing Division. Tarsha Redd, Program Specialist, highlighted the applications statistics.

Presiding Officer Gayle Latham moved to agenda item F. Discussion and possible action on the proposed Licensed Breeders Criminal Conviction Guidelines. Christina Kaiser, Director of Enforcement, gave an overview of the criminal history licensing and license denial process. Ms. Kaiser led the Advisory Committee through the draft criminal conviction guidelines. There was board discussion about the draft criminal conviction guidelines. Committee member Richard Cordes made a motion that the Commission adopt the Licensed Breeders Criminal Conviction Guidelines as published. Committee member Steve Epperson seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer Gayle Latham recessed for a break at 10:58 a.m. The Committee reconvened at 11:10 a.m.

Presiding Officer Gayle Latham moved to agenda item G. Discussion and possible action on the proposed Licensed Breeders Penalty Matrix. Christina Kaiser, Director of Enforcement, gave an overview of the Enforcement complaint process. Ms. Kaiser led the Advisory Committee through the draft penalty matrix. There was committee discussion about the draft penalty matrix. Presiding Officer Gayle Latham referred the penalty matrix to the Compliance workgroup. Presiding Officer Gayle Latham requested to appoint Richard Cordes, Maggie Dahl, Babettte Ellis, and Steve Epperson to the Compliance workgroup. Committee member Steve Epperson made a motion to appoint these committee members to the Compliance workgroup. Committee member Maggie Dahl seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer Gayle Latham moved to agenda item D. Public Comment. The Board heard public comment from Mary Visser and Skip Trimble.

Presiding Officer Gayle Latham moved to agenda item H. Recommendations for agenda items for next

meeting. The Committee decided to place the Compliance workgroup report and penalty matrix on the next agenda.

Presiding Officer Gayle Latham moved to agenda item I. Discussion of date, time, and location of next Committee meeting. The Committee agreed that dates would be sent to them to determine the next meeting date, time, and location.

Presiding Officer Gayle Latham moved to agenda item J. Adjournment. Presiding Officer Gayle Latham adjourned the meeting at 12:07 p.m.

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Gayle Latham, Presiding Officer
Licensed Breeders Advisory Committee

Licensed Breeders
(BRE)

Texas Occupations Code, Chapter 802 **16 Texas Administrative Code, Chapter 91**

Class A:

1st Violation	2nd Violation	3rd Violation
$500	$700 – $900	$1,100 – $1,300

POSTING AND PUBLIC INFORMATION VIOLATIONS	
• Failure to prominently display a copy of the breeders license in the facility in an area easily accessible to the public	802.151(1), 91.72
• Failure to maintain a current copy of the Licensed Breeders law and rules in a manner prescribed by the Department	802.151(2), 91.73
• Failure to include license number in an advertisement	802.151(3)
• Failure to include the license number in a contract for animal transfer or sale	802.151(4)(A), 91.74(a)(1)
• Failure to include the Department's information in a contract for animal transfer or sale	802.151(4)(B), 91.74(a)(2)
• Engaged in false, misleading, or deceptive advertising	91.71(a)
• Failure to include the facility license number in an advertisement in the proper font	91.71(b)
ADMINISTRATIVE VIOLATIONS	
• Failure to notify the Department in the required manner by the 10th day following a change in address, name, management, or controlling person	802.152, 91.75
• Submitted the required accounting to the Department of animals but failed to use the required form or failed to submit the accounting by February 1st	802.153(a), 91.76(a), 91.76(c)(2)
MATERIALS/CONSTRUCTION – FACILITIES	
• Housing facility not physically separated from another business	91.100(2)
PERSONNEL	
• Failure to have enough employees onsite to carry out the required level of husbandry practices and care	91.110(a)
• Failure to have employees who provide for husbandry and care, or handle animals, supervised by the appropriate person	91.110(a)
• Failure to have training documented for employees who handle or care for a dog or cat	91.110(b)
• Employed an individual who did not have the appropriate training	91.110(b)

Class B:

1st Violation	2nd Violation	3rd Violation
$750	$1,000 – $1,250	$1,500 – $1,750 and/or up to 6-month probated suspension

OPERATING WITHOUT PROPER LICENSE	
• Engaged in breeding activities while license was expired	802.106(b), 91.24(b)

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ADMINISTRATIVE VIOLATIONS	
• Failure to assist upon request an inspector in performing an inspection	802.062(c), 91.52(c), 91.78
• Failure to submit to the Department an accounting of all animals held in each facility any time during the preceding calendar year	802.153(a), 91.76(a),91.76(c)(2)
• Failure to make copy of annual inventory form available upon request from the Department or third-party inspector	802.153(b), 91.52(h), 91.53(e), 91.76(b)
• Failure to provide relevant documents or records during an inspection	91.52(h), 91.53(e)
• Failure to make an animal's care record available to an inspector upon request	802.154(b), 91.77(a)(3), 91.106(d)(2)
• Failure to pay the fee for an out-of-cycle inspection	91.53(c)
• Failure to comply with any corrective action required under an inspection report in the time provided by the report	802.107(c)(5), 91.54(a)(2), 91.92(b)(5)
• Failure to provide written verification of corrective actions to the Department when required	91.54(a)(2)
RECORDS	
• Failure to keep a copy at each facility of the annual inventory of animals	802.153(b), 91.76(b), 91.76(c)(1)
• Failure to maintain an animal's care record in the facility at which the animal was last kept for two years from the date of the last entry in the records	91.77(a), 91.77(a)(1), 91.77(b)
• Failure to maintain a separate record of care for each animal containing the required information	91.77(a), 91.77(a)(1)
• Failure to transfer records relating to an animal with the transferred animal	91.77(c)
• Failure to have the annual examination documented by the veterinarian in the medical records of an animal	91.112(a)
• Failure to have the written health care management protocol contain all required health care records, including all authorized exemptions approved by a veterinarian	91.112(c)(2)
• Failure to transfer a copy of the written health care management protocol with a transferred or sold animal, or to retain the original records	91.112(c)(3)
• Failure to have the length of the adequate rest period between breeding cycles for each female documented in the medical records for that animal	91.112(d)
RECORDS--TRANSPORTATION STANDARDS	
• Failure to have required shipping documents accompany the shipment of dogs and cats	91.202(8)
• Failure to have shipping documents held by the primary conveyance operator or attached to the outside of the primary enclosure in the required manner	91.202(8)

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Class C:

1st Violation	2nd Violation	3rd Violation
$1,000	$1,300 – $1,600	$1,900 – $2,200 and/or up to 6-month full suspension

MATERIALS/CONSTRUCTION – FACILITIES	
• Housing facility not structurally sound, kept in good repair, protecting and containing the dogs or cats, or restricting other animals from entering	91.100(1)
• Housing facility not physically separated from another business	91.100(2)
• Housing facility surfaces not constructed in a manner or made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled	91.100(3)(A)
• Housing facility surfaces not free of excessive rust, jagged edges or sharp points	91.100(3)(A)(i), 91.100(3)(A)(ii)
• Failure to maintain surfaces of a facility on a regular basis, or replace surfaces that cannot be readily cleaned and sanitized when required	91.100(3)(B), 91.103(c)
• Failure to have reliable, adequate power or adequate running potable water for a housing facility	91.100(4)
• Housing facility not equipped with disposal facilities and drainage systems in the required manner or location	91.100(6)
• Failure to provide readily accessible washing facilities in a housing facility for animal caretakers	91.100(7)
• All required surfaces of a housing facility not impervious to moisture or replaceable	91.101(d), 91.102(e)(1), 91.103(c)
• Shelter structure in outdoor facility did not contain a roof, four sides and a floor	91.103(b)
• Failure to have at least one shelter structure of the required size and accessible to each animal in an outdoor facility	91.103(b)
• Prohibited items or material used as shelter structures in an outdoor facility	91.103(c)
• Failure to replace flooring in an outdoor facility when required	91.103(c)
MATERIALS/CONSTRUCTION – PRIMARY ENCLOSURES	
• Primary enclosure not designed or constructed of suitable materials or not kept in good repair	91.104(1)(A)
• Primary enclosure had sharp points or edges which could injure a dog or cat, or enclosure failed to protect a dog or cat from injury	91.104(1)(B)(i), 91.104(1)(B)(ii)
• Failure of a primary enclosure to contain a dog or cat securely or failure to keep other animals from entering	91.104(1)(B)(iii), 91.104(1)(B)(iv)
• All surfaces of a primary enclosure in contact with dogs or cats could not be readily cleaned and sanitized or replaced when required	91.104(1)(B)(ix)
• Failure to have primary enclosure floors constructed in the required manner to protect dogs and cats' feet from injury or pass through openings in the floor	91.104(1)(B)(x)
• Failure to have suspended floor in a primary enclosure meet requirements	91.104(1)(B)(xii)
• Resting surface did not meet all size and material requirements	91.104(2)(I)
PRIMARY ENCLOSURES -- TRANSPORTATION STANDARDS	
• Failure to contain a dog or cat in acceptable primary enclosure for transport or delivery for transport in commerce	91.202(1)

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• Primary enclosure not strong enough to contain dogs and cats as required	91.202(1)(A)
• Primary enclosure had sharp points, edges, or protrusions which could injure the animal contained in it	91.202(1)(B)
• Primary enclosure did not securely contain dog or cat at all times within the enclosure, or prevent any part of the body from being put outside the enclosure	91.202(1)(C)
• Primary enclosure did not allow a dog or cat to be easily or quickly removed from the enclosure in an emergency	91.202(1)(D)
• Primary enclosure did not provide adequate devices on its exterior when not permanently affixed to conveyance to enable the enclosure to be lifted without tilting, or prevent anyone handling the enclosure from coming into contact with the contained animal	91.202(1)(E)
• Primary enclosure was not clearly marked with the words "Live Animals" in the required places, lettering, and markings when not permanently affixed to conveyance	91.202(1)(F)
• Primary enclosure used a substance in or on the enclosure that was toxic to the animal or harmful to its health or well-being	91.202(1)(G)
• Primary enclosure did not have a solid, leak-proof bottom or a removable leak-proof collection tray under a slatted or mesh-floor	91.202(1)(I)
• Primary enclosure removable floor not designed and constructed so that an animal could not put any part of its body between the slats or through the holes	91.202(1)(I)
CLEANING/SANITATION	
• Housing facilities or food and bedding storage not free of prohibited materials, kept neat, or free of clutter	91.100(2)
• Failure to spot-clean daily and sanitize hard and other surfaces, rake and spot clean designated flooring-types, or replace contaminated material	91.100(3)(C)
• Failure to store food and bedding supplies in the required manner	91.100(5)
• Stored required substance that is toxic to dogs or cats in food storage or preparation area	91.100(5)
• Failure to provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals in the required manner	91.100(6)
• Failure to drain or mop standing water in an animal enclosure	91.100(6)
• Trash containers not leak-proof or did not have tightly fitted lids at all times	91.100(6)
• Kept dead animals, animal parts or animal waste in prohibited areas	91.100(6)
• Failure to provide a receptacle containing sufficient clean litter in all primary enclosures	91.104(2)(H)
• Failure to remove excreta and food waste daily from primary enclosures	91.109(a)
• Failure to remove excreta and food waste from under primary enclosures as often as required	91.109(a)
• Failure to remove standing water from primary enclosures	91.109(a)
• Failure to clean pans under primary enclosures and raised runs with wire, mesh, or slatted floors	91.109(a)
• Used a primary enclosure for another dog, cat, or social grouping without cleaning and sanitizing as required	91.109(b)(1)
• Failure to clean and sanitize a primary enclosure as required at least once every two weeks or more often when necessary	91.109(b)(2)

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• Failure to sanitize a primary enclosure with live steam under pressure, hot water and soap or detergent, or an appropriate detergent and disinfect solution	91.109(b)(3)
• Failure to remove contaminated material as required from pens, runs, and outdoor housing areas that cannot be sanitized	91.109(b)(4)
• Failure to keep housing facilities and surrounding grounds clean and in good repair	91.109(c)
• Failure to keep housing facilities and surrounding grounds free of accumulations of trash, junk, waste products, and discarded matter	91.109(c)
• Failure to control weeds, grasses, and bushes of housing facilities and surrounding grounds	91.109(c)
• Failure to establish and maintain an effective program for the control of insects, external parasites, and birds and mammals that are pests	91.109(d)
CLEANING/SANITATION--TRANSPORTATION STANDARDS	
• Primary enclosure did not contain enough previously unused litter to absorb and cover excreta, or litter was not suitably absorbent, or safe and nontoxic to dogs and cats	91.202(1)(I)
• Failure to clean and sanitize primary enclosure before each use in the required method	91.202(2)
• Failure to clean primary enclosure and replace litter , or move dog or cat to another enclosure, when the animal was in transit more than 24 hours	91.202(2)

Class D:

1st Violation	2nd Violation (Epperson)	3rd Violation
$1,250	$1,750 – $2,250 ($1,550 –$ 1,850) and/or up to 1-year full suspension	$2,750 – $3,250 ($2,150 – $2,450) and/or up to 1-year full suspension

ENVIRONMENT / TEMPERATURE / ELEMENTS	
• Failure to sufficiently heat and cool an indoor or sheltered housing facility as necessary, or allowed ambient temperature to go above or below listed temperatures for more than two consecutive hours	91.101(a), 91.102(a)
• Failure to provide dry bedding, solid resting boards, or other method of conserving body heat when required in an indoor or sheltered facility	91.101(a), 91.102(a)
• Failure to maintain relative humidity at the required level as documented in the medical records for each animal	91.101(b)
• Failure to sufficiently ventilate an indoor housing facility or sheltered part of sheltered housing facility when dogs or cats are present	91.101(b), 91.102(b)
• Failure to adequately light an indoor or sheltered housing facility as required	91.101(c), 91.102(c)
• Failure to place primary enclosure so as to protect dogs or cats from excessive light	91.101(c), 91.102(c)
• Failure to provide dogs or cats with adequate shelter from the elements at all times	91.102(d)
• Failure to provide at least one outdoor area of shade large enough to contain all animals at once	91.103(b)
• Failure to provide dogs or cats in an outdoor facility with adequate protection and shelter from cold and heat	91.103(b)(1)
• Failure to provide dogs or cats in an outdoor facility with protection from direct rays of the sun and direct effect of wind, rain, or snow	91.103(b)(2)

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• Failure of an outdoor facility to contain a wind break and rain break at the entrance	91.103(b)(3)
• Failure to contain the proper amount of clean, dry, bedding material in an outdoor facility when ambient temperature dropped below listed temperatures	91.103(b)(4)
• Primary enclosure did not enable the dog or cat to remain clean and dry, or did not provide shelter and protection for extreme temperatures and weather	91.104(1)(B)(v), 91.104(1)(B)(vi)
• Primary enclosure failed to provide sufficient shade to shelter all dogs or cats housed in the primary enclosure at one time	91.104(1)(B)(vii)
ENVIRONMENT / TEMPERATURE / ELEMENTS – TRANSPORTATION STANDARDS	
• Failure to sufficiently heat and cool a mobile or traveling housing facility as necessary, or allowed ambient temperature to go above or below listed temperatures for more than two consecutive hours	91.201(a)
• Failure to provide dry bedding, solid resting boards, or other method of conserving body heat when required	91.201(a)
• Failure to sufficiently ventilate a mobile or traveling housing facility at all times when dogs or cats are present	91.201(b)
• Failure to adequately light a mobile or traveling housing facility as required	91.201(c)
• Primary enclosure did not provide proper ventilation	91.202(1)(H)
• Non-permanently affixed primary enclosure did not have ventilation openings or openings did not meet location and size requirements	91.202(3)(A)
• Non-permanently affixed primary enclosure did not have projecting rims or similar devices of the required size to prevent obstruction of ventilation openings	91.202(3)(B)
• Permanently affixed primary enclosure did not have a front ventilation opening or opening did not meet size and construction requirements	91.202(3)(C)
• Permanently affixed primary enclosure not affixed in such a way that the front ventilation opening opened directly to an unobstructed aisle or passageway and the opening could not be blocked	91.202(3)(C)
• Positioned a primary enclosure in a primary conveyance where it was not provided protection from the elements	91.202(5)(B)
PLACEMENT/GROUPING	
• Kept a prohibited category of dog or cat in an outdoor facility	91.103(a)(1)
• Kept dog or cat in an outdoor facility when its acclimation status was unknown	91.103(a)(2)
• Placed a primary enclosure without an impervious barrier on top of another primary enclosure	91.104(1)(A)
• Failure to meet primary enclosure compatibility requirements, specifically:	91.104(2)(G), 91.105
• Housed non-compatible cats/dogs, or more than 12 non-conditioned adults, in the same enclosure	91.104(2)(G), 91.104(3)(B), 91.105
• Housed females in heat with sexually mature males when not breeding	91.104(2)(G), 91.104(3)(B), 91.105(1)
• Housed females with litters, or kittens/puppies under six months, with other adults	91.104(2)(G), 91.104(3)(B), 91.105(3)

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• Failure to house cats/dogs with a vicious or aggressive disposition separately	91.104(2)(G), 91.104(3)(B), 91.105(2)
• Used permanent tethering as a primary enclosure	91.104(3)(C)
• Stacked primary enclosures above three vertical levels	91.104(3)(D)
• Housed dogs or cats in same primary enclosure with another species of animal that is incompatible	91.105(4)
• Failure to isolate a dog or cat that had or was suspected of having a contagious disease, as directed by a veterinarian	91.105(5)
• Kept a dog or dogs in a group when a veterinarian determined it would affect health or well-being, or any dog exhibited aggressive or vicious behavior	91.106(b)(1), 91.106(b)(2)
• Failure to remove dogs and cats from a primary enclosure during steam or water cleaning when required	91.109(a)
• Failure to protect animals in other primary enclosures from being contaminated with water and other wastes during cleaning	91.109(a)
PLACEMENT/GROUPING– TRANSPORTATION STANDARDS	
• Failure to safeguard a dog or cat from injury or prevent escape when cleaning or changing primary enclosures	91.202(2)
• Transported dogs or cats of different species or an incompatible group in the same primary enclosure	91.202(4)(A)
• Transported puppies or kittens six months of age or less in the same primary enclosure with adult dogs or cats not their dams	91.202(4)(B)
• Failure to individually transport a dog or cat that was overly aggressive or exhibited a vicious disposition	91.202(4)(C)
• Transported a female dog or cat in heat in the same primary enclosure with an adult male dog or cat	91.202(4)(D)
• Transported more than one dog or cat by air in the same primary carrier when not allowed	91.202(6)(A)
• Transported more than one puppy by air in the same primary enclosure when not allowed	91.202(6)(B)
• Transported more than two puppies or kittens by air in the same primary enclosure when not allowed	91.202(6)(C)
• Transported unweaned puppies or kittens less than eight weeks old to a research facility without their dam	91.202(6)(D), 91.202(7)(B)
• Transported more than four dogs or cats by surface vehicle or privately owned aircraft in the same primary carrier when not allowed	91.202(7)(A)

Class E:

1st Violation	2nd Violation	3rd Violation
$2,000 ($1,500)	$2,500 – $3,000 ($2,000–$2,500) and/or up to 1-year full suspension	$3,500 – $4,000 ($3,000–$3,500) plus (and/or) up to 1-year full suspension

EXERCISE	
• Failure to develop, document, or follow a plan with written standard procedures to provide dogs with the opportunity for daily exercise	91.106(a)
• Failure to have a daily exercise plan approved and documented in each dog's medical records by a veterinarian	91.106(a)

• Failure to give dogs in a group additional opportunity for daily exercise when the dogs' ages or the group's space did not meet minimum requirements	91.106(b)
• Failure to give a dog 12 weeks of age or older the required frequency, method, and duration of the opportunity for exercise	91.106(c)(1)
• Failure to provide a dog with the minimum required positive physical contact with humans	91.106(c)(2)
• Used a forced exercise method or device to meet exercise requirement	91.106(c)(4)
• Exempted dog from meeting exercise requirement without documentation from veterinarian at least every 30 days	91.106(d)(1)
HEALTH CARE	
• Failure to provide basic grooming to each animal as required	91.111
• Failure to have each animal used for breeding examined by a veterinarian at least once every 12-month period	91.112(a)
• Failure to develop for each animal and maintain at each facility a written health care management protocol approved by a veterinarian	91.112(c)
• Failure to ensure the written health care management protocol was followed and routine and preventative healthcare was provided to each animal	91.112(c)(1)
• Failure to ensure the written health care management protocol was followed and each animal received appropriate care and treatment for any injury, disease, or illness that may have affected the animal's health or well-being	91.112(c)(1)
• Failure to provide breeding females with adequate rest between breeding cycles	91.112(d)
• Sold, traded, or gave away an animal less than eight weeks of age	91.113
SPACE	
• Failure to provide sufficient space in a primary enclosure for a dog or cat to turn about freely, to stand, sit, lie, and to walk in a normal manner	91.104(1)(B)(xi)
• Failure to provide a cat in a primary enclosure with minimum required floor space	91.104(2)(A), (C), (D) & (F)
• Failure of a primary enclosure for a cat to be at least 24 inches high	91.104(2)(B)
• Failure to meet floor space requirements for a queen with nursing kittens	91.104(2)(E), 91.104(2)(F)
• Failure to provide a dog in a primary enclosure with minimum required floor space	91.104(3)(A)(i)
• Failure to meet floor space requirements for a bitch with nursing puppies	91.104(3)(A)(ii)
• Interior height of a primary enclosure for dogs did not meet minimum requirements	91.104(3)(A)(iii)
SPACE– TRANSPORTATION STANDARDS	
• Primary enclosure was not large enough to ensure the animal contained could move, stand, sit, and lie as required	91.202(5)(A)
FOOD/WATER	
• Failure to provide all dogs or cats with easy and convenient access to clean food and water	91.104(1)(B)(viii)
• Failure to feed dogs and cats at least once each day or as otherwise required	91.107(a)
• Fed a dog or cat contaminated, unwholesome, or unpalatable food, or of insufficient quantity and nutritive value to maintain the normal condition and weight of the animal	91.107(a)

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• Dog or cat's diet was inappropriate for its age or condition	91.107(a)
• Failure to use food receptacles or receptacles were not readily accessible	91.107(b)
• Failure to locate food receptacles so as to minimize contamination or to protect them from rain, sleet, or snow	91.107(b)
• Used non –disposable food receptacles that were not made of required material	91.107(b)
• Used self-feeders for wet food	91.107(b)
• Failure to ensure feed had no molding, deterioration, or caking	91.107(b)
• Failure to offer potable water to dogs and cats at least twice daily for at least one hour each time	91.108
FOOD/WATER – CLEANING/SANITATION	
• Failure to keep food receptacles or self-feeders clean and sanitize them as required	91.107(b)
• Failure to discard disposable food receptacles after one use	91.107(b)
• Failure to keep water receptacles clean and sanitized	91.108
• Failure to clean and sanitize water receptacles before being used by a different dog, cat, or social grouping	91.108
• Used a food or water receptacle for another dog, cat, or social grouping without cleaning and sanitizing as required	91.109(b)(1)
• Failure to clean and sanitize a food or water receptacle as required at least once every two weeks or more often when necessary	91.109(b)(2)
• Failure to sanitize a food or water receptacle with live steam under pressure, hot water and soap or detergent, or an appropriate detergent and disinfect solution	91.109(b)(3)

FOOD/WATER – TRANSPORTATION STANDARDS	
• Failure to offer a dog or cat at least 16 weeks of age food once every 24 hours	91.200(a)
• Failure to offer a dog or cat less than 16 weeks of age food once every 12 hours	91.200(a)
• Failure to offer a dog or cat potable water once every 12 hours	91.200(a)
• Failure to offer a dog or cat potable water within four hours of being transported in commerce	91.200(a)
• Failure to securely attach to the outside of the primary enclosure of an animal transported in commerce the written instructions for in-transit food and water requirements when required	91.200(b)
• Failure to attach the in-transit food and water requirements in the required manner	91.200(b)
• Failure to attach to inside of a primary enclosure food and water receptacles in the required manner	91.200(c)
• Failure to have instructions for food, water, administration of drugs or medication, and other special care attached to the outside of the primary enclosure in the required manner	91.202(8)

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Class F:

1st Violation	2nd Violation	3rd Violation
$3,000 to $5,000 and/or revocation	$5,000 and/or revocation	$5,000 and/or revocation

UNLICENSED ACTIVITY	
• Acted, offered to act, or represented to be a dog or cat breeder without holding a license	802.101(a)
• Failure to have a breeder license for each facility owned or operated	802.101(a), 91.22(a)
VETERINARY PROCEDURE VIOLATIONS	
• Euthanized an animal or performed a surgical birth when not a veterinarian	91.112(b)
• Allowed someone who was not a veterinarian to euthanize an animal or perform a surgical birth	91.112(b)
FRAUD AND NONCOMPLIANCE VIOLATONS	
• Failure to comply with previous order of Commission/Executive Director	51.353(a), 91.90
• Obtained a license by fraud or false representation	802.107(c)(3), 60.23(a)(1), 91.92(b)(3)
• Submitted falsified required documents as part of the initial or renewal application packet	802.107(c)(3), 60.23(a)(2), 91.92(b)(3)
• Failure to pay the Department for a dishonored check	60.82

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Combative Sports Administrative Rules
Texas Administrative Code, Chapter 61
Effective 2/1/2006

§61.120. Combative Sports Advisory Board.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission. The nine members include:

(1) four physicians;

(2) one representative of a boxing promoter;

(3) one representative of a mixed martial arts promoter;

(4) one combative sports referee or judge licensed at least three years;

(5) one former combative sports contestant; and

(6) one public member.

(b) If a license is required to hold any of the member positions in (a), the license must be issued by the State of Texas and be in and remain in good standing for the balance of the term.

(c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the presiding officer of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The presiding officer of the commission, with approval of the commission, appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. Board members may be, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets at the call of the presiding officer of the commission or executive director.

(g) The advisory board provides advice and recommendations to the department on health and safety of contestants and other matters relevant to the administration and enforcement of this chapter.

(h) The presiding officer of the advisory board shall appoint not less than two standing board workgroups to study and work with department staff on matters related to medical protocols and other matters that promote the health and safety of contestants.

COMBATIVE SPORTS ADVISORY BOARD MEETING

Meeting of November 6, 2015
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Acting Presiding Officer Wayne Lee called the meeting to order at 10:0 a.m.

Acting Presiding Officer Wayne Lee moved to roll call and Certification of Quorum. Committee Members present were Dr. Wayne Lee, Dr. Manuel Gonzalez, Dr. Ivan Melendez, and Edwin Reyes. Committee members absent were Dianne Casey, Blane Sibille, and Dr. Kelley Frasier. A roll call verified that a quorum was present.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item C, Training for Board Members - Open Meetings Act, Public Information Act, Administrative Procedures Act. Charles Johnson, Assistant General Counsel, presented the Administrative Procedures Act, Public Information Act and the Open Meetings Act, and answered questions from the board.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item D, Approval of minutes - Meeting of March 7, 2014. No action was taken.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item E, TDLR Video Presentation on Public Comment Process. The video was not presented. Deputy Executive Director, Brian Francis, informed the Board that the video is on our website for viewing at www.tdlr.texas.gov.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item F, Public Comment. There were no public comments.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item G, Staff Reports. Deputy Executive Director, Brian Francis presented the Executive Office Staff Report, Legislative Update, Discussion of Bill Implementation Timeline and process for public comments and rule recommendation to the Commission of Licensing and Regulation, Agency re-organization, and recent developments. Greg Alvarez, Combative Sports Manager, presented the Compliance Division staff report including update on event statistics and activities, Legislative implementation updates, and increase in events, to be documented in the records at request of Dr. Lee and identified by regions as recommended by Dr. Melendez. Greg answered questions from the Board. Ronald Foster, Senior Prosecutor for Enforcement Division, presented the Enforcement Division staff report which included enforcement statistics, cases, orders, penalties and trends; presented highlights of selected cases; and answered questions from the Board. Chloe Adkins, Program Supervisor, presented the Licensing Division report.

Acting Presiding Officer Wayne Lee moved to agenda item H, Discussion and possible recommendation regarding proposal to repeal rules at 16 Texas Administrative Code, Chapter 61 §61.120, and propose new rules at 16 Administrative Code, 61.120 implementing House Bill

3315, 84th Legislature, Regular Session (2015) regarding the name change from the Medical Advisory Committee to the Combative Sports Advisory Board. Charles Johnson, Assistant General Counsel, presented the proposed rule changes and answered questions from the Board on what is expected from the board in reference to technical and medical issues and regarding changing the quorum of the board members to 11.

Dr. Manuel Gonzalez, seconded by Dr. Ivan Melendez, moved to change the total number of board members to 9 to include 4 physicians, 1 former licensed combatant, 2 promotors of which 1 is from MMA and 1 from Boxing, 1 public member at large and 1 combined position for judge and referee. Motion passes unanimously.

Dr. Ivan Melendez, seconded by Dr. Manuel Gonzales to provide advice and recommendation to the Department on health and safety matters relating to the contestants and events and other technical issues relevant to the administration and enforcement of this chapter. Motion passes unanimously.

Dr. Ivan Melendez, seconded by Dr. Manuel Gonzalez moved to change two technical issues, on C2 to read "the Presiding Officer of the Commission" instead of the Chairman. On F "the meetings are called by the Executive Director Bill Kuntz or the Presiding Officer of the Commission." And on letter H to change the word "may" to "shall." Motion passes unanimously.

Dr. Ivan Melendez, seconded by Dr. Manuel Gonzalez moved to item H to read "The presiding officer of the advisory Board shall appoint not less than 2 licensed physician board members. Motion passes unanimously.

Charles Johnson informs the Board that the rules will be revised with their recommended changes, and the rules will be published in the Register for 30 days for public comment. The rules will come back to the Board after the public comments are received and then they can be recommended to the Commission for final approval.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item I, Recommendations for agenda items for the next meeting: Discussion and possible recommendation on the physician apprentice programs; Discussion and possible recommendation for doctors to serve as ringside doctors; Workgroup regarding salaries to doctors; Discussion on malpractice issues; Discussion and possible recommendation to review policies on returned checks; Discussion on physician training; Discussion on release of medical information waivers; and, Discussion on tracking injuries/medical reports obtained by the Compliance Division.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item J, Discussion of date, time, and location of next meeting. The next meeting date will be January 15, 2016, at 10:00 a.m.

Acting Presiding Officer Dr. Wayne Lee moved to agenda item K, Adjournment. The meeting was adjourned at 12:42 p.m.

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Dianne Casey, Presiding Officer
Combative Sports Advisory Board

MEDICAL ADVISORY COMMITTEE MEETING

Meeting of March 7, 2014
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Vice-Presiding Officer Blane Sibille called the meeting to order at 10:30 a.m.

Vice-Presiding Officer Blane Sibille moved to agenda item B, Roll call and Certification of Quorum. Committee Members present were Dr. Manuel Gonzalez, Dr. Wayne Lee, and Vice-Presiding Officer Blane Sibille. A quorum was not present.

Vice-Presiding Officer Blane Sibille moved to agenda item C, Approval of minutes - Meeting of May 3, 2013. No vote taken on this item due to lack of a quorum.

Vice-Presiding Officer Blane Sibille moved to agenda item D, Public Comment. No public comments were heard.

Vice-Presiding Officer Blane Sibille moved to agenda item E, Staff Reports. Executive Director, Bill Kuntz and staff reported on statistics and recent developments. Bill Kuntz presented an award to Dr. Wayne Lee for his assistance in organizing TDLR's Ringside Physician Conference.

Vice-Presiding Officer Blane Sibille moved to agenda item F, Discussion and possible recommendation regarding amendments to existing rules at 16 Texas Administrative Code, Chapter 61 Sections 61.10, 61.20, 61.23, 61.30, 61.40, 61.48, 61.80, and 61.120 to implement Senate Bill 618, 83rd Legislature, Regular Session (2013) regarding ringside physicians and timekeepers and public comments. Pamela Legate reported that the rules became effective December 15, 2013. No vote was taken on this item.

Vice-Presiding Officer Blane Sibille moved to agenda item G, Presentation and discussion regarding a new boxing concept. Representatives from Direct TV and Big Knockout Boxing (BKB) made a presentation to the Committee to introduce the concept of BKB; and answered questions from the Committee.

Vice-Presiding Officer Blane Sibille moved to agenda item H, Recommendations for agenda items for the next meeting. A review of the rules and a discussion of performance enhancing drug and what Nevada has done towards that end.

Vice-Presiding Officer Blane Sibille moved to agenda item I, Discussion of date, time, and location of next meeting. The next meeting date will be determined at a later time.

Vice-Presiding Officer Blane Sibille moved to agenda item J, Adjournment. The meeting was adjourned at 11:52 a.m.

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Blane Sibille, Sr., Vice-Presiding Officer
Medical Advisory Committee

MEDICAL ADVISORY COMMITTEE MEETING

Meeting of May 3, 2013
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Mickey Christakos called the meeting to order at 10:05 a.m.

Presiding Officer Mickey Christakos moved to roll call and Certification of Quorum. Committee Members present were Mickey Christakos, Dr. Manuel Gonzalez, Dr. Wayne Lee, Dr. Ivan Melendez, Edwin Reyes, and Blane Sibille. Committee member Dr. Kelley Frasier was absent. A roll call verified that a quorum was present.

Presiding Officer Mickey Christakos moved to agenda item C, Approval of minutes - Meeting of January 25, 2013. Dr. Manuel Gonzalez, seconded by Blane Sibille, moved to approve the minutes. The motion passed by a unanimous vote.

Presiding Officer Mickey Christakos moved to agenda item D, Public Comment. A comment was heard from Chris Bolen regarding jaw stabilization.

Presiding Officer Mickey Christakos moved to agenda item E, Staff Reports. Executive Director, Bill Kuntz and staff reported on statistics and recent developments.

Presiding Officer Mickey Christakos moved to agenda item F, Discussion and possible recommendation regarding amendments to existing rules at 16 Texas Administrative Code, Chapter 61 Sections 61.20, 61.40, 61.46, and 61.47 relating to licensing requirements for contestants, responsibilities of promoters, contestant sanctions and medical suspensions for positive drug tests and public comments. Dr. Manuel Gonzalez, seconded by Blane Sibille, moved to recommend the rules to the Commission as presented. The motion was passed by unanimous vote.

Presiding Officer Mickey Christakos moved to agenda item G, Discussion and possible recommendation regarding amendments to existing rules at 16 Texas Administrative Code, Chapter 61 Section 61.47 relating to therapeutic use exemptions for contestants. Dr. Wayne Lee, seconded by Blane Sibille, moved to remove the term “board certified” and keep the term “specialization” (endocrinology) in the rules and have one final review by the Committee. The motion was passed with Dr. Ivan Melendez voting in dissent.

Presiding Officer Mickey Christakos moved to agenda item H, Recommendations for agenda items for the next meeting. A review of the rules and a discussion of number of ropes required for a boxing ring and a mixed martial arts arena.

Presiding Officer Mickey Christakos moved to agenda item I, Discussion of date, time, and location of next meeting. The next meeting date will be determined at a later time.

Presiding Officer, Mickey Christakos moved to agenda item J, Adjournment. Edwin Reyes, seconded by Dr. Manuel Gonzalez, moved to adjourn the meeting. The motion was passed by unanimous vote. The meeting was adjourned at 11:33 a.m.

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Blane Sibille, Sr., Acting Presiding Officer
Medical Advisory Committee

Chapter 61
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

[~~§61.120. Medical Advisory Committee.~~]

[~~(a) The presiding officer of the Texas Commission of Licensing and Regulation, with the approval of the Commission, shall appoint a medical advisory committee to advise the Department concerning health issues for contestants.~~]

[~~(b) The presiding officer of the advisory committee shall be appointed by the presiding officer of the Texas Commission of Licensing and Regulation, with the approval of the Commission.~~]

[~~(c) The Committee shall be composed of seven members:~~]

[~~(1) four members shall be medical doctors licensed by the State of Texas;~~]

[~~(2) one member shall be an emergency medical technician; and~~]

[~~(3) two public members.~~]

[~~(d) The Committee shall make recommendations to the Department concerning:~~]

[~~(1) physical tests for contestants; and~~]

[~~(2) assignment requirements for ringside physicians.~~]

§61.120. Combative Sports Advisory Board.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission. The nine members include:

(1) four physicians;

(2) one representative of a boxing promoter;

(3) one representative of a mixed martial arts promoter;

(4) one combative sports referee or judge licensed at least three years;

(5) one former combative sports contestant; and

(6) one public member.

(b) If a license is required to hold any of the member positions in (a), the license must be issued by the State of Texas and be in and remain in good standing for the balance of the term.

(c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the presiding officer of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The presiding officer of the commission, with approval of the commission, appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. Board members may be, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets at the call of the presiding officer of the commission or executive director.

(g) The advisory board provides advice and recommendations to the department on health and safety of contestants and other matters relevant to the administration and enforcement of this chapter.

(h) The presiding officer of the advisory board shall appoint not less than two standing board workgroups to study and work with department staff on matters related to medical protocols and other matters that promote the health and safety of contestants.

Midwives Law
Occupations Code, Chapter 203
Effective 9/1/2015

SECTION 1.004. The heading to Subchapter B, Chapter 203, Occupations Code, is amended to read as follows:

SUBCHAPTER B. MIDWIVES ADVISORY BOARD

SECTION 1.005. Section 203.052, Occupations Code, is amended to read as follows:

Sec. 203.052. ADVISORY BOARD MEMBERSHIP.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) five licensed midwife members each of whom has at least three years' experience in the practice of midwifery;

(2) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists;

(3) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians; and

(4) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 1.006. Subchapter B, Chapter 203, Occupations Code, is amended by adding Section 203.0521 to read as follows:

Sec. 203.0521. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

SECTION 1.007. Section 203.055, Occupations Code, is amended to read as follows:

Sec. 203.055. TERMS; VACANCIES.

(a) Members of the advisory board serve for staggered terms of six years. The terms of three members expire on January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

SECTION 1.008. Section 203.056, Occupations Code, is amended to read as follows:

Sec. 203.056. PRESIDING OFFICER. The presiding officer of the commission shall designate a public member of the advisory board to serve as the presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

SECTION 1.009. Section 203.059, Occupations Code, is amended to read as follows:

Sec. 203.059. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Midwives Advisory Board

Meeting of February 9, 2016
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Meredith Rentz Cook called the meeting to order at 9:06 a.m.

Presiding Officer Meredith Rentz Cook moved to agenda item B, Roll Call and Certification of Quorum and Introductions. Board members Meredith Rentz Cook, Brenda Buffington, Janet Dirmeyer, Laurie Fremgen, Linda Hart, Victoria Meinhardt, and Helen Nelson were present and a quorum was seated. Dr. Charleta Guillory joined the meeting at 9:23 am. Dr. Michael Nix was absent and it was noted that Dr. Nix can never attend a meeting held on a Tuesday.

Presiding Officer Meredith Rentz Cook moved to agenda item C., Public Comment. There was no public comment at this time. At the conclusion of the meeting the board heard public comment from Carol Schamacker.

Presiding Officer Meredith Rentz Cook moved to agenda item D, Staff Reports. William Kuntz, Executive Director, introduced Commission Chairman Mike Arismendez who thanked the advisory board for their service and hard work on aiding in the development of the Department rules. Mr. Kuntz reported on the Agency's work in getting the Texas Comptroller's Office to release the funds necessary to implement the program. Mr. Kuntz highlighted our collaboration with the Department of State Health Services (DSHS). Yvonne Feinleib of the Department of State Health Services (DSHS), updated the advisory board on DSHS activities relating to the Midwifery Program and the collaboration efforts with TDLR.

Presiding Officer Meredith Rentz Cook moved to agenda item E., Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 115, Midwives and regarding comments on the proposed new rules. The proposed new rules implement Senate Bill 202, 84th Legislature, Regular Session (2015), which transfers the Midwives program from the Department of State Health Services to the Texas Department of Licensing and Regulation. Lynn Latombe, Assistant General Counsel recapped the previous meeting and outlined the process for rule adoption under the Administrative Procedures Act. Ms. Latombe presented the rule comments solicited by the earlier publication in the Texas Register. The board discussed the comments. Board member Janet Dirmeyer, seconded by Helen Nelson made a motion to recommend changes to the Commission rules for adoption the proposed revisions to sections 115.1, 115.3, 115.4, 115.16, 115.80 and 115.112. The motion passed by unanimous vote.

Presiding Officer Meredith Rentz Cook moved to agenda item F., Discussion and possible appointment of workgroups:

> Presiding Officer, Meredith Rentz Cook appointed the following members to the Enforcement workgroup to review and make recommendations regarding criminal conviction guidelines, the penalty matrix, other enforcement related matters and rules: *Janet Dirmeyer, Chair, Meredith Rentz Cook, and Brenda Buffington.*

Presiding Officer, Meredith Rentz Cook appointed the following members to the Licensing workgroup to review and make recommendations regarding licensing requirements and rules, inspections and compliance, and other administrative matters: *Brenda Buffington, Chair, Linda Hart, Laurie Fremgen, and Janet Dirmeyer.*

Presiding Officer, Meredith Rentz Cook appointed the following members to the Education and Examination workgroup to review and make recommendations regarding education and examination, continuing education requirements, and rules: *Victoria Meinhardt, Chair, Helen Nelson, Dr. Charleta Guillory, and Linda Hart.*

Presiding Officer, Meredith Rentz Cook appointed the following members to the Standard of Care workgroup to review and make recommendations regarding standard of care matters and rules: *Laurie Fremgen, Chair, Dr. Michael Nix, Helen Nelson, and Vicky Meinhardt.*

All work groups are appointed to serve through the first meeting in October and may be revisited and repopulated with varying members of the board.

Presiding Officer Meredith Rentz Cook moved to agenda item G., Recommendations for agenda items for next meeting. The Board requested the following items on its next agenda: Criminal Conviction Guidelines, Staff Reports, update on Commission actions, update on consolidation with DSHS, and report from DSHS.

Presiding Officer Meredith Rentz Cook moved to agenda item H., Discussion of date, time, and location of next Board meeting. The next two Board meetings will be Thursday, June 9, 2016, 10:00 a.m., and Wednesday, August 17, 2016, at 2:00 p.m. in Austin, Texas.

Presiding Officer Meredith Rentz Cook moved to agenda item I., Adjournment. The meeting was adjourned.

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Meredith Rentz Cook, Presiding Officer
Midwives Advisory Board

DRAFT

Chapter 115
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.
[**Double-underlined text**] is recommended proposed new language from published rules.
[~~**Double-strike-thru text**~~] is recommended proposed deleted language from published rules.

§115.1. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

(1) Act--The Texas Midwifery Act, Texas Occupations Code, Chapter 203.

(2) Appropriate health care facility--The Department of State Health Services, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(3) Approved midwifery education courses--The basic midwifery education courses approved by the department.

(4) Code--Texas Health and Safety Code.

(5) Health authority--A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(6) Local health unit--A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(7) Advisory Board--The Midwifery Advisory Board appointed by the presiding officer of the Commission with the approval of the Commission.

(8) Newborn care--The care of a child for the first six weeks of the child's life.

(9) Normal childbirth--The labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(10) Physician--A physician licensed to practice medicine in Texas by the Texas Medical Board.

(11) Postpartum care--The care of a woman for the first six weeks after the woman has given birth.

(12) Program--The department's midwifery program.

(13) Public health district--A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(14) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board in Chapter 193 (relating to Standing Delegation Orders) and §115.111 of this title (relating to Inter-professional Care).

(15) Retired midwife--A midwife licensed in Texas who is over the age of 55 and not currently employed in a health care field.

(16) Voluntary charity care--Midwifery care provided without compensation and with no expectation of compensation.

(17) Commission--The Texas Commission of Licensing and Regulation.

(18) Department--The Texas Department of Licensing and Regulation.

(19) Executive director--The executive director of the department.

§115.2. License Required.

(a) In order for an individual to legally practice midwifery in Texas, she/he must be currently licensed by the department.

(b) A midwife's initial license shall be valid from the date issued until March 1 of the following renewal period.

§115.3. Midwifery Advisory Board Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter, including scope of practice and health related standards of care.

§115.4. Advisory Board Membership.

The Midwifery Advisory Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) five members each of whom has at least three years' experience in the practice of midwifery;

(2) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife;

(3) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists; and

(4) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians.

§115.5. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expiring on January 31st of each odd-numbered year.

(b) If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§115.6. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§115.7. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

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

(c) A quorum of the advisory board is necessary to conduct official business.

(d) Advisory board action shall require a majority vote of those members present and voting.

§115.13. Initial Application for Licensure.

(a) Initial licensure. Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms. An individual may apply for licensure as a midwife at any time during the year by submitting the following to the department:

(1) a completed application on a department-approved form which shall contain:

(A) specific information regarding personal data, social security number, birth date, other licenses held, and misdemeanor or felony convictions;

(B) the date of the application;

(C) a statement that the applicant has read the Act and these rules and agrees to abide by them;

(D) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any license issued; and

(E) any other information required by the department.

(2) proof of satisfactory completion of a continuing education course covering the current Texas Midwifery Basic Information and Instructors Manual, and:

(A) satisfactory completion of a mandatory basic midwifery education course approved by the department and the North American Registry of Midwives (NARM) exam or any other comprehensive exam approved by the department;

(B) Certified Professional Midwife (CPM) certification by NARM; or

(C) satisfactory completion of a basic midwifery education course accredited by the Midwifery Education Accreditation Council (MEAC), and the North American Registry of Midwives (NARM) exam, or any other comprehensive exam approved by the department.

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association; equivalent certification for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Service's Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) proof of satisfactory completion of training in the collection of newborn screening specimens or an established relationship with another qualified and appropriately credentialed health care provider who has agreed to collect newborn screening specimens on behalf of the applicant;

(6) a nonrefundable fee required under §115.80; and

(7) proof of passing the jurisprudence examination approved by the department. The jurisprudence examination must have been taken no more than one year prior to the date of application.

(b) Initial licensure after interim of more than four years. A midwife seeking initial licensure who has not become licensed within four years of completing a basic midwifery education course approved by the department or accredited by MEAC shall in addition provide proof of having completed at least 40 contact hours of approved midwifery continuing education within the year preceding the application, which shall be based upon a review of:

(1) the current Texas Midwifery Basic Information and Instructors Manual; and

(2) the current Midwives Alliance of North America (MANA) Core Competencies and Standards of Practice.

(c) The applicant must successfully pass a criminal history background check.

(d) Pursuant to Texas Occupations Code, Chapters 51 and 203, the commission or the executive director may deny the application for violation of the Act.

(e) If after review the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a hearing under Texas Government Code, Chapter 2001.

§115.14. License Renewal.

In order to renew every two years, a midwife's application for license renewal must include the following:

(1) a completed license renewal application form which shall require the provision of the preferred mailing address and telephone number, and a statement of all misdemeanor and felony offenses for which the licensee has been convicted, along with any other information required by the department;

(2) proof of completion of at least 20 contact hours of approved midwifery education since March 1 of the previous two-year renewal period;

(3) proof of a current CPR certification for health care providers from one of the following:

(A) the American Heart Association;

(B) equivalent certification for the professional rescuer from the Red Cross;

(C) equivalent certification for healthcare and professional rescuer from the National Safety Council; or

(D) equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) a nonrefundable renewal fee; and

(6) proof of passing the jurisprudence examination approved by the department in the four years preceding renewal.

§115.15. Late Renewal.

Late license renewal. A midwife who fails to apply for license renewal by March 1 of the end of a renewal period in which the midwife is currently licensed, may apply for late license renewal on or before March 1 of the following year. Applications for late license renewal must include the following:

(1) each of the items required for timely renewal; and

(2) a nonrefundable late renewal fee.

§115.16. Renewal for Retired Midwives Performing Charity Work.

(a) A retired midwife who is only providing voluntary charity care:

(1) may apply to renew his or her midwifery license by submitting all the items required for renewal and the retired midwife renewal fee.

(2) may renew his or her midwifery license by submitting all the items required for renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(3) may renew his or her midwifery license late by submitting all the items required for late renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(b) A retired midwife who has previously renewed under this subsection, and then subsequently seeks to return to employment in the active practice of midwifery in Texas, must either:

(1) be currently licensed under this subsection but not due for renewal, and submit the following items to the department:

(A) ten hours of continuing education, taken in the 12 months preceding the application;

(B) the retired midwife reinstatement fee; and

(C) a written request to return his or her license to active status; or

(2) be currently licensed under this subsection and when billed for renewal, submit all the items required for renewal with a written request to return his or her license to active status; and

(3) receive approval from the department prior to returning to active practice.

§115.20. Basic Midwifery Education.

(a) The department shall consider for approval only courses which have a course supervisor/administrator and site in Texas.

(b) Mandatory basic midwifery education shall:

(1) be offered to ensure that only trained individuals practice midwifery in Texas;

(2) be offered by any individual or organization meeting the requirements for course approval established by this subsection;

(3) include a didactic component which shall:

(A) be based upon and completely cover the most current Core Competencies and Standards of Practice of the Midwives Alliance of North America (MANA) and the current Texas Midwifery Basic Information Manual;

(B) prepare the student to apply for certification by North American Registry of Midwives (NARM); and

(C) include a minimum of 250 hours course work.

(4) be supervised and conducted by a course supervisor/administrator who shall:

(A) be responsible for all aspects of the course; and

(B) have two years of experience in the independent practice of midwifery, nurse-midwifery or obstetrics; and

(C) have been primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and

(D) have met initial licensure requirements; or

(E) be a Certified Professional Midwife (CPM); or

(F) be American College of Nurse Midwives (ACNM) certified; or

(G) be a licensed physician in Texas actively engaged in the practice of obstetrics.

(5) include didactic curriculum instructors who:

(A) have training and credentials for the course material they will teach; and

(B) are approved by the course supervisor/administrator.

(6) provide clinical experience/preceptorship of at least one year but no more than five years and equivalent to 1,350 clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(A) serving as an active participant in attending 20 births;

(B) serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births. A minimum of 3 of the 20 births attended as primary midwife under supervision must be with women for whom the student has provided primary care during at least 4 prenatal visits, birth, newborn exam and one postpartum exam;

(C) serving as the primary midwife, under supervision, in performing:

(i) 75 prenatal exams, including at least 20 initial history and physical exams;

(ii) 20 newborn exams; and

(iii) 40 postpartum exams.

(7) include preceptors who are approved by the course supervisor/administrator and shall be:

(A) licensed midwives;

(B) certified professional midwives;

(C) certified nurse midwives; or

(D) physicians licensed in the United States and actively engaged in the practice of obstetrics.

(c) Individuals enrolled as students in an approved midwifery course must possess:

(1) a high school diploma or the equivalent; and

(2) a current Cardiopulmonary Resuscitation (CPR) certificate for health care providers from the American Heart Association; an equivalent CPR certificate for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination.

§115.21. Education Course Approval.

(a) Course approval.

(1) The course supervisor/administrator shall submit an application form and a non-refundable initial midwifery course application fee to the department with the following supporting documentation:

(A) course outline;

(B) course curriculum with specific content references to:

(i) MANA Core Competencies;

(ii) NARM Written Test Specifications;

(iii) NARM Skills Assessment Test Specifications;

(iv) Texas Midwifery Basic Information and Instructor Manual; and

(v) protocol writing, adaptation and revision.

(C) identification of didactic and preceptorship teaching sites;

(D) a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner and disclosure of any bankruptcy within the last five years; and

(E) written policies to include:

(i) tuition schedule, other charges, and cancellation and refund policy, including the right of any prospective student to cancel his/her enrollment agreement within 72 hours after signing the agreement and receive a full refund of any money paid;

(ii) student attendance, progress, and grievance policies;

(iii) rules of operation and conduct of school personnel;

(iv) requirements for state licensure;

(v) disclosure of approval status of course;

(vi) maintenance of student files; and

(vii) reasonable access for non-English speakers and compliance with federal and state laws on accessibility.

(2) Student files shall be maintained for a minimum of five years and shall include:

(A) evidence that the entrance requirements have been met;

(B) documentation demonstrating completion of didactic and clinical course work; and

(C) copies of any financial agreements between the student and the school.

(3) The department staff shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the department staff and a licensed midwife within the provisional year. The site visit will include the following:

(A) an inspection of the course's facilities;

(B) a review of its teaching plan, protocols, and teaching materials;

(C) a review of didactic and preceptorship instruction;

(D) interviews with staff and students; and

(E) a review of student, staff and preceptor files, to include coursework, protocols, and financial records.

(4) A nonrefundable site visit fee shall be assessed for each site visit.

(5) The site visit written report shall recommend to the department approval or denial of the course.

(6) The department shall evaluate the application and all other pertinent information, including any complaints received and the site visit report.

(b) Course reciprocity. A basic midwifery education course which is currently accredited by the Midwifery Education Accreditation Council (MEAC) shall be deemed approved under this subsection upon submission of evidence of such accreditation.

(c) Duration of course approval.

(1) The department shall approve courses for a three year period.

(2) Course supervisors/administrators shall reapply for approval six months prior to expiration.

(d) Course changes. Any substantive change(s) in the course or its content shall be submitted to the department within ten working days after change(s).

§115.23. Jurisprudence Examination.

(a) The department shall develop a jurisprudence examination.

(b) The subject matter covered by the examination shall include the Act, this chapter, and other Texas laws and rules which affect midwifery practice, as described in the current Texas Midwifery Basic Information and Instructor Manual.

(c) The department shall review and update the examination as needed.

§115.25. Continuing Education.

All continuing education taken by midwives for the purpose of obtaining or renewing a midwifery license must be in accordance with this section.

(1) Courses may be offered by any individual or organization that meets the requirements for course approval established by this section.

(2) Course curriculum must provide an educational experience which:

(A) covers new developments in the fields of midwifery or related disciplines; or

(B) reviews established knowledge in the fields of midwifery or related disciplines; and

(C) shall be presented in standard contact hour increments for continuing health education; and

(D) shall provide reasonable access for non-English speakers and comply with federal and state laws on accessibility.

(3) Course coordinators and instructors.

(A) Course coordinators shall obtain course approval, register and certify participant attendance, and provide attendance certificates to participants following the course.

(B) Course instructors shall have training and/or credentials appropriate for the course material they will teach.

(4) Course approval. Continuing education courses attended to fulfill licensure or license renewal requirements shall be accepted when the courses:

(A) satisfy the requirements of paragraph (2)(A) - (C); and

(B) are accredited by one of the following accrediting bodies:

(i) a professional midwifery association, nursing, social work, or medicine;

(ii) a college, a university, or an approved basic midwifery education course;

(iii) a nursing, medical, or health care organization;

(iv) a state board of nursing or medicine;

(v) a department of health; or

(vi) a hospital.

§115.70. Standards of Conduct.

The following are grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The commission or executive director may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) violation of the Act or rules adopted under the Act;

(B) submission of false or misleading information to the department;

(C) conviction of a felony or a misdemeanor involving moral turpitude;

(D) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(E) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(F) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(G) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(H) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(I) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 Texas Administrative Code (TAC), Chapter 181 (relating to Vital Statistics);

(J) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(K) failure to practice midwifery in a manner consistent with the public health and safety;

(L) failure to submit midwifery records in connection with the investigation of a complaint; or

(M) demonstrated lack of personal or professional character in the practice of midwifery.

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

(3) The commission or executive director may revoke course approval if:

(A) the course no longer meets one or more of the established standards;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the required qualifications;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor falsified course registration, attendance, completion and/or other records; or

(E) continued approval of the course is not in the public interest.

§115.75. License Surrender.

(a) A license issued by the department is the property of the department and shall be surrendered on demand.

(b) A licensee may also voluntarily surrender his or her license to the department.

§115.80. Fees.

All fees must be made payable to the department and are nonrefundable.

(1) Application fee--$275

(2) Renewal fee--$550 for each two-year renewal period

(3) Duplicate license fee--$20

(4) Retired midwife renewal fee--$275

(5) Retired midwife reinstatement fee--$275

(6) Jurisprudence examination fee--$35

(7) Education course initial application fee--$150

(8) Education course site visit fee--$500

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) Dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored **Payment Device [~~Check Fee~~]**).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

§115.90. State Roster of Licensed Midwives.

The department shall maintain a roster of all individuals currently licensed to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The department shall also provide information on new and/or late licensees to individual county clerks and local registrars of births during the course of a year as needed.

§115.100. Standards for the Practice of Midwifery in Texas.

(a) Midwifery care supports individual rights and self-determination within the boundaries of safety. Using reasonable skill and knowledge, the midwife shall:

(1) provide clients with a description of the scope of midwifery services and information regarding the client's rights and responsibilities in accordance with the Act;

(2) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care;

(3) provide clients with information about other providers and services when requested or when the care required is not within the scope of practice of midwifery; and

(4) practice in accordance with the knowledge, clinical skills, and judgments described in the Midwives Alliance of North America (MANA) Core Competencies for Basic Midwifery Practice, adopted August 4, 2011, within the bounds of the midwifery scope of practice as defined by the Act and Rules;

(b) The midwife shall provide care in a safe and clean environment. The midwife shall:

(1) carry and use when needed, resuscitation equipment; and

(2) use universal precautions for infection control.

(c) Midwifery care is documented in legible, complete health records. The midwife shall:

(1) maintain records that completely and accurately document the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(2) grant clients access to their records within 30 days of the date the request is received;

(3) provide a mechanism for sending a copy of the health record upon referral or transfer to other levels of care;

(4) maintain the confidentiality of client records; and

(5) maintain records:

(A) for the mother, for a minimum of five years; and

(B) for the infant, until the age of majority.

(d) Midwifery care includes documentation of a periodic process of evaluation and quality assurance of midwifery practice. The midwife shall:

(1) collect client care data systematically and be involved in analysis of that data for the evaluation of the process and outcome of care;

(2) review problems identified by the midwife or by other professionals or consumers in the community; and

(3) act to resolve problems that are identified.

§115.111. Inter-professional Care.

The following definitions regarding inter-professional care of women within a midwifery model of care apply to this chapter.

(1) Consultation is the process by which a midwife, who maintains primary management responsibility for the woman's care, seeks the advice of another health care professional or member of the health care team.

(2) Collaboration is the process in which a midwife and a health care practitioner of a different profession jointly manage the care of a woman or newborn who needs joint care, such as one who has become medically complicated. The scope of collaboration may encompass the physical care of the client, including delivery, by the midwife, according to a mutually agreed-upon plan of care. If a physician must assume a dominant role in the care of the client due to increased risk status, the midwife may continue to participate in physical care, counseling, guidance, teaching, and support. Effective communication between the midwife and the health care professional is essential to ongoing collaborative management.

(3) Referral is the process by which a midwife directs the client to a health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. The client and the physician (or associate) shall determine whether subsequent care shall be provided by the physician or associate, the midwife, or through collaboration between the physician or associate and midwife. The client may elect not to accept a referral or a physician or associate's advice, and if such is documented in writing, the midwife may continue to care for the client.

(4) Transfer is the process by which a midwife relinquishes care of the client for pregnancy, labor, delivery, or postpartum care or care of the newborn to another health care professional who has current obstetric or pediatric knowledge and is either a physician

licensed in the United States; or working in association with a licensed physician. If a client elects not to accept a transfer, the midwife shall terminate the midwife-client relationship. If the transfer recommendation occurs during labor, delivery, or the immediate postpartum period, and the client refuses transfer; the midwife shall call 911 and provide further care as indicated by the situation. If the midwife is unable to transfer to a health care professional, the client will be transferred to the nearest appropriate health care facility. The midwife shall attempt to contact the facility and continue to provide care as indicated by the situation.

(5) Standing orders from a physician licensed in Texas must be obtained if a midwife provides any prescription medication to a client or her newborn other than oxygen and eye prophylaxis. The orders must be current (renewed annually) and must comply with the rules of the Texas Medical Board. Midwives have the responsibility not to comply with an outdated order.

§115.112. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

(A) the client has no need of further care;

(B) the client terminates the relationship; or

(C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

(A) providing a minimum of 30 days written notice, during which the midwife shall continue to provide midwifery care, to enable the client to select another health care provider;

(B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care;

(C) providing referrals; and

(D) documenting the termination of care in midwifery records.

(3) Termination of Care during Labor

(A) If the midwife deems that midwifery care is no longer within her scope and the client is non-compliant, the midwife may:

(i) recommend transport;

(ii) call 911 and allow client to refuse EMS care; and

(iii) have a sign and dated written document that describes the reason for the termination and the signatures of both the midwife and the client.

§115.113. Transfer of Care in an Emergency Situation.

In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and immediate transfer of care by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

(1) transporting the client by private vehicle; or

(2) calling 911 and reporting the need for immediate transfer.

§115.114. Prenatal Care.

(a) Using reasonable skill and knowledge, the midwife shall collect, assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) infection requiring antimicrobial therapy;

(2) Hepatitis;

(3) non-insulin dependent diabetes;

(4) thyroid disease;

(5) current drug or alcohol abuse;

(6) asthma;

(7) abnormal pap smear (consistent with malignancy or pre-malignancy) during the current pregnancy;

(8) seizure disorder;

(9) prior cesarean setion (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8));

(10) multiple gestation;

(11) history of prior antepartum or neonatal death;

(12) history of prior infant with a genetic disorder;

(13) significant vaginal bleeding;

(14) maternal age less than 15 at EDC;

(15) cancer or history of cancer;

(16) psychiatric illness; or

(17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(c) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend transfer in accordance and document that recommendation in the midwifery record:

(1) placenta previa in the third trimester;

(2) Human Immunodeficiency Virus (HIV) positive or Acquired Immunodeficiency Syndrome (AIDS);

(3) cardio vascular disease, including hypertension, with the exception of varicosities;

(4) severe psychiatric illness;

(5) history of cervical incompetence with surgical therapy;

(6) pre-term labor (less than 37 weeks);

(7) Rh or other blood group isoimmunization;

(8) any previous cesarean section with a vertical or classical incision, or any previous uterine surgery which required an incision in the uterine fundus;

(9) preeclampsia/eclampsia;

(10) documented oligo-hydramnios or poly-hydramnios;

(11) any known fetal malformation;

(12) Preterm Premature Rupture Of Membranes (PPROM);

(13) intrauterine growth restriction;

(14) insulin dependent diabetes; or

(15) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(d) In lieu of referral or transfer, the midwife may manage the client in collaboration with an appropriate health care professional of this title.

§115.115. Labor and Delivery.

(a) Using reasonable skill and knowledge, the midwife shall evaluate the client when the midwife arrives for labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) The midwife shall monitor the client's progress in labor by monitoring vital signs, contractions, fetal heart tones, cervical dilation, effacement, station, presentation, membrane status, input/output and subjective status as indicated.

(c) The midwife shall assist in normal, spontaneous vaginal deliveries.

(d) The midwife shall not engage in the following:

(1) application of fundal pressure on abdomen or uterus during first or second stage of labor;

(2) administration of oxytocin, ergot, or prostaglandins prior to or during first or second stage of labor; or

(3) any other prohibited practice as delineated by the Act, §203.401 (relating to Prohibited Practices).

(e) If on initial or subsequent assessment during labor or delivery, one of the following conditions exists, the midwife shall initiate immediate emergency transfer and document that action in the midwifery record:

(1) prolapsed cord;

(2) chorio-amnionitis;

(3) uncontrolled hemorrhage;

(4) gestational hypertension/preeclampsia/eclampsia;

(5) severe abdominal pain inconsistent with normal labor;

(6) a non-reassuring fetal heart rate pattern;

(7) seizure;

(8) thick meconium unless the birth is imminent;

(9) visible genital lesions suspicious of herpes virus infection;

(10) evidence of maternal shock;

(11) preterm labor (less than 37 weeks);

(12) presentation(s) not compatible with spontaneous vaginal delivery;

(13) laceration(s) requiring repair beyond the scope of practice of the midwife;

(14) failure to progress in labor;

(15) retained placenta; or

(16) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

§115.116. Postpartum Care.

(a) Using reasonable skill and knowledge, the midwife shall assess the mother during the immediate postpartum period by monitoring vital signs, uterine fundus, bleeding and subjective status for a minimum of two hours after mother's condition is stable as indicated.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) collect, assess and document maternal care data throughout the postpartum period including history, physical exam, laboratory testing;

(2) develop and implement a plan of care;

(3) evaluate the client's condition on an ongoing basis and modify the plan of care as necessary; and

(4) provide health education/counseling.

(c) If on any postpartum assessment one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

(1) infection requiring antimicrobial therapy;

(2) bladder dysfunction;

(3) major depression; or

(4) any other condition or symptom which could threaten the health of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any postpartum assessment one of the following conditions exists, the midwife shall initiate immediate emergency transfer, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) uncontrolled hemorrhage;

(2) maternal shock;

(3) any hypertensive disorder, including preeclampsia/eclampsia;

(4) signs of thrombophlebitis or pulmonary embolism; or

(5) any other condition or symptom which could threaten the life of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

§115.117. Newborn Care During the First Six Weeks After Birth.

(a) Prior to delivery, the midwife shall establish a plan with the client for continuing care of the newborn. This plan shall:

(1) include referral or transfer to a health care professional who has current pediatric knowledge;

(2) include a recommendation that the client pre-arrange the timing of the first newborn visit with the health care professional; and

(3) be documented in the midwifery record.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) collect, assess and document newborn care data by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the postpartum period;

(2) provide appropriate education and counseling to the mother; and

(3) observe the newborn for a minimum of two hours after he or she is stable with no signs of distress.

(c) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) birth injury;

(2) gestational age assessment less than 36 weeks;

(3) small for gestational age;

(4) large for gestational age; or

(5) any other abnormal newborn behavior or appearance which could adversely affect the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) non-transient respiratory distress;

(2) non-transient pallor or central cyanosis;

(3) jaundice;

(4) apgar at 5 minutes less than or equal to 6;

(5) prolonged apnea;

(6) hemorrhage;

(7) signs of infection;

(8) seizure;

(9) major congenital anomaly not diagnosed prenatally;

(10) unstable vital signs;

(11) prolonged:

(A) lethargy;

(B) flaccidity; or

(C) irritability;

(12) inability to suck;

(13) persistent jitteriness;

(14) hyperthermia;

(15) hypothermia; or

(16) other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(e) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

(1) abnormal laboratory test results;

(2) minor congenital anomaly;

(3) failure to thrive; or

(4) any other abnormal newborn behavior or appearance which could adversely affect the infant, as assessed by a midwife exercising reasonable skill and knowledge.

(f) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional and document that action in the midwifery record:

(1) respiratory distress;

(2) pallor or central cyanosis;

(3) pathological jaundice;

(4) hemorrhage;

(5) seizure;

(6) inability to urinate or pass meconium within 24 hours of birth;

(7) unstable vital signs;

(8) lethargy;

(9) flaccidity;

(10) irritability;

(11) inability to feed;

(12) persistent jitteriness; or

(13) any other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

§115.118. Administration of Oxygen.

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; recommending referral; and/or recommending transfer or transport of the mother and newborn.

(b) Under this section a midwife is not required to use oxygen.

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother for the following:

(A) fetal heart rate irregularities while assessing for consultation and/or possible transfer;

(B) cord prolapse prior to transport;

(C) signs or symptoms of maternal shock or hemorrhage prior to transport; or

(D) as indicated by American Heart Association Cardiopulmonary Resuscitation guidelines;

(2) postpartum oxygen may be administered while monitoring according to the Midwifery Practice Standards and Principles:

(A) to the newborn during the initial neonatal period at a rate concurrent with American Academy of Pediatrics Neonatal Resuscitation guidelines; or

(B) to the mother and/or newborn in other situations not listed above and deemed necessary according to generally accepted standards of midwifery practice to protect the health and well-being of the mother and/or newborn;

(3) indications for administration of oxygen shall be clearly documented in the client's chart.

(d) Midwives are authorized to purchase equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen.

§115.119. Eye Prophylaxis.

(a) Each midwife is responsible for administering or causing to be administered to every infant which she or he delivers the necessary eye prophylaxis to prevent ophthalmia neonatorum in accordance with the medications specified in Health and Safety Code, §81.091.

(b) A midwife must obtain a written exemption from treatment in accordance with Health and Safety Code, §81.009 from any parent who refuses to allow a midwife to administer or cause to be administered eye prophylaxis in accordance with Health and Safety Code, §81.091

(c) The administration and possession of prophylaxis by a midwife is not a violation of the provisions of the Health and Safety Code, Chapter 483, concerning dangerous drugs

§115.120. Newborn Screening.

(a) Each midwife who assists at the birth of a child is responsible for performing the newborn screening tests according to the Health and Safety Code, Chapters 33 and 34, and 25 TAC §§37.51 - 37.65, or making a referral in accordance with this subsection. If the midwife performs the tests, then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the department in order to be licensed.

(1) Midwife Training Certification Form for Newborn Screening Specimen Collection. Should the midwife choose to do the newborn screening she or he will obtain training to perform this test from an appropriate health care facility. Instruction will be based upon the procedure for newborn screening developed by the Department of State Health Service's Newborn Screening Program under authority of the Health and Safety Code, Chapter 33. At the completion of the instruction for newborn screening blood collection, the midwife will request that the form Midwife Training Certification Form for Newborn Screening Specimen Collection be signed by the designated representative of the health care facility, attesting to the fact that the midwife has complied with this requirement. This training, as part of the licensure requirements, is only necessary once unless there is a change in screening procedures.

(2) Newborn Screening Agreement for Newborn Babies of Midwife Clients. The midwife could also choose to refer the family to have the infant's screening done at an appropriate

health care facility. In this case, the midwife must use the form Newborn Screening Agreement for Newborn Babies of Midwife Clients to attest to her responsibility for seeing that the screening is done and to designate a facility for such screening. The form must include a section where the facility representative signs, agreeing that the facility will do the screening.

(b) As long as the midwife has been approved to perform the newborn screening test, the act of collecting this specimen will not constitute "practicing medicine" as defined by the Medical Practice Act.

(c) As long as one is available, a physician or an appropriately trained professional acting under standing delegation order from a physician at an appropriate health care facility shall instruct midwives in the proper procedure (newborn screening collection procedure of the Department of State Health Services' Newborn Screening Program) for newborn screening blood specimen collection and submission. The physician, registered nurse, or any other person who instructs a midwife in the approved techniques for newborn screening on the orders of a physician is immune from liability arising out of the failure or refusal of a midwife to:

(1) collect and submit the blood specimen in an approved manner; or

(2) send the samples to the laboratories designated by the Department of State Health Services in a timely manner.

(d) Newborn Screening Test Objection Form. A midwife must obtain a completed and signed Newborn Screening Test Objection form from any parent who refuses to allow a midwife to perform the newborn screening tests.

§115.121. Informed Choice and Disclosure Statement.

The written informed choice and disclosure statement which has been approved by the department shall include:

(1) an informed choice statement containing:

(A) statistics of the midwife's experience as a midwife;

(B) the date of expiration of the midwife's license;

(C) the date of expiration of the midwife's adult and infant cardiopulmonary resuscitation and neonatal resuscitation certification;

(D) the midwife's compliance with continuing education requirements; and

(E) medical backup arrangements; and

(2) a disclosure statement, which includes the legal requirements of the midwife and prohibited acts as stated in the Act. The disclosure statement may not exceed 500 words and must be in Spanish and English; and must contain;

(3) information on where to file a complaint against a licensed midwife, including the name, mailing address and telephone number for the department.

§115.122. Obtain Complaint Information without Consent of Client.

The department shall obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint without the necessity of consent of the midwife's client.

§115.123. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 203, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 203 and any associated rules.

§115.125. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 203 and any associated rules may be used to enforce Texas Occupations Code, Chapters 51, 203 and this chapter.

ORTHOTISTS AND PROSTHETISTS
Occupations Code, Chapter 605
Effective 9/1/2015

SECTION 1.167. The heading to Subchapter B, Chapter 605, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ORTHOTISTS AND PROSTHETISTS ADVISORY BOARD

SECTION 1.168. Section 605.052, Occupations Code, is amended to read as follows:

Sec. 605.052. ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two licensed orthotist members who each have practiced orthotics for the five years preceding the date of appointment;

(2) two licensed prosthetist members who each have practiced prosthetics for the five years preceding the date of appointment;

(3) one licensed prosthetist orthotist member who has practiced orthotics and prosthetics for the five years preceding the date of appointment;

(4) one member who is a representative of the public who uses an orthosis; and

(5) one member who is a representative of the public who uses a prosthesis.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 1.169. Subchapter B, Chapter 605, Occupations Code, is amended by adding Section 605.0521 to read as follows:

Sec. 605.0521. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

SECTION 1.170. Section 605.055, Occupations Code, is amended to read as follows:

Sec. 605.055. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

SECTION 1.171. Section 605.056, Occupations Code, is amended to read as follows:

Sec. 605.056. PRESIDING OFFICER. The members of the advisory board shall elect from the advisory board's membership a presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

SECTION 1.172. Section 605.059, Occupations Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(c) Four or more advisory board members may call a special meeting of the advisory board by providing written notice not less than 14 days before the date of the meeting to:

(1) the presiding officer of the commission;

(2) the executive director; and

(3) all other members of the advisory board.

(d) Not more than two special meetings of the advisory board may be called under Subsection (c) in a calendar year.

Orthotists and Prosthetists Advisory Board

Meeting of February 18, 2016
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Miguel Mojica called the meeting to order at 9:00 a.m.

Presiding Officer Miguel Mojica moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Board Members Miguel Mojica, David Arhens, Sterling Phillips, Catherine Mize, Randall Duncan and Kevin Matthews were present. A quorum was present.

Presiding Officer Miguel Mojica moved to agenda item C., Approval of the minutes – meeting of November 16, 2015. Board member Kevin Matthews, seconded by Catherine Mize made a motion to approve the minutes. The motion passed by unanimous vote.

Presiding Officer Miguel Mojica moved to agenda item D., Public Comment. There was no public comment.

Presiding Officer Miguel Mojica moved to agenda item E., Staff Reports. William Kuntz, Executive Director reported that the Comptroller has approved the release of funding to cover the cost of transferring the program and the transfer will be completed October 1, 2016. Brian Francis, Deputy Executive Director explained that the remaining staff reports were duplicates of the previous reports and remained as place holders if the Board had questions. Yvonne Feinleib, Department of State Health Services reported on upcoming meetings and the work with TDLR and DSHS staff to transfer the programs.

Presiding Officer Miguel Mojica moved to agenda item F., Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 114, Orthotics and Prosthetics and regarding comments on the proposed new rules. The proposed new rules implement Senate Bill 202, 84th Legislature, Regular Session (2015), which transfers the Orthotics and Prosthetics program from the Department of State Health Services to the Texas Department of Licensing and Regulation. Laura Pfefferle, Assistant General Counsel provided a summary of the comments and the Department's proposed responses. The Board discussed the comments and made the following motions on the proposed responses to the comments. Board member Kevin Matthews, seconded by Sterling Phillips, made a motion to accept the comment of the Texas Medical Association and the Texas Orthopaedic Association recommending that two definitions in the statute be repeated in the rule definitions, at 16 TAC §114.10, to mirror the statute. The motion passed by unanimous vote. The comments from the Coalition for Nurses in Advanced Practice proposed to add a definition for "health care professional" and make three other text changes. The Board agreed to make the changes but with some modifications. The Board considered comments from an individual regarding registration of technicians, and Board member Duncan made a motion, seconded by Catherine Mize, to make no changes to the rule but to assign the topic to the Licensing workgroup for further consideration. The motion passed by a vote of 5-1 with Board member Matthews opposed. In response to an individual comment suggesting changes including defining "major repairs," Board member Duncan, seconded by Kevin Matthews, moved to accept the Department's revised language in response to the comment. The motion passed by unanimous vote. Board member Kevin Matthews, seconded by Sterling Phillips, made a motion to recommend the

draft

rules be adopted by the Commission with the proposed changes agreed to above. The motion passed by a unanimous vote.

Presiding Officer Miguel Mojica moved to agenda item G., Discussion and possible appointment of workgroups:

1. Enforcement workgroup to review and make recommendations regarding criminal conviction guidelines, the penalty matrix, other enforcement related matters and rules

Presiding Officer Miguel Mojica appointed the following members to the above referenced work group: Kevin Matthews, Catherine Mize, and Randy Duncan. Christina Kaiser, Director of Enforcement will be the staff contact for this workgroup.

2. Licensing workgroup to review and make recommendations regarding licensing requirements and rules, inspections and compliance, and other administrative matters

Presiding Officer Miguel Mojica appointed the following members to the above referenced work group: Miguel Mojica, Sterling Phillips, and David Ahrens. Dede McEachern, Director of Licensing and Tanya Gauthreaux, Director of Field Operations will be the staff contacts for this workgroup.

3. Education and Examination workgroup to review and make recommendations regarding education and examination, continuing education requirements, and rules

Presiding Officer Miguel Mojica appointed the following members to the above referenced work group: Miguel Mojica, Randy Duncan, and Kevin Matthews. Ray Pizarro, Director of Education and Examination will be the staff contact for this workgroup.

4. Standard of Care workgroup to review and make recommendations regarding standard of care matters and rules

Presiding Officer Miguel Mojica appointed the following members to the above referenced work group: Catherine Mize, David Ahrens, and Sterling Phillips. George Ferrie Director of Compliance will be the staff contact for this workgroup.

Presiding Officer Miguel Mojica moved to agenda item J., Recommendations for Agenda Items for Next Meeting. The Board requested the following items on its next agenda: staff reports, workgroup reports, criminal conviction guidelines, penalty matrix, and update on the Commission adoption of the proposed rules.

Presiding Officer Miguel Mojica moved to agenda item K., Discussion of Date, Time, and Location of next Board meeting. The next Board meetings will be June 13, 2016 and August 19, 2016 at 9:00 a.m. in Austin Texas.

Presiding Officer Miguel Mojica moved to agenda item L., Adjournment. Board Member Kevin Matthews, seconded by Randall Duncan, moved to adjourn the meeting at 10:34 a.m. Motion passed unanimously.

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Orthotists and Prosthetists Advisory Board

Meeting of November 16, 2015
North Campus, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

TDLR Commission Chairman Mike Arismendez called the meeting to order at 9:05 a.m.

Chairman Arismendez moved to agenda item B, Roll Call, Certification of Quorum, and Introductions. Board Members Miguel Mojica, Sterling Phillips, Catherine Mize, Randall Duncan and Kevin Matthews were present. A quorum was present.

Chairman Arismendez moved to agenda item C, Election of a Presiding Officer. Deputy Executive Director Brian Francis explained rules for the election of a presiding officer. Board Member Miguel Mojica nominated Board Member Catherine Mize to be the Presiding Officer. Board Member Kevin Matthews nominated Miguel Mojica. A vote ensued and the following votes were cast: Miguel Mojica and Catherine Mize voted for Catherine Mize. Sterling Phillips, Randall Duncan and Kevin Matthews voted for Miguel Mojica. Board Member Miguel Mojica was voted in as the Presiding Officer of the Orthotists and Prosthetists Advisory Board. Brian Francis passed the gavel to Presiding Officer Miguel Mojica.

Presiding Officer Miguel Mojica moved to agenda item D., Training for Board Members. Laura Pfefferle, Assistant General Counsel, provided an overview of open meetings, open records, and rulemaking, and highlighted some resources the Board should review and follow.

Presiding Officer Miguel Mojica moved to agenda item E., TDLR Video presentation on public comment process. Viewing of the video was waived because no members of the public were present to comment.

Presiding Officer Miguel Mojica moved to Public Comment., There were no public comment.

Presiding Officer Miguel Mojica moved to agenda item G., History and Overview of the Orthotists and Prosthetists Program. Board Members Catherine Mize and Presiding Officer Miguel Mojica gave a history of the program from the Legislative action that moved O & P from the Department of State Health Services to TDLR. Ms. Mize spoke of the committee workgroups that met in July, 2015 and passed new rules, following the public comment period. Presiding Officer Mojica, and Kevin Matthews spoke on the history of O & P dating back to the 1930's and 1940's and Mr. Matthews noted that he received his training through the military and that the O & P profession and program became certified in 1994.

Presiding Officer Miguel Mojica moved to agenda item H, Staff Reports:

Brian Francis, Deputy Executive Director, reported on the rules and the agency structure and the use of agency functions to achieve some of the goals for the program; discussed the collaboration with the Department of State Health Services regarding the transfer process; the rules process; the Legislative Session; and agency re-organization.

George Ferrie, Director, Compliance Division, provided an overview, introduced Yvonne Lopez as a point of contact for the Compliance Division, and stated that he is currently involved in review of

rules and documents relating to the program. He also reported that future meeting will include statistics and answered questions from the Board.

Ray Pizarro, Director, Education and Examination Division, provided an overview, and reported on the exam delivery process and the use of Subject Matter Experts (SME) in the development of the exams. Discussed reviewing the exam waiver for reciprocity and statistics that will be provided at the meetings. He introduced Kim Whitt as a point of contact for the division, and answered questions from the Board.

Christina Kaiser, Director, Enforcement Division, gave an overview, including the description of the three parts of the Enforcement Division - Intake section, Investigations section, and Prosecution section and gave a brief description of what each section does. She also reported on future case statistics and highlighted cases of note and spoke of the Enforcement Plan/Penalty Matrix.

Presiding Officer Miguel Mojica took a break at 10:44 a.m.
Presiding Officer Miguel Mojica reconvened the meeting at 11:01 a.m.
Dede McEachern, Director Licensing Division, provided an overview of the Licensing Division and answered question from the Board members.

Tanya Gauthreaux, Director Field Operations Division, provided an overview of Field Operations. Presented the Field Operations staff report and answered questions from the Board members. The Field Operations staff report which included Introduction and overview of the Field Operations Division, Statistics and provided a map of where the inspectors around Texas are located and what areas they are responsible for.

The Department of State Health Services waived the opportunity to provide an update on DSHS activities.

Presiding Officer Miguel Mojica moved to agenda item I., Discussion and Possible Recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 114 to implement the transfer of the Orthotists and Prosthetists program from DSHS to TDLR pursuant to Senate Bill 202, 84th Legislature, Regular Session (2015). Laura Pfefferle, Assistant General Counsel provided an overview of the TDLR statutes the Occupations Code, an overview of the rulemaking process, and went over the timeline for publishing the rules and public comments. She presented for review and discussion, the draft proposed rules for Orthotists and Prosthetists to be located at 16 Texas Administrative Code, Chapter 114, Sections 114.1 to 114.90, answered questions from the Board and discussed changes to be made to the draft rules.

Presiding Officer Miguel Mojica asked for a moment of silence, called for by the Governor, in honor of the victims of the terrorist attack in Paris, France on Nov. 13, 2015 and then the Board took a break for lunch and reconvened at 1:05 p.m.

Laura Pfefferle, Assistant General Counsel continued presenting the proposed new rules discussion between the Board and TDLR staff on several rule line items and wording changes to be made.

Presiding Officer Miguel Mojica called for a break at 2:03 p.m. and reconvened at 2:12 p.m.
Laura Pfefferle, Assistant General Counsel continued with the proposed new rules which ensued with a lengthy discussion with the Board.

Presiding Officer Miguel Mojica called for a break at 2:59 p.m. and reconvened at 3:09 p.m.

Laura Pfefferle, Assistant General Counsel continues with the proposed new rules which ensued with a lengthy discussion with the Board.

Board Member Catherine Mize, seconded by Presiding Officer Miguel Mojica, moved to add in the Scope of Services, Sec. 114.27, "when assistant patient care services are performed by an assistant practitioner the supervising licensed practitioner of that patient care service must review and sign off on the clinical note written by the assistant practitioner within 10 working days of the service provided Board members Miguel Mojica, Catherine Mize and Randall Duncan voted "in favor". Board Members Kevin Matthews and Sterling Phillips voted "against." Motion passed 3-2.

Board Member Kevin Matthews, seconded by Board Member Sterling Phillips, moved to add in Sec. 114.29 "an Orthotist can be in charge of a Prosthetic and Orthotic facility as long as there is a licensed Prosthetist on staff and a Prosthetist can be in charge as long as there is an Orthotist on staff as an employee or a provider licensed at that facility." Discussion from the Board ensued and Board Member Kevin Matthews withdrew his motion.

Board Member Kevin Matthews, seconded by Board Member Sterling Phillips, moved to change the wording in Sec. 114.29(e)(1)(A) to place a period at the point of "licensed by the department." This would end the sentence after the word "department." Board Member Matthews and Board Member Phillip voted "in favor"; Board Members Miguel Mojica, Catherine Mize, and Randall Duncan voted "against. Motion failed 2-3.

Presiding Officer Miguel Mojica called for a break at 4:55 p.m.
Board Member Sterling Phillips left the meeting at 4:55 p.m.
Presiding Officer Miguel Mojica reconvened the meeting at 5:05 p.m.

Laura Pfefferle, Assistant General Counsel continued with the proposed new rules which ensued with a lengthy discussion with the Board.
Presiding Officer Miguel Mojica called for a break at 5:34 p.m. and reconvened at 6:31 p.m.
Laura Pfefferle, Assistant General Counsel continued with the proposed new rules which ensued with a lengthy discussion with the Board.
Presiding Officer Miguel Mojica called for a dinner break at 5:34 p.m. and reconvened at 6:31 p.m.
Laura Pfefferle, Assistant General Counsel continued with the proposed new rules which ensued with a lengthy discussion with the Board.
Presiding Officer Miguel Mojica called for a break at 7:32 p.m. and reconvened at 7:37 p.m.
Randall Duncan, seconded by Presiding Officer Miguel Mojica, moved to publish the proposed rules with the changes made as discussed and agreed. Motion passed unanimously.

Presiding Officer Miguel Mojica moved to agenda item J., Recommendations for Agenda Items for Next Meeting. The Board requested the following items on its next agenda: staff reports, workgroups for training on the industry, rules and comments from the published rules, parking facilities, workgroup for supervision of clinical residency, unlicensed practitioners, criminal conviction guidelines and penalty matrix.

Presiding Officer Miguel Mojica moved to agenda item K., Discussion of Date, Time, and Location of next Board meeting. The next Board meeting date will be February 18, 2016 at 9:00 a.m. in Austin Texas.

Presiding Officer Miguel Mojica moved to agenda item L., Adjournment. Board Member Kevin Matthews, seconded by Board Member Randall Duncan, moved to adjourn the meeting at 8:03 p.m. Motion passed unanimously.

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Miguel Mojica, Presiding Officer
Orthotists and Prosthetists Advisory Board

Chapter 114
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.

§114.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 605.

§114.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates 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) Advisory board--The Orthotists and Prosthetists Advisory Board.

(3) Ancillary patient care service--Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events.

(4) Assistant patient care service--Includes comprehensive orthotic patient care (initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of custom fitted and off-the-shelf orthotic devices) involving pedorthics, compression garments, non-custom fabricated orthoses (except those used to treat scoliosis or an unstable fracture or dislocation), and knee orthoses; and comprehensive prosthetic care involving compression garments, when provided under the appropriate supervision of a practitioner licensed in the practice area in which the service is being provided.

(5) Board--The Orthotists and Prosthetists Advisory Board.

(6) CAAHEP--The Commission on Accreditation of Allied Health Education Programs.

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

(8) Clinical residency for a professional--A professional practitioner-level experience supervised by a practitioner.

(9) Commission--The Texas Commission of Licensing and Regulation.

(10) Critical care events--Initial patient assessment, prescription development and recommendation, appropriate patient education and training and final evaluation and assessment of fit and function of the custom-fabricated prosthesis or orthosis.

(11) Department--The Texas Department of Licensing and Regulation.

(12) 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.

(13) Executive director--the executive director of the department.

(14) Extensive orthotic practice--Includes the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions; 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, and assembling; the fitting and assessment of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the training and instruction of patients in the use and care of the orthosis; and maintaining current encounter notes and patient records.

(15) Extensive prosthetic practice--Includes the evaluation of patients with a wide range of upper and lower limb deficiencies; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, assembly, and aligning; the fitting and assessment of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the training and instruction of patients in the use and care of the prosthesis; and maintaining current encounter notes and patient records.

(16) Indirect supervision--Supervision provided to a licensed assistant or to a person in clinical residency for a professional by a practitioner who provides appropriate on-site supervision as approved by the accredited facility’s practitioner in charge.

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

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

(19) Licensee--Includes a person holding a current license or registration issued by the department, to engage in an activity regulated under the Act.

(20) NCOPE--The National Commission on Orthotic and Prosthetic Education.

(21) Off-the-shelf--A prescribed, prefabricated orthosis that requires minimal self-adjustment by the patient or by a personal caregiver(s) for appropriate use and does not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

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

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

(24) Patient education--Patient education involves information, instructions, training, and review for understanding that are provided to the patient or caregiver, including donning, doffing, use, care, sanitation, spinal and cranial orthotic training, upper extremity orthotic and prosthetic training, lower extremity orthotic and prosthetic gait training, normal wear and tear, schedule for continuing care, and indications for return to physician.

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

(26) Practitioner in charge--The orthotist in charge, the prosthetist in charge, or the prosthetist/orthotist in charge.

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

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

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

(30) Prosthetist/Orthotist in charge--A prosthetist/orthotist who is designated on the application for accreditation as the person 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.

(31) Registered orthotic technician--A person registered under the Act who fabricates, assembles, or services orthoses 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.

(32) Registered prosthetic technician--A person registered under the Act who fabricates, assembles, or 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.

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

(34) Safety manager--An employee of an accredited facility who is assigned to develop, carry out and monitor an accredited facility's safety program.

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

(36) Voluntary charity care--The practice of a licensed practitioner without compensation or expectation of compensation.

§114.20. Applications.

(a) Unless the context clearly indicates otherwise, use of the terms license, licensure, and licensing shall apply to both licenses and registrations.

(b) Materials submitted in the licensure process become the property of the department and are not returnable.

(c) Unless otherwise indicated an applicant must submit the following, as applicable to the license type for which the person is applying:

(1) a completed application on a department-approved form;

(2) official transcript(s) or certificates of all relevant college courses, degrees, and residencies showing successful completion of the applicable requirements under the Act and this chapter;

(3) the department-approved form providing information regarding other state licenses, certificates or registrations that an applicant holds or held, if applicable; and

(4) the fee required under §114.80.

(d) The department will accept as proof of completion of a degree or course work an official transcript from a regionally accredited college or university. Foreign transcripts must be submitted with an evaluation from World Education Services (WES), or another provider

approved by the department, that demonstrates equivalency of the foreign degree or coursework with a U.S. degree or coursework.

(e) Uniquely qualified applicants for a practitioner license shall submit department reference forms from a total of two physicians, practitioners, or persons licensed or certified by a state or by a national organization in orthotics or prosthetics who can attest to the applicant's skills and professional standards of extensive prosthetic or orthotic practice.

(f) All applicants for initial licensure and for every other renewal cycle must submit proof of successful completion of the Texas Jurisprudence Examination required under §114.21, at the time of application.

(g) The applicant must successfully pass a criminal history background check.

(h) Disapproved applications. The department may disapprove an application if the applicant:

(1) 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 department to verify the applicant's qualifications for a license;

(2) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;

(3) 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, or prosthetic/orthotic technician;

(4) has failed to file a report or record required by law;

(5) has obstructed or induced another to obstruct the filing of a report or record required by law;

(6) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice as established by the department in §114.90;

(7) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of a physical or mental condition or illness or drug or alcohol dependency.

(8) has failed to report a known violation of the Act to the department;

(9) has violated a provision of the Act, a rule adopted under the Act, or an order issued by the executive director or the commission;

(10) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs due to fraudulent activities;

(11) has committed a prohibited act under the Act, §§605.351 - 605.353; or

(12) fails to meet department standards for the license for which the applicant is applying developed in accordance with Chapter 53, Occupations Code, relating to criminal history.

§114.21. Licenses and Licensing Procedures.

(a) Unless the context clearly indicates 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) Jurisprudence examination. The Texas Jurisprudence Examination content is based on the Act, the rules of the department, and other state and federal laws and rules that relate to the practice of orthotics and prosthetics.

(1) All applicants for initial licensure and for every other renewal cycle must complete the applicable jurisprudence examination before applying for a license.

(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 for the jurisprudence examination.

(c) Term of license.

(1) A license or registration shall be issued for a two year period.

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

(3) A student registration shall be issued for a two-year period, and may be renewed for one additional two year period.

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

(e) Licenses shall be displayed appropriately and publicly as follows:

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

(2) 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.

(3) No person shall display or carry a copy of a license instead of the original document.

(f) 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.

(g) License alterations. No person shall make alterations to a license or to a copy of a license.

§114.22. Examination for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Except as provided by §114.23, an applicant must pass a competency examination to qualify for a practitioner license.

(b) Examinations shall be offered in prosthetics or orthotics.

(c) To take the examination, the applicant must have been:

(1) issued a student registration; or

(2) approved by the department.

(d) Approved applicants shall have no more than two years from the date of approval to pass the required examination(s).

(e) Applications for examination.

(1) The department shall notify an applicant whose license application has been approved that the applicant is eligible for the examination.

(2) The department or its designee shall forward an examination registration form to the approved applicants at least thirty (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 department or its designee by the established deadline.

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

(g) Frequency. The examinations shall be administered at least once each year.

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

(i) Results.

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

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

(j) Examination failure. Upon written request, the department shall furnish an applicant who fails an examination an analysis of performance.

§114.23. Requirements for Uniquely Qualified Person Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(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 qualified to perform prosthetic or orthotic care.

(c) The department 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 department.

(d) Applicants may apply for licensure as a uniquely qualified person in accordance with paragraph (1), (2), or (3):

(1) Applicants with at least fifteen (15) years of extensive orthotic or prosthetic experience in the discipline for which they have applied. These applicants must demonstrate proof of having taken at least seventy-five (75) hours of continuing education that meets the requirements of §114.50, within the five years before application.

(2) Applicants with at least fifteen (15) years of extensive orthotic experience and fifteen years of extensive prosthetic experience who are applying for the prosthetist/orthotist license. These applicants may accumulate extensive orthotic experience concurrently with the accumulation of extensive prosthetic experience. These applicants must demonstrate proof of having taken at least one hundred (100) hours of continuing education that meets the requirements of §114.50, in both orthotics and prosthetics, within the five years before application.

(3) Applicants who meet the academic requirements under §114.24, but who have not completed a professional clinical residency meeting NCOPE requirements. These applicants shall submit proof of at least two years of applicable orthotic or prosthetic experience within the five years before application that was obtained under supervision of a licensed or certified orthotist or prosthetist in the discipline for which they have applied.

(e) The following is applicable to persons applying for licensure under paragraphs (d)(1) and (2).

(1) The practitioner with extensive orthotic practice experience must, within the limits set by the department, demonstrate application of all of the elements of extensive orthotic practice, as defined in §114.10(14), to at least two-thirds of the following types of orthoses: 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.

(2) The practitioner with extensive prosthetic practice experience must, within the limits set by the department, demonstrate application of the elements of extensive prosthetic practice, as defined in §114.10(15), to at least two-thirds of the following types of prostheses: 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.

(f) Applicants who meet the requirements of this section but for whom a determination under this section is inconclusive may be required to pass the practitioner exam required under §114.22, to demonstrate unique qualifications for a practitioner license.

§114.24. Requirements for Licensure by Examination as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) Applicants for the orthotist license must complete the orthotist academic, residency, and examination requirements for orthotists. Applicants for the prosthetist license must complete the prosthetist academic, residency, and examination requirements for prosthetists. Applicants for the prosthetist/orthotist license must complete the prosthetist and orthotist academic, residency, and examination requirements.

(b) Academic requirements for an orthotist, prosthetist, or prosthetist/orthotist license. The applicant must hold a bachelor's or graduate degree:

(1) in prosthetics and orthotics from a college or university educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) while the applicant attended the program or a college or university educational program accepted by the department as having educational standards equal to or exceeding CAAHEP standards; or

(2) in any subject and a certificate from an orthotics, prosthetics, or both an orthotics and prosthetics practitioner educational program, as applicable to the license type for which the person is applying, that is accredited by CAAHEP while the applicant attended the program, or from a practitioner education program accepted by the department as having educational standards equal to or exceeding CAAHEP standards.

(c) Post-graduate requirements for the orthotist, prosthetist, or prosthetist/orthotist license.

(1) The applicant must submit a completion certificate from a NCOPE orthotic, prosthetic, or both an orthotic and prosthetic residency program, as applicable to the license type for which the person is applying, or from a residency program or programs approved by the department.

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

§114.25. Temporary License for Practitioners.

(a) A temporary license may be issued under this section to a person who:

(1) has become a Texas resident as defined in §114.10(35), within the twelve (12) month period preceding application for a temporary license;

(2) has applied for a practitioner license; and

(3) has practiced orthotics or prosthetics or both regularly since January 1, 1996 or earlier; or

(4) has been licensed by the state in which the person formerly resided if that state has license requirements that are equal to or exceed the requirements of this chapter.

(b) A temporary license is valid for one year from the date issued unless the applicant is not approved by the department for a practitioner license.

(c) If the practitioner application is not approved by the department, the temporary license is no longer valid and shall be surrendered to the department within fifteen (15) days of the notice of denial.

§114.26. Student Registration.

(a) Student registration provides authorization for a person to practice prosthetics or orthotics while fulfilling the postgraduate requirements for licensure by examination.

(b) Eligibility. The department shall issue or renew a student registration certificate if the applicant:

(1) has applied for student registration on department-approved forms;

(2) has paid the student registration fee; and

(3) either:

(A) has completed the academic requirements for a practitioner license; or

(B) is a student who is currently enrolled in a graduate program in this state in orthotics and prosthetics that is recognized and accredited by CAAHEP and submits to the department 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; and

(4) is actively engaged in either:

(A) completing a professional clinical residency; or

(B) applying for or awaiting the results of the examination, and has completed the professional clinical residency.

(c) An applicant may be issued an initial student registration in each area: prosthetics, orthotics, or both, depending on the type of clinical residency.

(d) The applicant shall apply for a student registration before beginning the professional clinical residency.

(e) A person becomes eligible to take the state examination when the department issues the student registration.

(f) A student registration may be upgraded to a practitioner license after the applicant:

(1) meets the requirements of §114.24;

(2) passes the appropriate examination; and

(3) submits a complete license upgrade form and fee.

§114.27. Assistant License.

(a) Qualifications. The applicant must submit evidence satisfactory to the department of having successfully completed either (1) and (2), or (1) and (3), of the following:

(1) 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) eight (8) credit hours of anatomy and physiology;

(B) three (3) credit hours of medical terminology;

(C) three (3) credit hours of physics.

(2) For applicants for a prosthetic assistant or orthotic assistant license, a clinical residency for assistants of not less than 1,000 hours in prosthetics or 1,000 hours in orthotics, respectively, completed in a period of not more than one year, in a facility that is accredited under §114.29, or its equivalent, as approved by the department, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(3) For applicants for the prosthetic/orthotic assistant license, a clinical residency for assistants of not less than 1,500 hours in prosthetics and orthotics, completed in a period of not more than one year, in a facility that is accredited under §114.29, or its equivalent, as approved by the department, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(b) Clinical residency for an assistant.

(1) Before undertaking a clinical residency for an assistant, the supervisor and clinical resident must notify the department by filing a completed supervision agreement with the department with the clinical resident's application for licensure as an assistant and the required fee.

(2) The supervisor shall not allow the clinical residency to begin until approval from the department is received.

(3) The supervisor shall provide the clinical resident and the department with written documentation upon beginning, terminating or completing a clinical residency.

(4) The resident shall practice under the direct supervision of a licensed practitioner. The supervisor must be licensed in the same discipline as the course of study being completed by the clinical resident.

(5) The supervising practitioner must review and sign off on patient care notes made by the clinical resident.

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

(7) The clinical residency shall include both observation and supervised performance of assistant level work including assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, as appropriate to the type of residency. Supervision shall be in the physical presence of the supervisor.

(8) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed practitioner.

(9) 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.

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

(11) When terminating or completing a residency, the written documentation shall indicate the number of hours satisfying the requirements of this section that were completed by the clinical resident.

(12) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

(c) Scope of practice.

(1) When assistant patient care services are performed by a licensed assistant, the supervising licensed practitioner of that assistant must review and sign off on the clinical note written by the assistant within ten working days of the date the service was provided.

(2) A licensed orthotist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed orthotist or licensed prosthetist/orthotist.

(3) A licensed prosthetist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed prosthetist or licensed prosthetist/orthotist.

(4) A licensed prosthetist/orthotist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed prosthetist/orthotist.

(5) The supervising practitioner is responsible for the acts or omissions of the licensed assistant.

(6) A licensed assistant may only perform critical care events while in the physical presence of the supervising practitioner.

(7) Except as set forth in this subsection, the supervising practitioner shall supervise and direct the licensed assistant.

(8) The supervising practitioner shall report to the department violations of the Act or this chapter committed by the licensed assistant.

(9) Assistants may only practice in a facility accredited under §114.29, or in a facility to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

§114.28. Technician Registration.

(a) A technician must be supervised by a licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant.

(b) To qualify for registration as a technician, an applicant must submit:

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

(2) a copy of:

(A) an official diploma or official transcript indicating graduation from high school or a certificate of high school equivalency; or

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

(C) documentation, acceptable to the department, demonstrating completion of not less than 1,000 hours of laboratory experience as a prosthetic technician or as an orthotic technician.

(c) Registration as a technician is voluntary.

(d) A registered technician is not authorized to provide patient care to orthotic or prosthetic patients, including ancillary or assistant patient care services.

(e) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§114.29. Accreditation of Facilities.

(a) The purpose of accreditation is to identify for prospective patients, referral sources, and third-party payers which prosthetic or orthotic facilities meet the department'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 one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(b) Accreditation requirement inapplicable to certain facilities. The accreditation requirement of the Act does not apply to a facility licensed under the Health and Safety Code, Title 4, in accordance with §605.260(e) of the Act. These facilities include hospitals, convalescent and nursing homes, ambulatory surgical centers, birthing centers, abortion facilities, continuing care facilities, personal care facilities, special care facilities, maternity homes, and end-stage renal disease facilities.

(c) Requirement for practice setting of licensees.

(1) A person licensed under the 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 one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act.

(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 or orthotics.

(d) Accreditation application. The application shall be completed and submitted to the department on a department-approved form. The application shall be accompanied by the appropriate fee.

(1) A new application for accreditation is required for:

(A) a new facility;

(B) a new location or branch of existing, affiliated facilities;

(C) a new location of an existing facility that is relocating;

(D) a facility adding the prosthetic or orthotic category to an accreditation that is not expired, suspended or revoked;

(E) a facility for which the accreditation has expired or has been terminated; and

(F) an existing facility that has been transferred to new ownership, regardless of prior accreditation status.

(i) 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.

(ii) The new owner of a prosthetic or orthotic facility must apply for accreditation within ten business days after the change in ownership.

(2) The application for accreditation must include:

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

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

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

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

(3) If a person applies for accreditation of more than one facility owned by that person, the department requires one primary application and separate addendum pages for additional sites to be accredited.

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

(5) The department shall give the applicant written notice of the reason(s) for the proposed decision if the facility fails to obtain accreditation.

(e) Personnel requirements for accredited facilities. Accredited facilities shall have the following staff:

(1) Practitioner in charge.

(A) An accredited facility must be under the on-site clinical direction of a practitioner licensed by the department in the discipline(s) for which the facility is accredited. The practitioner in charge shall supervise the provision of prosthetics or orthotics in accordance with the Act and rules.

(B) A person who holds a temporary license or a student registration may not serve as the on-site practitioner in charge.

(C) To change the designation of the on-site practitioner(s) in charge, the facility shall notify the department in writing of the name and license number of the new

on-site practitioner(s) and the effective date of the change within thirty (30) days after the change is effective. The written notice shall be accompanied by the appropriate fee.

(2) Residency program director. Facilities providing professional clinical residencies shall have a residency program director to provide direct and indirect supervision of residents. The program director shall be on site as appropriate in accordance with the responsibilities in §114.30. The program director must be a Texas licensed practitioner whose license is in the same discipline in which the professional clinical residency is being conducted.

(3) Safety manager. An accredited facility must designate at least one person as the safety manager.

(A) The safety manager shall develop, carry out, and monitor the safety program for the accredited facility.

(B) To change the designation of the safety manager(s), the facility shall notify the department in writing of the name and license number of the safety manager(s), if any, and the effective date of the change within thirty (30) days after the change is effective. The written notice shall be accompanied by the appropriate fee.

(f) General requirements for accredited facilities.

(1) A facility may not provide services until the department has approved the accreditation.

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

(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.

(4) An accreditation certificate issued by the department is the property of the department and must be surrendered on demand by the department.

(5) A facility accredited under the Act shall prominently display a consumer complaint notice or sign that complies with the requirements of §114.70(d).

(6) An accredited facility may advertise as a "Prosthetic and/or Orthotic Facility Accredited by the Texas Department of Licensing and Regulation." A facility that is exempt or that is not subject to the Act, or that the department does not accredit may not advertise or hold itself out as a facility accredited by the department.

(7) An accreditation issued under this chapter may not be transferred or sold to another facility, location, or owner.

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

(9) An accredited facility must display a visible sign with its hours of operation, including:

(A) hours of normal business operation, and when appropriate;

(B) information regarding temporary closure, including holidays, or for periods during business hours, including specific dates and times of the closure and emergency contact information.

(g) 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 action.

(h) Facilities failing to renew the accreditation by the expiration date are subject to the late renewal fee schedule applicable to licensees in §60.83 of this title (relating to Late Renewal Fees).

(i) Inspections.

(1) Inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation.

(2) Each accredited facility shall be inspected at least once every two years to verify compliance with the Act and this chapter.

(3) Facilities are subject to random inspection and inspection to investigate complaints.

(4) The department may conduct inspections under the Act and this chapter without advance notice.

(5) Inspections shall be performed during the hours of normal business operation of the facility. The department inspector will contact the facility practitioner in charge or other representative upon arrival at the facility, and before proceeding with the inspection.

(6) The facility practitioner in charge or representative shall cooperate with the inspector in the performance of the inspection.

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

(1) Licensees shall wash their hands with soap and water before treating each patient.

(2) Patient examination and treatment rooms shall be cleaned after each patient.

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

(4) Exam tables shall either be covered in a material that can be disinfected and shall be cleaned and disinfected after providing service to each patient or the facility must use disposable covers that are one-time use and that are replaced after providing service to each patient.

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

(6) Facilities shall keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(7) Plumbing fixtures, including toilets and wash basins, shall be kept clean. Any disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(8) Facilities shall have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and for potable water supply.

(9) Facilities shall provide access to at least one restroom located on or adjacent to the premises of the facility that complies with applicable current Americans with Disabilities Act or Texas Accessibility standards. Chemical supplies shall not be stored in restrooms or other areas accessible to the public or to patients.

(10) Facilities shall not be utilized for living or sleeping purposes except as applicable to patients, and may not be used for any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public.

(k) Patient waiting area.

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

(2) Chairs with armrests must be provided in waiting rooms. Chairs without armrests or wheels must be provided upon patient request.

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

(l) 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 that can be closed. Windows must be covered in a way that assures 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.

(m) Safety.

(1) Safety equipment, including safety glasses or goggles and dust masks, shall be available to persons working in an accredited facility.

(2) Proper machine use training shall be provided to staff. The facility shall maintain records documenting training, listing the name of the staff person and the date of training for each machine.

(3) Safety guards on machines shall be in place in accordance with the manufacturers' specifications.

(4) Lab/Fabrication areas must be separated from other areas by walls or rigid doors and have adequate lighting.

(5) If smoking is permitted, policies and procedures to control smoking materials shall be clearly posted.

(6) At least one safety manager shall be assigned to the facility. The safety manager shall develop, carry out, and monitor the safety program.

(n) Business office area.

(1) Patient records shall 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 shall be kept for a minimum of five years.

(o) General.

(1) Americans with Disabilities Act compliant restroom and hand washing facilities shall be safe and accessible to the patients.

(2) The facility shall have the equipment, tools, and materials to provide casting, measuring, fitting, and major repairs and adjustments.

§114.30. Professional Clinical Residency Requirements.

(a) The department will accept a professional clinical residency having standards that are equivalent to or exceed NCOPE standards and those set forth in this chapter, at the time the residency was being completed.

(b) The Texas licensure requirements in this section apply only to residencies and residency programs fulfilled or conducted in Texas.

(c) Professional clinical residency programs must meet or exceed current NCOPE standards.

(d) The resident's involvement in patient care must meet or exceed current NCOPE standards.

(e) 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 the professional clinical residency is being completed.

(f) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

(g) 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 residency. The written description of the program must demonstrate equivalency to NCOPE requirements and must include:

(1) the term of residency;

(2) 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 practitioner who is designated as the residency program director.

(h) Facility requirements. A facility offering a professional clinical residency program must:

(1) be accredited by the department unless the facility is one to which the accreditation requirement does not apply in accordance with §605.260(e) of the Act;

(2) have the resources and adequate facilities for residents to fulfill their education and patient care responsibilities;

(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.

(i) Responsibilities of the residency program director.

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

(2) The 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.

(A) Direct supervision of the following is required:

(i) critical care events;

(ii) the fitting and delivery process; and

(iii) ancillary patient care services.

(B) The supervising practitioner shall review and sign off on patient care notes made by the clinical resident, and review all clinical records, within ten working days.

(C) Indirect supervision of clinical procedures, except critical care events, is permitted.

(D) Supervision shall be provided by a practitioner licensed in Texas in the discipline being taught.

(E) 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 residency program director's responsibility, in consultation with members of the teaching staff. The facility administration shall assure that, through the residency program 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; and

(C) maintains written evaluations on department-approved forms, as part of the performance record for each resident. The performance record of each resident shall be available to that resident.

(j) Resident responsibilities and qualifications.

(1) The resident shall participate in safe, effective and compassionate patient care under supervision commensurate with his or her level of advancement and responsibility.

(2) The resident must hold a student registration issued under the Act.

(k) 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 or orthotic services as demonstrated by the ability to:

(A) obtain a history of the patient to determine the need for a specific device by interviewing the patient, and others, if necessary, and/or by 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 patients 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 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 or 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 or orthotic function;

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

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

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

§114.40. Renewal.

(a) Application. 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.

(1) After the initial license period, a licensee must renew the license every two years. This requirement does not apply to renewal of a temporary license or a student registration.

(2) At least thirty (30) days before the expiration date of a person's license, the department shall send notice to the licensee at the address in the department'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 department with the required renewal fee.

(3) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the license shall not excuse failure to apply for renewal or late renewal.

(4) The department shall not renew the license of a licensee who is in violation of the Act or department rules at the time of application for renewal.

(b) 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.

(c) License renewal requirements. To renew a license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) submit proof of successfully completing the Texas Jurisprudence Exam, if applicable;

(3) successfully pass a criminal history background check;

(4) complete applicable continuing education requirements under §114.50;

(5) comply with the continuing education audit process described under §114.50, as applicable; and

(6) submit the renewal fee required under §114.80.

(d) Renewal for a retired practitioner performing voluntary charity care.

(1) A retired practitioner performing voluntary charity care is a person who is:

(A) at least 55 years old;

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

(C) has notified the department in writing of the intention to retire and provide only voluntary orthotic or prosthetic charity care.

(2) A retired practitioner who is only providing voluntary charity care may renew the license by submitting a renewal form; the required fee; and documentation of required continuing education hours.

(3) A retired practitioner may not change his or her retired status until the next renewal period. To change status upon renewal, the retiree must notify the department in writing, submit a renewal form, the renewal fee for a prosthetist or orthotist license, and documentation of the required continuing education hours.

(e) Renewal of facility accreditation.

(1) An accreditation is valid for two years.

(2) The department 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 department.

(3) At least thirty (30) days before the expiration of a facility's accreditation, the department will send notice to the facility of the accreditation expiration date, the amount of the renewal fee due and an accreditation renewal application. Failure to receive a renewal application from the department does not exempt the facility from renewing its accreditation. Each facility is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification of expiration from the department before the expiration date of the license shall not excuse failure to apply for renewal or late renewal.

(4) The department 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 department.

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

(f) Expiration of license or accreditation.

(1) A person may not practice with an expired license.

(2) 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.

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

(4) A person whose license has expired may late renew the license in accordance with §60.31 of this title (relating to License Renewal Applications) and §60.83 of this title (relating to Late Renewal fees). Facilities whose accreditation has expired may late renew the accreditation in accordance with §60.31 and §60.83.

§114.50. Continuing Education.

(a) This section applies to licensees and registrants of the department. This section does not apply to a temporary license or a student registration.

(b) The first continuing education period shall begin after the licensee has renewed his or her license for the first time. Continuing education is not required during the initial license period. Subsequently, a licensee shall attend continuing education activities as a condition of renewal of a license.

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

(d) Determination of continuing education credits.

(1) For seminars, lectures, presentations, symposia, workshops, conferences and similar activities, 50 minutes shall be considered as one credit hour.

(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.

(e) Licensees shall attend and complete qualifying continuing education each renewal period unless the licensee is exempt under subsection (l).

(1) Licensees must maintain a record of continuing education credits earned by the licensee and proof of completion of the continuing education credits, which may 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 department verifying the licensee's attendance or participation.

(2) Attendance and completion of the following number of continuing education credits are required during each renewal period:

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

(f) At least 50% of the total hours of continuing education required must be live, instructor-directed activities. Fifty percent or less may be self-directed study.

(g) Continuing education hours must be directly related to prosthetics, orthotics, physical or occupational therapy, orthopedic, podiatric, pedorthic, physical medicine or other subjects approved by the department.

(h) Continuing education credits must be offered or approved by a state, regional or national prosthetic or orthotic, or allied health organization or offered by a regional accredited college or university.

(i) Continuing education undertaken by a licensee shall be acceptable if the licensee attends and participates in an activity in the following categories:

(1) academic courses;

(2) clinical courses;

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

(4) self-study modules, with or without audio and video components, if a post-test is required and the number of hours completed do not exceed 50% of the credits required;

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

(6) instructing or presenting in activities listed in paragraphs (1) - (3). Multiple presentations of the same program or equivalent programs may only be counted once during a continuing education period; and

(7) writing a book or article applicable to the practice of prosthetics or orthotics. Four (4) credits for an article and eight (8) 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 department-approved form.

(2) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(3) The audit process shall be as follows:

(A) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(B) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(C) Failure to timely furnish this information or providing false information during the audit process or the renewal process, are grounds for disciplinary action against the license holder.

(D) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(k) Licenses will not be renewed until continuing education requirements have been met.

(l) The following licensees are exempt from the requirements of this section if the qualifying event occurred during the twenty-four (24) months immediately preceding the license expiration date. The licensee shall submit proof satisfactory to the department:

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

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

(m) Licensees employed as faculty in CAAHEP accredited programs or in programs having educational standards equal to or greater than CAAHEP in prosthetics and orthotics shall be exempt from 50% of the continuing education requirements in this section.

(n) Licensed practitioner who are renewing under retired voluntary charity care status shall be exempt from 50% of the continuing education requirements in this section.

(o) Failure to submit documentation satisfactory to the department as required by subsection (l), shall be considered the same as failing to meet the continuing education requirements of this section.

(p) Untrue documentation or information submitted to the department may subject the licensee to disciplinary action.

(q) Activities unacceptable as continuing education for which the department 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; and

(4) performance of duties that are routine job duties or requirements.

§114.65. Orthotists and Prosthetists Advisory Board; Membership.

(a) Membership. The advisory board consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two licensed orthotist members who each have practiced orthotics for the five years preceding the date of appointment;

(2) two licensed prosthetist members who each have practiced prosthetics for the five years preceding the date of appointment;

(3) one licensed prosthetist orthotist member who has practiced orthotics and prosthetics for the five years preceding the date of appointment;

(4) one member who is a representative of the public who uses an orthosis; and

(5) one member who is a representative of the public who uses a prosthesis.

(b) Appointments to board. Appointments to the advisory board shall be made without regard to the race, color, national origin, religion, gender, age, or disability of the appointee.

§114.66. Duties.

Purpose. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

§114.67. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§114.68. Officer.

The members of the advisory board shall elect from the advisory board's membership a presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

§114.69. Meetings.

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

(b) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is four members.

(d) Four or more advisory board members may call a special meeting of the advisory board by providing written notice not less than fourteen (14) days before the date of the meeting to the presiding officer of the commission, the executive director and all other members of the advisory board.

(e) Not more than two special meetings of the advisory board may be called under Paragraph (4) in a calendar year.

§114.70. Responsibilities of Licensees.

(a) Persons to whom a license has been issued shall return the license to the department upon the surrender, revocation or suspension of the license.

(b) All applicants, licensees, registrants and accredited facilities shall notify the department of any change(s) of name or mailing address. Accredited facilities shall notify the department of any change(s) in the facility name, the name of the safety manager and the practitioner in charge, the mailing address and physical address. Written notification to the department and the appropriate fee shall be submitted to the department within thirty (30) days after a change is effective. Changes in a facility's physical location or ownership require a new application for accreditation.

(c) Name changes. Before the department will issue a new license certificate and identification card, notification of name changes must be received by the department. 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.

(d) Consumer complaint information notices. All licensees, registrants and accredited facilities, excluding facilities that a licensee visits to treat patients, such as hospitals, nursing homes or patients' homes, shall prominently display a consumer complaint notice or sign in a waiting room or other area where it shall be visible to all patients. Lettering shall be at least one-fourth inch, or font size 30, in height, with contrasting background, containing the department's name, website, mailing address, and telephone number for the purpose of directing complaints to the department regarding a person or facility regulated or requiring regulation under the Act. Script or calligraphy prints are not allowed. The notice shall be worded as specified by the department.

§114.80. Fees.

(a) Unless otherwise specified, the fees established in this section must be paid to the department before a license, registration, or accreditation will be issued or renewed. A new application for accreditation of a facility and payment of the initial accreditation fee may be required for certain changes at a facility in accordance with §114.29(d).

(b) Schedule of fees.

(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) upgrade for student registrant after passing the examination:

(A) one category--$200;

(B) two categories--$300;

(14) changing the name of the on-site practitioner in charge of an accredited facility--$50;

(15) changing the name of the safety manager of an accredited facility--$50;

(16) changing the name of an accredited facility--$50;

(17) retired voluntary charity care prosthetist or orthotist license renewal--$150;

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

(19) prosthetist with orthotist assistant license or orthotist with prosthetist assistant license renewal--$350;

(20) license, registration, or accreditation duplicate or replacement--$25;

(21) 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.

(c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).

(d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

(f) Fees for dishonored/returned checks or payments and late renewal fees for accredited facilities shall follow the late fee schedule applicable to licenses under §60.82 and §60.83.

(g) All fees paid to the department are nonrefundable.

§114.90. Professional Standards and Basis for Disciplinary Action.

(a) General. This section is authorized under the Orthotics and Prosthetics Act (Act), Texas Occupations Code, §605.353, and Chapter 51 of the Texas Occupations Code.

(1) If a person or entity violates any provision of Texas Occupations Code, Chapters 51, 605, or any other applicable provision, this chapter, or a rule or order issued by the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 605, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or an administrative or civil penalty may be 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) using a proxy to take an examination or to participate in a continuing education activity;

(6) providing false or misleading information to the department regarding an inquiry by the department; or

(7) 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 an administrative or civil penalty may be 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 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 Texas Occupations Code, §102.001;

(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 facility that is required to be accredited and has an expired, suspended, or revoked accreditation;

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

(12) persistently or flagrantly over treating a client or patient;

(13) violation of the Act, this chapter, or an order issued by the executive director or the commission;

(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 an administrative or civil penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c). Other action that may cause a license, registration, or facility accreditation to be denied, not renewed, revoked, suspended, or that may cause an administrative or civil penalty to be imposed include, but are not limited to:

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

(2) having surrendered a license to the department 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 department 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 department 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 agreed to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope of the person’s license;

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

(9) providing prosthetic or 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 for which the licensee is unprepared through 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 must be accredited or failing to renew the accreditation of a facility that must be accredited;

(15) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;

(16) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;

(17) 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;

(18) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(19) submitting false documentation or information to the department relating to continuing education;

(20) failing or refusing to provide acceptable documentation of continuing education reported to the department for renewal if selected for an audit, or if specifically requested by the department;

(21) failing to cooperate with the department during an investigation of a complaint by not furnishing required documentation or responding to a request for information or a subpoena issued by the department or its authorized representative;

(22) interfering with an investigation or disciplinary proceeding by misrepresentation of facts or by use of threats, retaliation or harassment against anyone;

(23) fitting a prosthesis or orthosis without prescription;

(24) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician;

(25) providing orthotic care in a facility that is not accredited in orthotics that is required to be accredited;

(26) providing prosthetic care in a facility that is not accredited in prosthetics that is required to be accredited;

(27) 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 department;

(28) failing to comply with an order issued by the executive director or the commission; and

(29) other unprofessional or unethical conduct.

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

(g) Surrender of license and formal disciplinary action.

(1) When a licensee or accredited facility has offered the surrender of the license or accreditation after a complaint has been filed, the department shall consider whether to accept the surrender of the license.

(2) Surrender of a license or accreditation without acceptance by the department does not deprive the department of jurisdiction to prosecute an alleged violation of the Act or this chapter.

(3) When the department accepts a surrender while a complaint is pending, that surrender is deemed to be the result of a formal disciplinary action and an order shall be prepared accepting the surrender and reflecting this fact.

(4) A license surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

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

§114.95. Complaints.

(a) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation under this chapter are confidential in accordance with §605.2021 of the Act.

(b) The department shall list with its business telephone number a toll-free telephone number established to accept complaints relating to a health profession regulated by the department.

(c) For purposes of this section, a health profession is a profession for which the enabling statute is located in Title 3, Occupations Code, or that is determined to be a health profession under other law.

POLYGRAPH ADVISORY COMMITTEE
Chapter 1701
Occupations Code
Effective: May 27, 2009

SUBCHAPTER B. POLYGRAPH ADVISORY COMMITTEE

Sec. 1703.051. COMMITTEE MEMBERSHIP.

(a) The Polygraph Advisory Committee consists of five members appointed by the presiding officer of the commission, with the approval of the commission, as follows:

(1) two polygraph examiner members who are qualified polygraph examiners for a governmental law enforcement agency;

(2) two polygraph examiner members who are qualified polygraph examiners in the commercial field; and

(3) one member who represents the public.

(b) A member must have been a United States citizen and a resident of this state for at least two years before the date of appointment.

(c) A polygraph examiner member must be actively engaged as a polygraph examiner on the date of appointment.

(d) Two committee members may not be employed by the same person.

(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the appointee.

Sec. 1703.054. TERMS; VACANCY.

(a) Committee members serve staggered six-year terms.

(b) If a vacancy occurs on the committee, the presiding officer of the commission, with the commission's approval, shall appoint a successor to fill the unexpired term.

Sec. 1703.055. PRESIDING OFFICER.

The presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as presiding officer of the committee for a two-year term.

Sec. 1703.058. COMMITTEE DUTIES.

The committee shall advise the commission on:

(1) educational requirements for a polygraph examiner;

(2) the contents of a licensing examination;

(3) technical issues related to a polygraph examination;

(4) the specific offenses for which a conviction would constitute grounds for the department to take action under Section 53.021; and

(5) administering and enforcing this chapter.

Texas Department of Licensing and Regulation
POLYGRAPH ADVISORY COMMITTEE MEETING
Tuesday, November 4, 2014 – 10:00 a.m.
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane – Austin, Texas

Summary of Minutes

Presiding Officer, Bill Teigen called the meeting to order at 10:08 a.m.

Presiding Officer, Bill Teigen moved to agenda item B., Roll Call, Certification of Quorum and Introductions. Committee members present were Bill Teigen, Manuel Espinosa, III, Sharon Brank, and Alicia Coleman. Committee member, Tiffany Collier was absent and the board approved a motion to excuse her absence. A quorum was present.

Presiding Officer, Bill Teigen moved to agenda item C., Training for Board Members. Lynn Latombe provided an overview of the Open Meetings Act, Public Information Act, and Administrative Procedures Act as they relate to the committee member duties.

Presiding Officer, Bill Teigen moved to agenda item D., Approval of the meeting minutes from January 31, 2013. Committee member Bill Teigen, made a motion, seconded by Manuel Espinosa, to approve the minutes with the correction noted. The motion passed by a unanimous vote.

Presiding Officer, Bill Teigen moved to agenda item E., Public Comment. The Committee heard public comment from Skip Ensley, Maria Hubbard and Kelly Hendricks.

Presiding Officer, Bill Teigen moved to agenda item F., Staff Reports. William Kuntz, Executive Director, gave the Executive Office report on strategic initiatives and legislative background. Russ Taulli, Program Specialist provided the Compliance staff report. Kim Whitt, Program Specialist, and Ray Pizarro, Director for the Education and Examination Division, provided a staff report and answered questions from the Committee. Karen Cox, Prosecutor, provided the Enforcement report and statistics. Lisa Houdek, Licensing Manager, provided the Licensing Division staff report and answered questions from the Committee.

Presiding Officer, Bill Teigen moved to agenda item G., Discussion of voice stress analysis ("VSA") and possible recommendation to the executive director to include or not include VSA as a regulated instrument for the detection of truth or deception in this state as allowed under Chapter 1703 of the Occupations Code. The Board discussed the value and merits of the VSA method. Staff provided an overview of the research and data collected at the Summit held in June 2014. Bill Teigen made a motion, seconded by Sharron Brank, that the Polygraph Advisory Board makes a recommendation to the Department to not allow use of or inclusion of VSA as a regulated instrument for the detection of truth or deception in this state as allowed under Chapter 1703 of the Occupations Code. The motion passed by unanimous vote.

Presiding Officer, Bill Teigen moved to agenda item H., Should the advisory board vote favorably to recommend VSA as an additional instrument in Agenda Item G. -- the appointment of an advisory board working group to develop necessary amendments to 16 Texas Administrative

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Code, Chapter 88, to add VSA as an additional instrument; to develop instrumentation requirements; and to determine the education, experience, licensure, testing, codes of conduct, and continuing education requirements for VSA examiners. The Board took no action on this item.

Presiding Officer, Bill Teigen moved to agenda item I., Discussion of computerized voice stress analysis ("CVSA") and possible recommendation to the executive director to include or not include CVSA as regulated instrument for the detection of truth or deception in this state as allowed under Chapter 1703 of the Occupations Code. The Board discussed the introduction on CVSA process into the program. Staff provided an overview of the research and data collected at the Summit held in June 2014. Bill Teigen made a motion, seconded by Manual Espinosa, that the Polygraph Advisory Board makes a recommendation to the Department to not allow the use of or inclusion of CVSA as regulated instrument for the detection of truth or deception in this state as allowed under Chapter 1703 of the Occupations Code. The motion passed by unanimous vote.

Presiding Officer, Bill Teigen moved to agenda item J., Should the advisory board vote favorably to recommend CVSA as an additional instrument in Agenda Item I. -- the appointment of an advisory board working group to develop necessary amendments to 16 Texas Administrative Code, Chapter 88, to add CVSA as an additional instrument; to develop instrumentation requirements; and to determine the education, experience, licensure, testing, codes of conduct, and continuing education requirements for CVSA examiners. The Board took no action on this item.

Presiding Officer, Bill Teigen moved to agenda item K., Discussion and possible appointment of an advisory board rules working group to develop additional changes to 16 Texas Administrative Code, Chapter 88 for consideration by the board. Presiding Officer, Bill Teigen continued the existing Continuing Education Rules Work Group of Tiffany Collier and Manual Espinosa to review the existing continuing education provider rules. Presiding Officer, Bill Teigen appointed Manuel Espinosa and Alicia Coleman to a New Technology Work Group to review new and developing technology under section 88.101. Presiding Officer, Bill Teigen appointed Manuel Espinosa and himself to a Continuing Education Requirements Review work group to contact the national polygraph organizations to become continuing education providers in Texas and review the standards to create and approve continuing education provider by the department.

Presiding Officer, Bill Teigen moved to agenda item L., Recommendation for agenda items for the next meeting. The Committee decided to place work group reports on the next agenda.

Presiding Officer, Bill Teigen moved to agenda item M., Adjournment. The meeting adjourned at 1:02 p.m.

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Bill Teigen, Presiding Officer

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Texas Department of Licensing and Regulation
POLYGRAPH ADVISORY COMMITTEE MEETING
Thursday, January 31, 2013 – 10:00 a.m.
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane – Austin, Texas

Summary of Minutes

Presiding Officer, Bill Teigen called the meeting to order at 10:15 a.m.

Presiding Officer, Bill Teigen moved to agenda item B., Roll Call, Certification of Quorum and Introductions. Committee members present were Bill Teigen, Manuel Espinosa, III, and Tiffany Niemann Collier. Committee members Michael McDougal and Teddy Ratcliff were absent. The board voted to excuse the absence of Mr. McDougal and Mr. Ratcliff. A quorum was present.

Presiding Officer, Bill Teigen moved to agenda item C., Approval of the meeting minutes from December 18, 2012. Presiding Officer Bill Teigen made a motion, seconded by Tiffany Niemann Collier, to approve the minutes as presented. The motion passed by a unanimous vote.

Presiding Officer, Bill Teigen moved to agenda item D., Public Comment. The Presiding Officer noted a letter to the Department from Andy Sheppard which is offered as public comment. The Committee heard public comment from Matt Hicks requirements for schools and the Department's policy of CVSA; and from John Rios on the Department's authority to regulate CVSA.

Presiding Officer, Bill Teigen moved to agenda item E., Nomination and Election of a vice chair. The Committee passed this item.

Presiding Officer, Bill Teigen moved to agenda item F., Staff Reports. Brian Francis, Deputy Executive Director gave the Executive Office report regarding proposed legislation which may affect the Polygraph Statute. Mr. Francis answered questions from the Committee. Ray Pizzaro, Program Specialist for the Education and Examination Division provided a staff report and answered questions from the Committee. Karen Cox Staff Attorney and Christina Kaiser, Division Director answered questions from the Committee regarding the complaint process. Lisa Houdek, Licensing Manager provided the Licensing Division staff report and answered questions from the Committee.

Presiding Officer, Bill Teigen moved to agenda item G.1., Discussion and possible recommendations on Work Group Report: Education and Examination Work Group. Lynne Latombe reported that the work group met and proposed changes under item H.

Presiding Officer, Bill Teigen moved to agenda item G.2., Discussion and possible recommendations on Work Group Report: Enforcement Work Group. Bill Teigen and Mike McDougal reported that the Work Group met and proposed changes under item I.

Presiding Officer, Bill Teigen moved to agenda item I., Discussion and possible recommendation for the Polygraph Examiners penalty matrix to be included in TDLR's Enforcement Plan. Christina Kaiser, Enforcement Division and Tony Couvillon, Program Specialist outlined the Penalty Matrix development process and its use by the Department. Ms. Kaiser reviewed the level of violations and actions included under those violations. Presiding Officer Bill Teigen gave an overview of the work group's consideration for the Matrix. Bill Teigen, seconded by Tiffany Niemann Collier, made a motion to accept the Penalty Matrix as presented. The motion passed by a unanimous vote.

Presiding Officer, Bill Teigen moved to agenda item H. Discussion and possible recommendation regarding amendments to existing rules at 16 Texas Administrative Code, Chapter 88, §§ 88.20, 88.28, 88.70 and, 88.100 relating to polygraph examiner licensing requirements, responsibilities of registered curriculum providers, general responsibilities of sponsor and technical requirements for polygraph examiner internships and course curriculum. Lynn Latombe, Assistant General Counsel provided an overview of the work groups meeting and reported that some new information had come to light which the Committee and work group might like to consider. Committee member Tiffany Niemann Collier reported that the APA guidelines will be changing which would affect the guideline the Committee would recommend and suggested staying this issue until further information from the APA. The Committee discussed this matter and decided to send this item back to the work group.

Presiding Officer, Bill Teigen moved to agenda item J., Recommendation for agenda items for the next meeting. The Committee decided to place work group reports and possible rules, legislative updates, and update on the penalty matrix on the next agenda.

Presiding Officer, Bill Teigen moved to agenda item K., Discussion of date, time and location of next Committee meeting. The Committee decided to hold its next meeting on March 20, 2013.

Presiding Officer, Bill Teigen moved to agenda item L., Adjournment. The meeting adjourned at 11:51a.m.

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Bill Teigen, Presiding Officer

Texas Department of Licensing and Regulation
POLYGRAPH ADVISORY COMMITTEE MEETING
Monday, December 18, 2012 – 10:00 a.m.
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane – Austin, Texas

Summary of Minutes

Presiding Officer, Bill Teigen called the meeting to order at 10:12 a.m.

Presiding Officer, Bill Teigen moved to agenda item B., Roll Call, Certification of Quorum and Introductions. Committee members present were Bill Teigen, Manuel F. Espinosa, III, Teddy Ratcliff, and Tiffany Niemann. Committee member Michael McDougal was absent. The Committee voted to excuse the absence of Mr. McDougal. A quorum was present.

Presiding Officer, Bill Teigen moved to agenda item C., Approval of the meeting minutes from December 7, 2009. Presiding Officer Bill Teigen made a motion to approve the minutes as presented. The motion passed by a unanimous vote.

Presiding Officer, Bill Teigen moved to agenda item D., Training for Committee members. Pamela Legate, Assistant General Counsel provided an update and refresher on the Open Meetings Act, Public Information Act, and the Administrative Procedures Act.

Presiding Officer, Bill Teigen moved to agenda item G.1., Staff Reports. Executive Office. Executive Director, Bill Kuntz provide a copy of the proposed changes to the statute to provide greater clarity clean up issues presented in the administration of the program. Mr. Kuntz and Mr. Francis explained the proposed changes. Mr. Kuntz answered questions from the Board members on the administration of the statute.

Presiding Officer, Bill Teigen moved to agenda item G.2., Compliance Division. Program Specialist, Russ Tauli reported that the program is running smoothly. Mr. Tauli explained that the Department is available for speaking engagements.

Presiding Officer, Bill Teigen moved to agenda item G.4., Enforcement Division. Karen Cox, Staff Attorney provided enforcement statistics and reported that 8 cases have been opened since 2009. Ms. Cox answered questions from the Committee members. Ms. Cox gave a detailed report on the enforcement process.

Presiding Officer, Bill Teigen moved to agenda item G.3., Education and Examination Division. Ray Pizarro, Program Specialist requested the Committee submit persons to serve as subject matter experts for the exam development. Mr. Pizarro presented the statistics and answered questions from the Committee on the exam process.

Presiding Officer, Bill Teigen moved to agenda item G.5., Licensing Division. Licensing Supervisor, Lisa Houdek reported on licenses issued, renewals, and renewal notices. Ms.

Houdek advised the Committee that the report is standard and can be customized to the Committee's desire.

Presiding Officer, Bill Teigen moved to agenda item F., Nomination and Election of a Vice Chair. Manuel Espinosa expressed an interest in serving as the Vice Chair. The Committee voted unanimously to approve Manuel Espinosa as Vice Chair.

Presiding Officer, Bill Teigen moved to agenda item E., Public Comment. The committee heard Public Comment from Matt Hicks and Jack St. John. Presiding Officer Bill Teigen read a letter from Eric Holden.

Presiding Officer, Bill Teigen moved to agenda item H, Discussion and possible recommendation regarding amendments to existing rules at 16 Texas Administrative Code, Chapter 88, §§ 88.20, 88.28, 88.70 and, 88.100 relating to polygraph examiner licensing requirements, responsibilities of registered curriculum providers, general responsibilities of sponsor and technical requirements for polygraph examiner internships and course curriculum. Pamela Legate, Assistant General Counsel and Don Dudley, Division Director presented the rules review process and proposed rules. The Committee discussed the proposed rules and decided to send the rules to a work group for further review and future act Committee action.

Presiding Officer, Bill Teigen moved to agenda item I., Work Group Reports and Appointment of Work Group Members. The work groups had not met and there were no reports. Tiffany Niemann and Manuel Espinosa accepted the assignment to the Education and Examination Work Group and were charged with the review of the curriculum rules prior to the next meeting. The Enforcement Work Group remains Bill Teigen and Mike McDougal and was tasked with the review of the penalty matrix prior to the next meeting. The Licensing Work Group remains Teddy Ratcliff and Mike McDougal and would contact Lisa Houdek of the Licensing section to see if there were areas that need a review.

Presiding Officer, Bill Teigen moved to agenda item J., Recommendation for agenda items for the next meeting. The Committee decided to place Work Group reports and review of the Enforcement Penalty Matrix on the next agenda.

Presiding Officer, Bill Teigen moved to agenda item K., Discussion of date, time and location of next Committee meeting. The Committee decided to hold its next meeting on January 23, 2012.

Presiding Officer, Bill Teigen moved to agenda item L., Adjournment. The meeting adjourned at 2:13 p.m.

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Bill Teigen, Presiding Officer

will not adversely affect the administration and enforcement of the program.

The amendments to §87.85 reduce various permit application, license, and renewal fees as part of the Department's annual fee review. Also, the wording for the duplicate and amended permit and license fees has been changed to "Revised/Duplicate License/Certificate/Permit/Registration" to be consistent with the same fee in other Department programs.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6834). The deadline for public comments was November 4, 2013. The Department did not receive any comments on the proposed rule during the 30-day public comment period.

The amendments are adopted under Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, in particular Texas Occupations Code, §51.202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2013.

TRD-201305899
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-7348

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CHAPTER 88. POLYGRAPH EXAMINERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 88, §88.10, and §88.70; new §§88.25, 88.100 and 88.101; and the repeal of §88.100 regarding the Polygraph Examiners program without changes to the proposed rules as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6835).

Section 88.20 is adopted with changes to the proposed rule as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6835) and is republished.

The adoption of the amendments, new rules, and repeal implement Senate Bill 562 (SB 562), 83rd Legislature, Regular Session (2013) which amended Texas Occupations Code, Chapter 1703 relating to the regulation of polygraph examiners.

Amendments to §88.10 mirror the statutory changes in definition of an instrument in SB 562.

The amendments to §88.20 delete the licensing option of a 12-month polygraph examiner internship. This alternative was eliminated in statute by SB 562.

New §88.25 creates mandatory continuing education requirements for polygraph examiners as required by SB 562. Six hours of continuing education is mandated per year.

The amendments to §88.70 change the term "curriculum" to "training" or "training material" to update the terminology to industry standard.

The repeal of existing §88.100 deletes the curriculum standards for the 12-month internship, for it was statutorily eliminated under SB 562, and replaces it with new §88.100 which updates the polygraph examiner education course to 320 hours of specific course content and hours for each subject consistent with current industry standards. In addition, new §88.100 delineates the fundamental subjects and hours for the statutorily designated six-month internship.

New §88.101 provides placement in the rules for the consideration of other instruments and instrumentation by the Commission as provided for in SB 562.

The Department drafted and distributed the rule proposal to persons internal and external to the agency. The proposed rules were published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6835). The deadline for public comments was November 4, 2013. The Department received comments from six interested parties during the 30-day public comment period.

Comment: One commenter states that their association's continuing education hours requirement is 20 hours over two years and to reduce the hours to six hours per year would cause an increase in substandard examiners and ineffective examinations.

Department Response: The association could continue with their 20 hours course. The continuing education hours reflected in rule are just a minimum. Any examiner or association could certainly give or take more.

Comment: Section 88.10 should include galvanic skin response/electrodermal activity of the subject.

Department Response: The rule definition mirrors the definition in statute. The Department refrains from adding any new provision in rule to a definition in statute.

Comment: The license requirements under §88.20 are inadequate. They should only allow baccalaureate degrees from an accredited college or university recognized by the southern association of educational standards. No degrees, obtained by only paying a fee, should be allowed as qualification for licensure.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: Section 88.20 allows satisfaction of licensing qualifications with a university degree or investigative experience during the five years preceding the application. This is unsatisfactory for it could allow one day of experience to satisfy the requirement. It doesn't do enough to qualify the length or form of the experience. The standard should be four years' experience within the last five as an investigator with a police agency assigned to person(s) or property crimes conduction criminal interrogations/interviews of felony/misdemeanor suspects.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: Applicants should have to pass a background check and have no felony convictions; no convictions of family violence; no identified conduct or convictions of moral turpitude; or convictions of sexual abuse, child abuse, or any sex crime.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: In §88.25 "maintenance of trust accounts" should be removed as this is something only lawyers are required to do as part of their occupations. "Marketing" should also be removed.

Department Response: This is not a comment on a proposed rule amendment as published.

Comment: Section 88.101 should be removed entirely. Any new instrumentation or instruments need to be professionally evaluated, tested, and have peer review research conducted prior to any adoption or approval for use.

Department Response: The Department with the support of the Advisory Committee will take any new recommendations for new instrumentation under the full consideration of professional evaluation and recommendation. However, at this time, no new instrumentation is being offered in this rule posting.

Comment: It is hard for most examiners to attend offered continuing education.

Department Response: Continuing education is required in statute.

Comment: Allow online continuing education courses.

Department Response: The Department will evaluate any course for the appropriate substantive material and security. Extensive comment was made on voice stress analysis and its relation to polygraph examination. The current rules do not include voice stress analysis. The Department will consider these comments in any future considerations of the inclusion of voice stress analysis in rule.

The Department has changed the language in §88.20(5) to "complete an acceptable polygraph examiner course of study" instead of "graduate from a department-approved polygraph school" to more closely follow the statute.

16 TAC §§88.10, 88.20, 88.25, 88.70, 88.100, 88.101

The amendments and new rules are adopted under Texas Occupations Code, Chapter 51 and 1703, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and 1703. No other statutes, articles, or codes are affected by the adoption.

§88.20. Licensing Requirements--Polygraph Examiner.
To be eligible for a polygraph examiner license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §88.80;

(3) provide a copy of an insurance policy, surety bond or bond continuation certificate required under §88.40;

(4) either:

(A) hold a baccalaureate degree from a college or university; or

(B) have active investigative experience during the five (5) years preceding the application;

(5) complete an acceptable polygraph examiner course of study and satisfactorily complete a six (6) month polygraph examiner internship;

(6) pass a written and practical examination required under §88.29; and

(7) successfully pass a criminal background check.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2013.

TRD-201305900
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-7348

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16 TAC §88.100

The repeal is adopted under Texas Occupations Code, Chapter 51 and 1703, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51 and 1703. No other statutes, articles, or codes are affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2013.

TRD-201305901
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: January 1, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 463-7348

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CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §§94.20, 94.21, 94.25

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to 16 Texas Administrative Code (TAC) Chapter 94, §94.20 regarding the Property Tax Professionals program, without changes to the proposed rule as

PROPERTY TAX CONSULTANTS
Occupations Code, Chapter 1152, Title 7. Practices and Professions Related to Real Property and Housing
Effective 9/1/2009

SUBCHAPTER C. PROPERTY TAX CONSULTANTS ADVISORY COUNCIL

§ 1152.101. Definition

In this subchapter, "council" means the Property Tax Consultants Advisory Council.

§ 1152.102. Council Membership

(a) The council is composed of seven members appointed by the presiding officer of the commission, with the commission's approval.

(b) The presiding officer of the commission may appoint not more than two members who are qualified for an exemption under Section 1152.002(a)(3).

(c) Except as provided by Subsection (d), each person appointed for membership on the council must:
- (1) be a registered senior property tax consultant;
- (2) be a member of a nonprofit and voluntary trade association:
  - (A) whose membership consists primarily of persons who perform property tax consulting services in this state or who engage in property tax management in this state for other persons;
  - (B) that has written experience and examination requirements for membership; and
  - (C) that subscribes to a code of professional conduct or ethics;
- (3) be a resident of this state for the five years preceding the date of the appointment; and
- (4) have performed or supervised the performance of property tax consulting services as the person's primary occupation continuously for the five years preceding the date of the appointment.

(d) One member of the council must be a public member.

§ 1152.103. Membership Restrictions

A person is not eligible for appointment as a member of the council if the person is:
- (1) required to register with the secretary of state under Chapter 305, Government Code;
- (2) required to register with the Board of Tax Professional Examiners under Chapter 1151; or
- (3) exempt from the registration requirements imposed by this chapter, except as provided by Section 1152.102.

§ 1152.104. Terms; Vacancy

(a) Members of the council serve staggered three-year terms, with the terms of two members expiring on February 1 of each year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

§ 1152.105. Presiding Officer

The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

§ 1152.106. Meetings; Vote Required for Action

(a) The council shall meet at least semiannually at the call of the presiding officer or at the call of a majority of its members.

(b) A decision of the council is not effective unless it receives the affirmative vote of at least four members.

§ 1152.107. Compensation; Reimbursement

A council member is not entitled to receive compensation for serving as a member. A council member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member, subject to applicable limitations in the General Appropriations Act.

§ 1152.108. Council Powers

The council shall:

(1) recommend to the commission standards of practice, conduct, and ethics for registrants to be adopted under this chapter;

(2) recommend to the commission amounts for the fees it may set under this chapter;

(3) recommend to the commission contents for the senior property tax consultant registration examination and standards of acceptable performance;

(4) assist and advise the commission in recognizing continuing education programs and educational courses for registrants; and

(5) advise the commission in establishing educational requirements for initial applicants.

PROPERTY TAX CONSULTANTS ADVISORY COUNCIL MEETING

Meeting of Thursday, December 10, 2009 – 10:00 a.m.
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Judy Cullers called the meeting to order at 10:05 a.m.

Presiding Officer, Judy Cullers moved to agenda item B., Roll Call, Certification of Quorum. Council members present were Judy Cullers, Stephen R. Dunson, Steven G. Mills, W. Ken Parsons, and Paul Pennington. Council members Mitchell Katine and William Green were absent. A quorum was present.

Presiding Officer, Judy Cullers moved to agenda item C., Approval of the minutes from the October 22, 2009, meeting. Council member, Steven G. Mills made a motion to accept the minutes as presented. Council member, W. Ken Parsons seconded the motion. The motion passed by a unanimous vote in favor.

Presiding Officer, Judy Cullers moved to agenda item D., Public Comment. There was no public comment.

Presiding Officer, Judy Cullers moved to agenda item E.1., Staff Reports, Executive Office. Bill Kuntz, Executive Director, reported on upcoming rule adoptions. Council member Steven G. Mills inquired about the upcoming public hearing and Bill Kuntz, Executive Director responded that the hearing was for the Property Tax Professionals.

Presiding Officer, Judy Cullers moved to agenda item E.2., Staff Reports, Education and Examinations Division. Don Dudley, Division Director, reported on statistics and that the new examination would be in place on January 1, 2010. There was discussion about the new examination, pass rate, and the candidate information bulletin.

Presiding Officer, Judy Cullers moved to agenda item E.3., Staff Reports, Enforcement Division. Robert Musemeche, Enforcement Prosecutor, reported on complaint statistics. There was discussion about how the Council can be notified of administrative hearings and the complaint process if there is a pending case with the Office of the Attorney General.

Presiding Officer, Judy Cullers moved to agenda item E.4., Staff Reports, Licensing Division. Joyce Hennington, Licensing Supervisor, provided the statistics for fiscal year 2010 and the list of attorneys applying for senior property tax consultants.

Presiding Officer, Judy Cullers moved to agenda item F., Discussion and possible action regarding proposed amendments to existing rules 16 Texas Administrative Code, Chapter 66, including §66.20, to implement House Bill 2591, 81st Legislative Session and public comments. Lynn Latombe, Assistant General Counsel, gave an overview of Section 66.20 and the comments received. Council member Steven G. Mills made a motion to recommend the proposed rules to

the Commission for adoption. Paul Pennington seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Judy Cullers moved to agenda item G., Discussion of on-line courses offered for continuing education credit. Presiding Officer, Judy Cullers commented that there have been several complaints that the online courses are not meeting the outlined standard. Don Dudley, Director of Education and Examination Division stated that we need a complaint filed to allow us to investigate this concern. Mr. Dudley also stated that we will work with the providers to ensure that the courses are following the outlined standard. Brian Francis, Deputy Executive Director commented that the Department has taken action against Auctioneer and Cosmetology on-line continuing education providers that were in violation. Council member Paul Pennington encouraged the council to have those complaining file complaints with TDLR.

Presiding Officer, Judy Cullers moved to agenda item H., Recommendations for agenda items for next meeting. The Council recommended that the examination review be placed on the next agenda.

Presiding Officer, Judy Cullers moved to agenda item I., Discussion of date, time, and location of next Council meeting. The Council decided to meet on March 29, 2010 at 10:00 a.m.

Presiding Officer, Judy Cullers moved to agenda item K., Adjournment. Presiding Officer, Judy Cullers adjourned the meeting at 10:58 a.m.

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Judy Cullers, Presiding Officer
Property Tax Consultants Advisory Council

PROPERTY TAX CONSULTANTS ADVISORY COUNCIL MEETING

Meeting of October 22, 2009
North Campus Building, 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Judy Cullers called the meeting to order at 9:41 a.m.

Presiding Officer, Judy Cullers moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Council members present were Ken Parsons, Stephen Dunson, Judy Cullers, Mitchell Katine, and Steven Mills. Council members Paul Pennington and William Green were absent. A quorum was present.

Presiding Officer, Judy Cullers moved to agenda item C., Approval of the minutes from the March 6, 2009, meeting. Council member, Steven Mills made a motion to accept the minutes as presented. Council member, Ken Parsons seconded the motion. The motion passed by a unanimous vote in favor.

Presiding Officer, Judy Cullers moved to agenda item D., Public Comment. There was no public comment.

Presiding Officer, Judy Cullers moved to agenda item E.1., Staff Reports, Executive Office. Bill Kuntz, Executive Director, welcomed Mitchell Katine the newest Council member and welcomed the Council to the new meeting facility highlighting the audio and video broadcasting of the meeting. Mr. Kuntz reported on the new programs including Property Tax Professionals, a related program, and legislative tweaks to the Property Tax Consultants Statute.

Presiding Officer, Judy Cullers, moved to agenda item E.2., Staff Reports, Compliance Report. Russ Taulli, Program Manager, introduced Roger Thormahlen as program specialist for the Property Tax Consultants and explained the role of the Compliance Division.

Presiding Officer, Judy Cullers moved to agenda item E.3., Staff Reports, Education and Examinations Division. Don Dudley, Division Director, reported statistics are on track from the last couple of years; and, exams are the same and the pass rate remains the same. Mr. Dudley reported on the November meeting for exam review to comply with legislative changes. The Council raised concerns about the crossover questions for each level of registration. Council Member, Steven Mills will add some questions on ethics for the exam review committee. Council Member, Mitchell Katine asked questions about education requirements in order to sit for an exam.

Presiding Officer, Judy Cullers moved to agenda item E.4., Staff Reports, Enforcement Division. Robert Musemeche, Enforcement Prosecutor, reported on two agreed orders which have been issued. Mr. Musemeche answered questions from the Council on enforceable actions, specifically, "What causes a violation and triggers an enforcement action?" Mr. Musemeche

also answered questions on the complaint resolution ratio for Property Tax Consultants to that of the Department.

Presiding Officer, Judy Cullers moved to agenda item E.5., Staff Reports, General Counsel's Office. Lynn Latombe, Assistant General Counsel, reminded the Council of the Open Meetings Act and Notice of Public Meetings Requirements. Ms. Latombe provided recommendations for best practices to avoid violations of the Open Meetings Act or Notice of Public Meetings. Ms. Latombe also reported on the Legislative changes to §1152: exam requirements; limiting Senior Property Tax Consultants to consultant ratio; requirements of licensees; advertising requirements; and website requirements.

Presiding Officer, Judy Cullers moved to agenda item E.6., Staff Reports, Licensing Division. Joyce Hennington, Licensing Supervisor, provided the statistics for Fiscal Year 2009; and names of the attorneys applying for senior property tax consultants.

Presiding Officer, Judy Cullers moved to agenda item F., Discussion and possible action to approve the revised Property Tax Consultants criminal conviction guidelines for inclusion in the Department's enforcement plan. Charlotte Melder, Lead Prosecutor, presented the changes to the criminal conviction guidelines. Council Member, Steven Mills made a motion to approve the criminal conviction guidelines, Council Member, Mitchell Katine, seconded. The motion passed with a unanimous vote in favor.

Presiding Officer, Judy Cullers moved to agenda item G., Discussion and possible action regarding proposed amendments to existing rules 16 Texas Administrative Code, Chapter 66, including §66.20 to implement House Bill 2591, 81st Legislative Session. Lynn Latombe, Assistant General Counsel, presented the proposed rules and the rules adoption process. Council member, Mitchell Katine made a motion to approve paragraphs B-C as submitted. Council member, Ken Parsons seconded the motion. The motion passed with a unanimous vote in favor. Ms. Latombe discussed division of hours for continuing education courses. Council members Ken Parsons, Steven Mills, and Stephen Dunson will form a workgroup to develop class curriculum. The Council proposed adding section D to define the hourly requirements as: 8 hours – legal, 16 hours – appraisal, 8 hours – property tax consultants, general, and 8 hours – ethics. Council member, Mitchell Katine made a motion to add §66.20(d). Council member, Steven Mills seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Judy Cullers moved to agenda item H., Discussion and possible recommendation regarding rule changes requiring information to be included in solicitations from property tax consultants to taxpayers. Lynn Latombe, Assistant General Counsel, pointed to the Legislative changes at §1152 (222-223) and answered questions and addressed the Council's concerns. The Council took no action.

Presiding Officer, Judy Cullers moved to agenda item I., Recommendations for agenda items for next meeting. The Council recommended that the following items be placed on the next meeting's agenda: Discussion and recommendation of the administrative rules and comments.

Presiding Officer, Judy Cullers moved to agenda item J., Discussion of date, time, and location of next Council meeting. The Council decided to meet on December 10, 2009, at 10:00 a.m.

Presiding Officer, Judy Cullers moved to agenda item K., Adjournment. Presiding Officer, Judy Cullers adjourned the meeting at 11:25 a.m.

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Judy Cullers, Presiding Officer
Property Tax Consultants Advisory Council

PROPERTY TAX CONSULTANTS ADVISORY COUNCIL MEETING

Meeting of March 6, 2009
E.O. Thompson Building, 7th Floor Public Meeting Room
920 Colorado Street, Austin, Texas

Summary of Minutes

Vice-Presiding Officer, Paul Pennington called the meeting to order at 9:30 a.m.

Vice-Presiding Officer, Paul Pennington moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Council members present were Stephen Dunson, William Green, Steven Mills, Ken Parson, Paul Pennington. Presiding Officer Judy Cullers was absent. A quorum was present.

Vice-Presiding Officer, Paul Pennington moved to agenda item C., Approval of the minutes from the December 19, 2008 meeting. Council member, Ken Parson made a motion to accept the minutes as presented. Council member, Stephen Dunson seconded the motion. The motion passed by a unanimous vote in favor.

Vice-Presiding Officer, Paul Pennington moved to agenda item D., Public Comment. There was no public comment.

Vice-Presiding Officer, Paul Pennington moved to agenda item E.1, Staff Reports, Executive Office. Bill Kuntz reported that the new North campus facility is completed and the legislative request for reimbursement of travel expenses was well received and expected to pass. Two bills regard property tax consultants were recently offered for this session: HB 2550 by Rep. Howard, and HB 2591 by Rep. Thompson. Mr. Kuntz introduced Commissioner Deborah Yurco and answered questions about new meeting facility; possible new programs including Tax Professionals and Polygraph Examiners.

Vice-Presiding Officer, Paul Pennington, passed on agenda item E.2., Staff Reports, Compliance Report.

Vice-Presiding Officer, Paul Pennington moved to agenda item E.3., Staff Reports, Education and Examinations Division. Director of Education and Examination, Don Dudley reported the statistic and stated continuing education statistics are lower than last year, but could catch up by end of the fiscal year.

Vice-Presiding Officer, Paul Pennington moved to agenda item E.4., Staff Reports, Enforcement Division. Enforcement Prosecutor, Karen Cox reported on employment changes within enforcement, training opportunities, and property tax consultants' enforcement statistics. Ms. Cox reported that seven enforcement cases have been opened this fiscal year and one resolved.

Vice-Presiding Officer, Paul Pennington moved to agenda item E.5., Staff Reports, Licensing Division. Joyce Hennington, Licensing Supervisor, presented licensing statistics, including the number of attorneys applying for senior property tax consultant status.

Vice-Presiding Officer, Paul Pennington moved to agenda item F., Discussion and possible recommendation for proposed rules at 16 TAC Chapter 66, regarding the minimum education and competency requirements for new property tax consultants, including increasing the education requirements. Don Dudley and Brad Bowman laid out the proposed rules and rule making timeline. Paul Pennington and Ken Parson questioned the effect of the rule against the proposed legislation. Council member Ken Parson made a motion to recommend publication of proposed rules to increase the education hours required to become a property tax consultant. Council member William Green seconded the motion. The motion passed with a unanimous vote in favor.

Vice-Presiding Officer, Paul Pennington moved to agenda item G., Discussion and possible recommendation related to soliciting input from education providers to identify the subject areas or topics that should be included in introductory property tax courses. Don Dudley facilitated the discussion among the Council regarding the need to develop educational directions to education providers. Council discussed developing a work group; having staff notify the current providers of the possible changes and reviewing exam statistics to gain insight on the needed topic areas. Council agreed to develop a workgroup that will provide the proposed rules and comments to the education providers: Steven Mills, Stephen Dunson and William Green.

Vice-Presiding Officer, Paul Pennington moved to agenda item H., Discussion and possible recommendation for proposed rules at 16 TAC Chapter 66, regarding information to be included in solicitations from property tax consultants to taxpayers, including the name and license number of the Senior Property Tax Consultant and a statement that the property tax consultant is regulated by TDLR. Discussion and possible recommendation for proposed rules at 16 TAC Ch. 66, regarding information to be included in solicitations from PTC to tax payers, including the name and license number of the Sr. PTC and a statement that the PTC is regulated by TDLR. Brad Bowman and Lynn Latombe presented two possible proposals for advertising requirements. Council engaged in discussions regarding need to add contact information on marketing materials. Karen Cox outlined the benefit of adding the contact information to marketing materials to assist enforcement actions giving persons an opportunity to file timely complaints. Council member Ken Parson raised concerns for national firms that do marketing throughout the U.S. Council member Paul Pennington supports option two and suggests the Board become pro-active for the industry to avoid undue hardships from the legislature to regulate the industry. Council member Ken Parson made a motion to recommend the implementation of proposed rules listed as option one as present. Council member Steven Mills seconded the motion. The motion passed with a unanimous vote in favor.

Vice-Presiding Officer, Pail Pennington moved to agenda item I., Discussion regarding limiting the number of registered property tax consultants under the supervision of a senior property tax consultant license. Discussion regarding limiting number of property tax consultants supervised under the senior registered property tax consultants. Brad Bowman

facilitated the discussion among the Council. Stephen Dunson presented industry failures as a result of having too many registered property tax consultants under a senior which does not allow for proper training of the junior consultants. The Council and staff pointed out that the proposed legislation includes limitation for junior consultants under a senior property tax consultant's license. The Council agreed that it needed to propose a limit of 10 to 1 juniors to seniors. Lynn Latombe questioned if the ratio concept addresses the fundamental concern to ensure the public is adequately represented. Council member Paul Pennington suggested the development of a workgroup to define the roll of a senior. Council member Stephen Dunson made a motion to recommend development of rules limiting the number of registered property tax consultants under a senior property tax consultant to ten. Council member Ken Parson seconded the motion. The motion passed with a unanimous vote in favor.

Vice-Presiding Officer, Paul Pennington moved to agenda item J., Recommendations for agenda items for next meeting. The Council recommended that the following items be placed on the next meeting's agenda: Define the relationship between a senior property tax consultants and registered property tax consultants, adding broadcast media to advertising requirements

Vice-Presiding Officer, Paul Pennington moved to agenda item K., Discussion of date, time, and location of next Council meeting. The Council decided to meet on September 11, 2009 at 9:30 a.m.

Vice-Presiding Officer, Paul Pennington moved to agenda item L., Adjournment. Presiding Officer, Judy Cullers adjourned the meeting at 11:11 a.m.

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Judy Cullers, Presiding Officer
Property Tax Consultants Advisory Council

Chapter 66. Registration of Property Tax Consultants

Proposal Filed: October 26, 2009 – To be published in the *Texas Register*: November 6, 2009
Deadline for Public Comment: December 7, 2009

Underlined text is new language.

§66.20. Registration Requirements.

(a) To register or renew a registration, a person must file a completed application on a form provided by the department and pay the applicable fees.

(b) An applicant for a senior property tax consultant registration must pass a department-approved examination for senior property tax consultants. The standard for passing the senior property tax consultant examination shall be a score of at least 70%.

(c) An applicant for a property tax consultant registration must pass a department-approved examination for property tax consultants. The standard for passing the property tax consultant examination shall be a score of at least 70%.

(d) To be eligible for an original property tax consultant registration, a person must successfully complete at least 40 classroom hours of education including:

(1) eight hours on the laws and rules relating to property tax consulting;

(2) sixteen hours on appraisal and valuation;

(3) eight hours on property tax consulting; and

(4) eight hours on ethics.

Chapter 1151
Occupations Code
Effective: September 1, 2011
Texas Tax Professional Advisory Committee

Sec. 1151.051. MEMBERSHIP. (a) The Texas Tax Professional Advisory Committee consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are certified under this chapter as registered professional appraisers;

(2) two members who are certified under this chapter as registered Texas collectors or registered Texas assessors; and

(3) three members who represent the public.

(b) A vacancy on the committee is filled in the same manner as the original appointment for the unexpired portion of the term.

(c) The presiding officer of the commission shall designate one member of the committee as the presiding officer.

(d) Each appointment to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) Section 2110.008, Government Code, does not apply to the committee.

Sec. 1151.0511. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the committee if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of property tax appraisal, assessment, or collection;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department;

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses; or

(5) at any time has served on an appraisal review board.

Sec.1151.0512

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection.

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

Sec. 1151.052. TERMS. Committee members serve six-year terms, with the terms of one or two members expiring on March 1 of each odd-numbered year.

Section 1151.055 COMPENSATION AND REIMBURSEMENT

(a) A committee member may not receive compensation for the member's services.

SUBCHAPTER C. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, DEPARTMENT, AND ADVISORY COMMITTEE

Sec. 1151.101. FEES. The commission, with the advice of the committee, shall establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering the programs and activities under this chapter.

Sec. 1151.108. COMMITTEE DUTIES. The committee shall:

(1) recommend to the commission rules and standards regarding technical issues relating to tax professionals;

(2) provide advice to the commission regarding continuing education courses and curricula for registrants;

(3) provide advice to the commission regarding the contents of any examination required by the commission under this chapter; and

(4) educate, and respond to questions from, the commission and the department regarding issues affecting tax professionals.

Texas Department of Licensing and Regulation

TAX PROFESSIONAL ADVISORY COMMITTEE MEETING

Monday, September 23, 2013 – 10:30 a.m.
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane – Austin, Texas

MINUTES

Presiding Officer, Shane Docherty called the meeting to order at 10:32 a.m.

Presiding Officer, Shane Docherty moved to agenda item B. Roll Call, Certification of Quorum. Committee members Shane Docherty, James E. Childers, Thomas Stanley Keeland, and Lee Jaye Rosenberg were present. Committee member, Michael Craig McDougal was absent. A quorum was present.

Presiding Officer, Shane Docherty moved to agenda item C. Approval of minutes from July 8, 2013 meeting. Committee member, Lee Jaye Rosenberg made a motion to approve the minutes as documented. Committee member James E. Childers seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moves to agenda item D. Public Comment. No public comment was heard.

Presiding Officer, Shane Docherty moved to agenda item E.1. Staff Reports – Executive Office. Executive Director, Bill Kuntz gave an update on the bill implementation process.

Presiding Officer, Shane Docherty moved to agenda item E.2. Staff Reports – Compliance Division. Program Specialists, Roger Thormahlen and Russ Taulli reported on process improvements, outreach efforts, updated FAQs and MAPs. There was Committee discussion about the industry appreciating our outreach efforts, the percentage of licensees prescribed to our email notification service, and the email notification service and website being great tools to the industry.

President Officer, Shane Docherty moved to agenda item E.3. Staff Reports – Education and Examination Division. Program Specialist, Ray Pizarro reported on continuing education and examination statistics. There was Committee discussion about the examinations and seating issues, the pass rate, and the number of times an individual can take an examination. Mr. Pizarro also informed the Committee that there is an examination review coming in the near future.

Presiding Officer, Shane Docherty moved to agenda item E.4. Staff Reports – Enforcement Division. Prosecutor, Mary Winston gave an overview of the enforcement case statistics, agreed orders and penalties assessed. There was Committee discussion about the operation of law cases.

Presiding Officer, Shane Docherty moved to agenda item E.5. Staff Reports – Licensing Division. Program Specialist, Joyce Hennington reported on the licensing statistics. There was Committee discussion regarding online renewals.

Presiding Officer, Shane Docherty moved to agenda item F. Discussion and possible recommendation regarding proposed rule amendments, new rules, and/or repeals at 16 Texas Administrative Code, Chapter 94, to implement House Bill 585 and Senate Bill 546, 83rd Legislature, Regular Session (2013), changes to 94.21(8)(A)(iv)(III), and the Commission's general rulemaking authority to administer the property tax professional program. Assistant General Counsel, Lynn Latombe gave an update on where we are in the bill implementation process. Committee member, Jim Childers inquires as to whether or not 94.25(b)(1) was changed from 7 hours to 3.5 hours and 94.25(i) regarding certificates had been modified as requested. Ms. Latombe informed the Committee that the requested changes had been made and gave the Committee an overview of the proposed rules.

Presiding Officer, Shane Docherty moved to agenda item G. Discussion and possible recommendation on proposed amendments to 16 Texas Administrative Code, Section 94.80, including reducing fees based on the

Department's annual fee review. Assistant General Counsel, Lynn Latombe gave an overview of the fee reductions. There was Committee discussion regarding whether or not the examination fees will change. Deputy Executive Director, Brian Francis informed the Committee that the examination fees will stay the same per our contract with PSI.

Committee member, James E. Childers, made a motion to publish the proposed rule amendments, new rules, repeals, and reduced fee rules in agenda items F. and G.. Committee member, Lee Jaye Rosenberg seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moved to agenda item H. Recommendations for agenda items for next meeting. The Committee requested that the public comments for the proposed rule amendments, new rules, repeals, and reduced fee rules be on the next agenda.

Presiding Officer, Shane Docherty moved to agenda item I. Discussion of date, time and location of next Committee meeting. The next meeting will be scheduled between November 14 – 21, 2013.

Presiding Officer, Shane Docherty moved to agenda item J. Adjournment. Committee member, Lee Jaye Rosenberg made a motion to adjourn the meeting at 11:11 a.m. Committee member, Thomas Stanley Keeland seconded the motion. The motion passed with a unanimous vote in favor.

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Shane Docherty, Presiding Officer

Texas Department of Licensing and Regulation

TAX PROFESSIONAL ADVISORY COMMITTEE MEETING

Monday, November 18, 2013 – 10:30 a.m.
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane – Austin, Texas

MINUTES

Presiding Officer, Shane Docherty called the meeting to order at 10:32 a.m.

Presiding Officer, Shane Docherty moved to agenda item B. Roll Call, Certification of Quorum. Committee members Shane Docherty, James E. Childers, Thomas Stanley Keeland, Lee Jaye Rosenberg and J. Sidney Vela were present. Committee member, Michael Craig McDougal was absent. A quorum was present.

Committee member, Lee Jaye Rosenberg made a motion for the Committee to excuse Committee member, Michael Craig McDougal's absence. Committee member, Thomas Stanley Keeland seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moved to agenda item C. Approval of minutes from September 23, 2013 meeting. Committee member, James E. Childers made a motion to approve the minutes as documented. Committee member, Lee Jaye Rosenberg seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moves to agenda item D. Public Comment. No public comment was heard.

Presiding Officer, Shane Docherty moved to agenda item E.1. Staff Reports – Executive Office. Executive Director, Bill Kuntz had staff introduce themselves. Mr. Kuntz then gave an update on the bill implementation process and reported that the Texas Department of Licensing and Regulation was named as one of the Top Workplaces in Sunday's *American-Stateman*.

Presiding Officer, Shane Docherty moved to agenda item E.2. Staff Reports – Compliance Division. Program Specialist, Roger Thormahlen reported on process improvements and outreach efforts. There was Committee discussion about the continuing education reporting process and the continuing education information on the Department's website.

President Officer, Shane Docherty moved to agenda item E.3. Staff Reports – Education and Examination Division. Program Specialist, Ray Pizarro reported on continuing education and examination statistics. Mr. Pizarro also reported that the examination review for the Property Tax Professionals' program will occur in January. There was Committee discussion about the continuing education providers approved by the Comptroller's Office. Division Director, Don Dudley reported that the Comptroller's Office approves courses and that the Department works with providers to get their applications completed and approved. There was discussion about the ease of use of the Department's website.

Presiding Officer, Shane Docherty moved to agenda item E.4. Staff Reports – Enforcement Division. Prosecutor, Mary Winston gave an overview of the enforcement case statistics, agreed orders and penalties assessed. Ms. Winston gave an overview of what an operation of law revocation is. Committee member, Lee Jaye Rosenberg inquired about the number of penalties assessed vs. collected. Executive Director, Bill Kuntz reported that out of the $4,550 in penalties assessed, $4,250 were collected.

Presiding Officer, Shane Docherty moved to agenda item E.5. Staff Reports – Licensing Division. Program Specialist, Joyce Hennington reported on the licensing statistics. There was Committee discussion regarding online renewals.

Presiding Officer, Shane Docherty moved to agenda item F. Discussion and possible recommendation regarding proposed rule amendments, new rules, and/or repeals at 16 Texas Administrative Code, Chapter 94, to

implement House Bill 585 and Senate Bill 546, 83rd Legislature, Regular Session (2013), changes to 94.21(8)(A)(iv)(III), and the Commission's general rulemaking authority to administer the property tax professional program. Assistant General Counsel, Lynn Latombe gave an update on where we are in the bill implementation process. Committee member, Jim Childers inquires as to whether or not 94.25(b)(1) was changed from 7 hours to 3.5 hours and 94.25(i) regarding certificates had been modified as requested. Ms. Latombe gave an overview of the rule changes posted in the Texas Register to update the new Committee member, J. Sidney Vella. Ms. Latombe also reported on the comments received. There was board discussion regarding the proposed rules and comments received. Committee member, James E. Childers made a motion to recommend the rules to the Commission for adoption with the change in Section 94.25(c)(V) of date to be on or after January 1, 2015. Committee member, J. Sidney Vela seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moved to agenda item G. Discussion and possible recommendation on proposed amendments to 16 Texas Administrative Code, Section 94.80, including reducing fees based on the Department's annual fee review. Assistant General Counsel, Lynn Latombe reported that no comments were received regarding the published rules. Committee member, Lee Jaye Rosenberg made a motion to recommend the rules to the Commission for adoption as presented. Committee member, James E. Childers seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moved to agenda item H. Recommendations for agenda items for next meeting. The Committee had no items to be included on the next agenda.

Presiding Officer, Shane Docherty moved to agenda item I. Discussion of date, time and location of next Committee meeting. The Committee requested dates and times for the next meeting be sent to them when needed.

Presiding Officer, Shane Docherty moved to agenda item J. Adjournment. Committee member, Thomas Stanley Keeland made a motion to adjourn the meeting at 11:40 a.m. Committee member, James E. Childers seconded the motion. The motion passed with a unanimous vote in favor.

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Shane Docherty, Presiding Officer

Texas Department of Licensing and Regulation

TAX PROFESSIONAL ADVISORY COMMITTEE MEETING

Thursday, December 6, 2012 – 10:30 a.m.
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane – Austin, Texas

MINUTES

Presiding Officer, Shane Docherty called the meeting to order at 10:30 a.m.

Presiding Officer, Shane Docherty moved to agenda item B. Roll Call, Certification of Quorum. Committee members Shane Docherty, Ro'Vin Garrett, Thomas Stanley Keeland, Michael Craig McDougal, Dorye Kristeen Roe, and Lee Jaye Rosenberg were present. Committee member, James E. Childers was absent. A quorum was present. Committee member, Lee Jaye Rosenberg made a motion to excuse the absence of Committee member, James E. Childers. Committee member, Mike Craig McDougal seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moved to agenda item C. Approval of minutes from April 11, 2012 meeting. Committee member, Michael Craig McDougal made a motion to approve the minutes as documented. Committee member Lee Jaye Rosenberg seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Shane Docherty moved to agenda item D. Public Comment. No public comment was heard.

Presiding Officer, Shane Docherty moved to agenda item E.1. Staff Reports – Executive Office. Deputy Executive Director, Brian Francis gave a legislative update informing the Committee that the Department does not plan on pursuing statutory changes for this program with the exception of §5.102 of the Tax Code. Mr. Francis also gave an update on the certification levels and requirements and stated that this would be discussed further in Agenda Item G.

Presiding Officer, Shane Docherty moved to agenda item E.2. Staff Reports – Compliance Division. Program Specialist, Roger Thormahlen reported on process improvements and outreach efforts. There was Committee discussion about the number of online renewals.

President Officer, Shane Docherty moved to agenda item E.3. Staff Reports – Education and Examination Division. Program Specialist, Ray Pizarro reported on the PSI examination reviews for the Appraiser and Assessor/Collector Class III and Class IV examinations and continuing education and examination statistics. There was Committee discussion on the examinations.

Presiding Officer, Shane Docherty moved to agenda item E.4. Staff Reports – Enforcement Division. Prosecutor, Mary Winston gave an overview of the Enforcement statistics. There was Committee discussion regarding the informally closed cases.

Presiding Officer, Shane Docherty moved to agenda item E.5. Staff Reports – Licensing Division. Program Specialist, Joyce Hennington reported on Licensing statistics.

Presiding Officer, Shane Docherty moved to agenda item F. Work Group Reports and Discussion. There were no workgroup reports given for the Education and Examination, Licensing, and Enforcement and Ethics workgroups. Presiding Officer, Shane Docherty informed the Committee that there would be discussion regarding the Rule Simplification workgroup report on Agenda Item H.

Presiding Officer, Shane Docherty moved to agenda item G. Discussion and possible recommendation on rules at 94.21, 94.22. Division Director, Don Dudley, gave an overview of the 94.21 and 94.22 possible changes. There was Committee discussion regarding the rules.

Presiding Officer, Shane Docherty moved to agenda item H. Discussion and possible recommendation regarding work group rule review regarding rules at 94.21, 94.25, 94.70, 94.71, 94.72, 94.100. Presiding Officer, Shane Docherty gave an overview of the changes requested by the workgroup. There was Committee discussion about the rules. Committee member, Michael Craig McDougal made a motion to change 7 hours to 3.5 hours in §94.25(b)(3) and to strike §94.25(i). Committee member, Dorye Kristeen Roe seconded the motion. The motion passed with a unanimous vote in favor. Presiding Officer, Shane Docherty requested that the Rule Simplification workgroup and Department staff meet to develop a draft of rules to bring to the Committee at the next meeting. The Committee and Department staff agreed.

Presiding Officer, Shane Docherty moved to agenda item I. Recommendations for agenda items for next meeting. The Committee requested that rules at 94.21, 94.25, 94.70, 94.71, 94.72, and 94.100 be included on the next agenda.

Presiding Officer, Shane Docherty moved to agenda item J. Discussion of date, time and location of next Committee meeting. The Committee requested that dates and times be forwarded to them to schedule the next meeting.

Presiding Officer, Shane Docherty moved to agenda item K. Adjournment. Committee member, Ro'Vin Garrett made a motion to adjourn the meeting. Committee member, Dorye Kristeen Roe seconded the motion. Presiding Officer, Shane Docherty adjourned the meeting at 11:35 a.m.

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Shane Docherty, Presiding Officer

Chapter 94. Property Tax Professionals

Proposal Filed: September 30, 2013 – Published in the *Texas Register*: October 11, 2013
Deadline for Public Comment: November 12, 2013

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§94.80. Fees.

(a) Application fees.

(1) Appraiser--$100 [~~$105~~]

(2) Collector--$100 [~~$105~~]

(3) Assessor/Collector--$100 [~~$105~~]

(b) Renewal fees.

(1) Appraiser--$55 for registrations expiring before February 1, 2014; $45 for registrations expiring on or after February 1, 2014

(2) Collector--$55 for registrations expiring before February 1, 2014; $45 for registrations expiring on or after February 1, 2014

(3) Assessor/Collector--$55 for registrations expiring before February 1, 2014; $45 for registrations expiring on or after February 1, 2014

[~~(c) Examination fees.~~]

[~~(1) Class III Appraiser--$55~~]

[~~(2) Class III Assessor/Collector--$55~~]

[~~(3) Class III Collector--$80~~]

[~~(4) Class IV Appraiser--$80~~]

[~~(5) Class IV Assessor/Collector--$80~~]

(c) [~~(d)~~] "Break in service" credit application fee--$75

(d) [~~(e)~~] One-Year Extension application fee--$25

(e) [~~(f)~~] Change from inactive status to active status--$25

(f) [~~(g)~~] Late Renewal Fees. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(g) [~~(h)~~] Revised/Duplicate License/Certificate/Permit/Registration [~~Revised or duplicate license fees~~]--$25

(h) [~~(i)~~] All fees are non-refundable, except as otherwise provided by law.

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
Occupations Code, **Chapter 401**
Effective 9/1/2015

SUBCHAPTER C. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

SECTION 1.045. Section 401.102, Occupations Code, is amended to read as follows:

Sec. 401.102. ADVISORY BOARD MEMBERSHIP.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three audiologist members;

(2) three speech-language pathologist members; and

(3) three members who represent the public.

(b) Advisory board members must:

(1) have been a resident of this state for the two years preceding the date of appointment;

(2) be from the various geographic regions of the state; and

(3) be from varying employment settings.

(c) The advisory board members appointed under Subsections (a)(1) and (2) must:

(1) have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and

(2) be licensed under this chapter.

(d) One of the public advisory board members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

(e) Appointments to the advisory board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

SECTION 1.046. Subchapter C, Chapter 401, Occupations Code, is amended by adding Section 401.10205 to read as follows:

Sec. 401.10205. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

SECTION 1.047. The heading to Section 401.105, Occupations Code, is amended to read as follows:

Sec. 401.105. TERMS; VACANCIES.

SECTION 1.048. Section 401.105(b), Occupations Code, is amended to read as follows:

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

SECTION 1.049. Section 401.107, Occupations Code, is amended to read as follows:

Sec. 401.107. PRESIDING OFFICER. (a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year.

(b) The presiding officer of the advisory board may vote on any matter before the advisory board.

SECTION 1.050. Section 401.108, Occupations Code, is amended to read as follows:

Sec. 401.108. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

Meeting of February 24, 2016
North Campus, 1st Floor Public Meeting Room #125E
1106 Clayton Lane, Austin, Texas

MINUTES

Presiding Officer, Sherry Sancibrian called the meeting to order at 9:08 a.m.

Presiding Officer, Sherry Sancibrian moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Board members present Patricia Brannon, Cheval Bryant, Michelle Tejeda, Cristen Plummer, Sherry Sancibrian Karl Hummel, Manny Bodner, and Dr. Tammy Camp. Board member Robert Novak was absent and asked to be excused. A quorum was present.

Presiding Officer, Sherry Sancibrian moved to agenda item C., Approval of the Minutes – November 17, 2015. Board member Manny Bodner, seconded by Cristen Plummer, made a motion to accept the minutes as presented. The motion passed by unanimous vote.

Presiding Officer, Sherry Sancibrian moved to agenda item D., Public Comment. The Board heard public comment from Janna Lily regarding the need to licensees in the public school system and the Boards development of rules that may be restrictive to getting those licensees.

Presiding Officer, Sherry Sancibrian moved to agenda item E.1., Staff Reports. Executive Office, Brian Francis, Deputy Executive Director, provided an overview of the Executive Office, Office of Innovation and Office of Strategic Communication; and provided an update of Department of State Health Services (DSHS) Transfer to Texas Department of Licensing and Regulation (TDLR), the interagency workings between DSHS and TDLR, funding for the program through the Comptroller, and also provided an overview of the Rule Making Process and answered questions from the board.

Presiding Officer, Sherry Sancibrian moved to agenda item E.6., Staff Reports. Department of State Health Services. Katie Brice provided and report on the program status at DSHS and presented the number of licensees and future meetings of the Board of Speech-Language Pathologists and Audiologists.

Presiding Officer, Sherry Sancibrian moved to agenda item F., Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 111, Speech-Language Pathologists and Audiologists and regarding comments on the proposed new rules. The proposed new rules implement Senate Bill 202, 84th Legislature, Regular Session (2015), which transfers the Speech-Language Pathologists and Audiologists program from the Department of State Health Services to the Texas Department of Licensing and Regulation. Wendy Pellow, Assistant General Counsel presented the comments and department responses to the proposed comments and outlined the rule implementation process and timeline for implementation. Ms. Pellow provided a summary of the 11 comments. Board member Manny Bodner, seconded by Michelle Tejada, made a motion to change the onsite supervision from one hour to two hours. Motion passed by unanimous vote. Board member Dr. Tammy Camp, seconded by Cheval Bryant, made a motion to change §111.213 to modify the requirements of tele-health and tele-practice supervision requirements. Motion passed by unanimous vote. Board member Dr. Tammy Camp, seconded by Patricia Brannon, made a motion to strike §111.90 (e) (4) (a) – (b) to be consistent with rules provided by DSHS. Motion passed by unanimous vote.

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Board member Cheval Bryant, seconded by Karl Hummel, made a motion to recommend the rules for approval by the Commission with the proposed changes discussed today. Motion passed by unanimous vote.

Presiding Officer, Sherry Sancibrian passed item G., Discussion and possible appointment of workgroups:

1. Enforcement workgroup to review and make recommendations regarding criminal conviction guidelines, the penalty matrix, other enforcement related matters and rules.

Presiding Officer, Sherry Sancibrian appointed Sherry Sancibrian, Dr. Tammy Camp, and Cristen Plummer to the Enforcement workgroup.

2. Licensing workgroup to review and make recommendations regarding licensing requirements and rules, inspections and compliance, and other administrative matters.

Presiding Officer, Sherry Sancibrian appointed Manny Bodner, Michelle Tejada, and Patricia Brannon to the Licensing workgroup.

3. Education and Examination workgroup to review and make recommendations regarding education and examination, continuing education requirements, and rules.

Presiding Officer, Sherry Sancibrian appointed Dr. Robert Novak, Cheval Bryant, Michelle Tejada, and Karl Hummel to the Education and Examination workgroup.

4. Standard of Care workgroup to review and make recommendations regarding standard of care matters and rules.

Presiding Officer, Sherry Sancibrian appointed Karl Hummel, Patricia Brannon, Dr. Robert Novak, and Cristen Plummer to the Standards of Care workgroup.

Presiding Officer, Sherry Sancibrian to agenda item H., Recommendations for agenda items for next Board meeting. The Board decided to place the following items on the agenda:

Presiding Officer, Sherry Sancibrian moved to agenda item I., Discussion of date, time, and location of next Board meeting. The next meetings of the Board will be held Monday May 23, 2016 at 1:00 p.m. and Friday September 23, 2016 at 9:00 a.m.

Presiding Officer, Sherry Sancibrian moved to agenda item J. Adjournment. The meeting was adjourned at 11:36 a.m.

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Sherry Sancibrian, Presiding Officer
Speech-Language Pathologists and
Audiologists Advisory Board

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SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

Meeting of November 17, 2015
North Campus, 1st Floor Public Meeting Room #125E
1106 Clayton Lane, Austin, Texas

MINUTES

Presiding Officer, Sherry Sancibrian, called the meeting to order at 9:13 a.m.

Presiding Officer Sancibrian moved to agenda item B., Roll Call, Certification of Quorum, and Introductions. Board members present Manny Bodner, Cheval Bryant, Tammy Camp, Cristen Plumber and Sherry Sancibrian. Board members Robert Novak and Patricia Brannon joined the meeting at 9:39 a.m. A quorum was present.

Presiding Officer Sancibrian moved to agenda item G.1, Staff Reports, Executive Office, Brian Francis, Deputy Executive Director, provided an overview of the Executive Office, Office of Innovation and Office of Strategic Communication; and provided an update of Department of State Health Services (DSHS) Transfer to Texas Department of Licensing and Regulation (TDLR), the interagency workings between DSHS and TDLR, funding for the program through the Comptroller, and also provided an overview of the Rule Making Process and answered questions from the board.

Presiding Officer Sancibrian moved to agenda item F., Discussion on History and Overview of the Speech-Language Pathologists and Audiologists Program. Presiding Officer, Sancibrian provided the overview of the program history from DSHS. The board members took a break at 9:30 and reconvened at 9:38. Board Members Robert Novak and Patricia Brannon joined the meeting.

Presiding Officer Sancibrian moved to agenda item H., Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter 111 to implement the transfer of the Speech-Language Pathologists and Audiologists program from DSHS to TDLR pursuant to Senate Bill 202, 84th Legislature, Regular Session (2015). Assistant General Counsel Wendy Pellow, provided an explanation of the rule-review process and presented documents to the Board including the proposed rules. Board Member Patricia Brannon suggested that the changes recommended by DSHS be added to the proposed rules and addressed under this current statute. Board and staff discussion determined that the changes from the DSHS board could be addressed at a future meeting. Board member Patricia Brannon suggested that definitions be added for *caseload* and *supervision* to be taken from the proposed rules from DSHS.

The board and Assistant General Counsel Pellow continued rule review by rule subsection:

Subchapter B – Advisory Board Duties, Board member Manny Bodner suggested the need for a vice-chair and board secretary to review the meetings. Agency policy does not require a vice chair or secretary be appointed to the board. No change was made to this section.

Subchapter C – Examinations. The Board had no suggested changes.

Subchapter D – Requirements for Speech-Language Pathology Licenses. Discussion on college accreditation, discussion of license requirements and the CCC Certification, application submission process, suggested change to the term communication sciences and disorders to be consistent throughout the document, change Clinical Certification Board to Council for Clinical Certification minor changes to words and terms. Discussion on the late renewal process and removal of the 60 day grace period.

Subchapter E – Requirements for Intern in Speech-Language. Building in a limited number of licensees that can be supervised in the Department's data base per the rule requirements. Board member Brannon reported

that the current DSHS rule proposal removes the requirement for a limited number of supervised. Section 111.42 Internship licensing requirements reduced to one year to prevent unlicensed work with an allowance for a period of renewal. The requirement for interns to get continuing education.

Subchapter F – Requirements for Assistants in Speech-Language Pathology License. Timeframes for course work will be vetted by a work group. Discussion on supervision requirements and in person on-site. Discussions on determining the hours of direct and indirect supervision and use of tele-health. Board discussions on supervision requirements and duties. The Department questioned the need for a definition of direct supervision. The board will work on drafting new language in work groups. The Board members and staff crafted language to address the minimum supervision requirements. Transfer of licenses from other states to allow masters to practice in Texas of practicing as masters in other states. Board members suggested the department make the change from DSHS rules on Audiologist interns proposed rules to allow approval by an accrediting body. Board discussed the requirements for an Audiologists Assistant and to require applicants to work with at a minimum a high school diploma. Recommendations to require and Audiologist on site with an assistant during certain practices of an assistant. The staff recommended that the term "by mail" be removed from the department's requirements and allow alternate methods of delivery other than by mail throughout the proposed rules. Recommendation to implement changes from the DSHS for intern and assistant licensing. Discussion reorganizing the rules to cluster the sections that require direct supervision. Discussion on limiting the supervision of assistants by Audiologist.

Board member Tammy Camp, seconded by Robert Novak, made a motion to recommend the proposed rules with the changes made in this meeting for publication in the Texas Register for public comment. Motion passed by a unanimous vote.

Presiding Officer Sancibrian passed item I. on the agenda Recommendations for agenda items for next Board meeting

Presiding Officer Sancibrian moved to agenda item J. Discussion of date, time, and location of next Board meeting. No date was offered at this time.

Presiding Officer Sancibrian moved to agenda item K. Adjournment. The meeting was adjourned at 3:59 p.m.

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Sherry Sancibrian, Presiding Officer
Speech-Language Pathologists
and Audiologists Advisory Board

Chapter 111
Discussion and possible recommendation
Current rule proposal

Underlined text is new language.

SUBCHAPTER A. GENERAL PROVISIONS.

§111.1. Authority.

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 401, and Chapter 402 as applicable.

§111.2. Definitions.

Unless the context clearly indicates otherwise, the following words and terms shall have the following meanings.

(1) ABA--The American Board of Audiology.

(2) Act--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists.

(3) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists; and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(4) Advisory board--The Speech-Language Pathologists and Audiologists Advisory Board.

(5) ASHA--The American Speech-Language-Hearing Association.

(6) Assistant in audiology--An individual licensed under Texas Occupations Code §401.312 and §111.90 of this chapter and who provides audiological support services to clinical programs under the supervision of a department-approved audiologist licensed under the Act.

(7) Assistant in speech-language pathology--An individual licensed under Texas Occupations Code §401.312 and §111.60 of this chapter and who provides speech-language pathology support services under the Act.

(8) Audiologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 to practice audiology.

(9) Audiology--The application of nonmedical principles, methods, and procedures for

measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communication disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.

(10) Caseload--The number of clients served by the licensed speech-language pathologist or licensed speech-language pathology intern.

(11) Client--A consumer or proposed consumer of audiology or speech-language pathology services.

(12) Commission--The Texas Commission of Licensing and Regulation.

(13) Department--The Texas Department of Licensing and Regulation

(14) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(15) Executive director--The executive director of the department.

(16) Extended absence--More than two consecutive working days for any single continuing education experience.

(17) Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(18) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments.

(19) Hearing instrument--Any wearable instrument or device designed for, or represented as aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(20) Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(21) Intern in audiology--An individual licensed under Texas Occupations Code §401.311 and §111.80 of this chapter and who works under the direction of an individual who holds an audiology license under Texas Occupations Code §401.302 and §401.304.

(22) Intern in speech-language pathology--An individual licensed under Texas Occupations Code §401.311 and §111.40 of this chapter and who works under the direction of an individual who holds a speech-language pathology license under Texas Occupations Code §401.302 and §401.304.

(23) Provisional Licensee--An individual granted a provisional license under Texas Occupations Code §401.308.

(24) Sale or purchase--Includes the sale, lease or rental of a hearing instrument or augmentative communication device to a member of the consuming public who is a user or prospective user of a hearing instrument or augmentative communication device.

(25) Speech-language pathologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304, to practice speech-language pathology.

(26) Speech-language pathology--The application of nonmedical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or a group.

(27) Supervisor--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 and whom the department has approved to directly oversee the services provided by the assigned department-approved assistant and/or intern. The term "supervisor" and "department-approved supervisor" have the same meaning as used throughout this chapter.

(28) Telehealth--See definition(s) in Subchapter V, Telehealth.

(29) Under the direction of--The speech-language pathologist or audiologist supervises and directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

SUBCHAPTER B. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD.

§111.10. Membership.

(a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three audiologist members;

(2) three speech-language pathologist members; and

(3) three members who represent the public.

(b) Advisory board members must:

(1) have been a resident of this state for the two years preceding the date of appointment;

(2) be from the various geographic regions of the state; and

(3) be from varying employment settings.

(c) The advisory board members appointed under Subsections (a)(1) and (2) must:

(1) have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and

(2) be licensed under this chapter.

(d) One of the public advisory board members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

§111.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

§111.12. Terms; Vacancies.

(a) Members are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

§111.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year.

(b) The presiding officer shall preside at all meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

§111.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

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

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Board action shall require a majority vote of those members present and voting.

SUBCHAPTER C. EXAMINATIONS.

§111.20. License Examination--General Requirements.

The examination required by the Act shall consist of a written examination and a Jurisprudence Examination.

§111.21. License Examination--Written Examination.

(a) The written examination shall be the Speech-Language Pathology and Audiology Examination (Praxis exam), a national examination administered by the Educational Testing Service.

(b) An applicant shall have a passing score as determined by the Educational Testing Service on the written examination.

(c) A person who fails the examination may take a subsequent examination upon payment of a nonrefundable fee.

(d) Pursuant to Texas Occupations Code §401.307(b), an applicant who fails two examinations may not be reexamined until the person:

(1) submits a new application accompanied by a nonrefundable application fee; and

(2) presents evidence acceptable to the department of additional study in the area for which a license is sought.

§111.22. Waiver of Written Examination Requirement.

(a) This section is applicable to applicants applying for a speech-language pathology license under Subchapter D or an audiology license under Subchapter H. This waiver only applies to the written examination under §111.21. The applicant must still take the Jurisprudence Examination under §111.23.

(b) The department may waive the written examination requirement and issue a license to an applicant who holds the ASHA Certificate of Clinical Competence ASHA or the ABA Certification.

(c) An applicant for a license issued by the department who currently holds the ASHA Certificate of Clinical Competence, may submit official documentation from ASHA as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this chapter for a speech-language pathology license.

(d) An applicant for a license issued by the department who currently holds either the ASHA Certificate of Clinical Competence or the ABA Certification, may submit official documentation from ASHA or ABA as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this chapter for an audiology license.

§111.23. License Examination--Jurisprudence Examination.

(a) The department shall develop and administer a Jurisprudence Examination to determine an applicant's knowledge of the Act, this chapter, and any other applicable laws of this state affecting the practice of speech-language pathology or audiology.

(b) The department shall revise the Jurisprudence Examination as needed.

(c) All applicants for licensure shall submit proof of successful completion of the Jurisprudence Examination at the time of application. The Jurisprudence Examination must be completed no more than six months prior to the date of licensure application.

SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE.

§111.30. Speech-Language Pathology License--Licensing Requirements.

(a) An individual shall not practice as a speech-language pathologist without a current license issued by the department. An applicant for a speech-language pathology license shall meet the requirements set out in the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, *et seq.).*

(1) Original or certified copies of the transcripts showing the conferred degree shall

verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology, including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have a hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the thirty-six (36) hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if, the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and

December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) Supervised Professional Experience. An applicant must have completed supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §111.40.

(1) An individual shall be licensed under §111.40, prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §111.40 shall:

(A) be licensed in that other state; or

(B) hold the ASHA Certificate of Clinical Competence in speech-language pathology if the other state did not require licensing.

(e) Examination. An applicant shall pass the examination referenced under §111.21 within:

(1) the past ten (10) years; and

(2) two years of the completion date of the internship referenced in subsection (d).

(f) In the event the applicant passed the examination referenced in subsection (e) more than two years after the completion date of the internship, the applicant shall repeat the thirty-six (36) weeks supervised internship before applying for the speech-language pathology license. The applicant shall obtain the intern license as required by §111.40, prior to repeating the internship. The applicant may appeal to the executive director for waiver of the requirement to repeat the internship.

§111.35. Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on current department-approved forms.

(b) An applicant for a speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master’s degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if not previously submitted when applying for an intern's license, a Course Work and Clinical Experience Form completed by the program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.30(b) - (c);

(5) a Report of Completed Speech-Language Pathology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's degree in one of the areas of communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(8) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(9) the initial application fee required under §111.160.

(c) An applicant for a speech-language pathology license must submit a completed legible set of fingerprints, on a department-approved form, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) Waiver of Clinical Experience and Examination Requirements. An applicant who currently holds the ASHA Certificate of Clinical Competence may submit official documentation from ASHA of the Certificate of Clinical Competence as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this subchapter for a speech-

language pathology license. Such an applicant must submit:

(1) an original or certified copy of a signed letter from ASHA, which verifies the applicant currently holds the Certificate of Clinical Competence in the area of speech-language pathology;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency; and

(3) the required documents and fees under subsection (b)(1), (8) and (9) and subsection (c).

(e) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.36. Speech-Language Pathology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) A speech-language pathology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.37. Speech-Language Pathology License--License Terms; Renewals.

(a) A speech-language pathology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew a speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete 20 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(5) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology.

SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE.

§111.40. Intern in Speech-Language Pathology License--Licensing and Internship Requirements.

(a) An individual shall not practice as an intern in speech-language pathology without a current license issued by the department. An applicant for an intern in speech-language pathology license must meet the requirements under the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001, *et seq.).*

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have a hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the thirty-six (36) hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) In the event the course work and clinical experience set out in subsections (b) - (c), were earned more than ten (10) years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology.

(e) An applicant who successfully completed all education and clinical requirements under this section, but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical

experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(f) An applicant whose master's degree is received at a college or university accredited by the ASHA Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements have been met and review of the transcript shows that the applicant has successfully completed at least twenty-four (24) semester credit hours acceptable toward a graduate degree in the area of speech-language pathology.

(g) Intern Plan and Agreement of Supervision. A Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted in a manner prescribed by the department and completed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern in speech-language pathology. The proposed department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the intern in speech-language pathology. The Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) the addition of other proposed department-approved supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern in speech-language pathology, each proposed department-approved supervisor must submit a signed Speech-Language Pathology Intern Plan and Agreement of Supervision Form which shall also identify all proposed department-approved supervisors.

(3) In the event the department-approved supervisor ceases supervision of the intern in speech-language pathology, the intern shall stop practicing immediately. The department shall hold the department-approved supervisor responsible for the practice of the intern in speech-language pathology until the department-approved supervisor notifies the department, in writing, of the change in supervision.

(4) Should the intern in speech-language pathology practice without approval from the department, disciplinary action may be initiated against the intern in speech-language pathology. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor may also be initiated.

(h) Internship Requirements. The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsections (b) and (c) have been met;

(2) be completed within a maximum period of forty-right (48) months once initiated;

(3) be successfully completed after no more than two attempts;

(4) consist of thirty-six (36) weeks of full-time supervised professional experience (thirty-five (35) hours per week) totaling a minimum of 1,260 hours, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology. Professional experience of less than five hours per week cannot be used to meet the supervised professional experience.

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than thirty-six (36) clock hours of supervisory activities to include:

(A) six hours of in person observations per segment by the department-approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the department-approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the department.

(i) Extension Request. An applicant who does not meet the time frames defined in subsection (h)(1) and (2), shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the department-approved supervisor in a manner prescribed by the department. Evaluation of the intern's progress of performance from all department-approved supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted in a manner prescribed by the department. The department shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §111.21 is required.

(j) An intern, who is employed full-time as defined by subsection (h)(4), and wishes to practice at an additional site, shall notify the department in a manner prescribed by the department.

(k) Evaluations. During each segment of the internship, each department-approved supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the department upon request.

(l) Changes. Prior to implementing changes in the internship, approval from the department is required.

(1) If the intern changes his or her department-approved supervisor or adds additional department-approved supervisors, a current Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed department-approved supervisor and approved by the department before the intern may resume practice. The Report of Completed Internship Form or information shall be completed by the past department-approved supervisor and intern and submitted to the department upon completion of that portion of the internship. It is the decision of the department-approved supervisor to determine whether the internship is acceptable. The department shall review the form and inform the intern of the results.

(2) Each department-approved supervisor who ceases supervising an intern shall submit a Report of Completed Internship Form for the portion of the internship completed under the department-approved supervisor's supervision. This must be submitted within thirty (30) days of the date the supervision ended.

(3) If the intern changes his or her employer but the department-approved supervisor and the number of hours employed per week remain the same, the department-approved supervisor shall notify the department in a manner prescribed by the department of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(m) In any professional context the licensee must indicate the licensee’s status as a speech-language pathology intern.

(n) If the intern wishes to continue to practice after the completion of the supervised professional experience as defined in subsection (h), the intern shall apply for either:

(1) a speech-language pathology license under Subchapter D, if the intern passed the examination referenced in §111.21; or

(2) a temporary certificate of registration under Subchapter G if the intern has not passed the examination referenced in §111.21.

(o) If the intern holds a valid license, the intern may continue to practice under supervision for up

to thirty (30) days after the department receives the Report of Completed Internship Form.

(p) A licensed intern shall not use "SLP-CFY" or "SLP-CF" as indicators for their credentials. Licensees shall use "Intern SLP" or "SLP Intern" to shorten their professional title.

(q) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.45. Intern in Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an intern in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) if the graduate degree has not been officially conferred, an original or certified copy of transcript(s) and verification from the university attended verifying the applicant successfully completed all requirements for the graduate degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5) a Course Work and Clinical Experience Form completed by the university program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.40(b) - (c);

(6) an Intern Plan and Agreement of Supervision Form completed by the proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(7) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(8) the initial application fee required under §111.160.

(c) An applicant for an intern in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.46. Intern in Speech-Language Pathology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An intern in speech-language pathology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.47. Intern in Speech-Language Pathology License--License Terms; Renewals.

(a) An intern in speech-language pathology license is valid for one year from the date of issuance and may be renewed annually.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an intern in speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete ten (10) hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit;

(5) submit an evaluation of the intern's progress or performance from all department-approved supervisors and any intern plans and supervisory evaluations for completed segments;

(6) submit an Intern Plan and Agreement of Supervision Form for the intern's upcoming

experience unless the intern is currently not practicing. In that event, the intern shall provide an explanation of the reason for not practicing; and

(7) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology.

SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE.

§111.50. Assistant in Speech-Language Pathology License--Licensing Requirements.

(a) An individual shall not practice as an assistant in speech-language pathology without a current license issued by the department. An applicant for an assistant in speech-language pathology license must meet the requirement under the Act and this section. The applicant must meet the following requirements:

(1) possess a baccalaureate degree with an emphasis in communicative sciences or disorders;

(2) have acquired at least twenty-four (24) semester hours in speech-language pathology and/or audiology with a grade of "C" or above with the following conditions:

(A) at least 18 of the 24 semester hours must be in speech-language pathology;

(B) at least three of the 24 semester hours must be in language disorders;

(C) at least three of the 24 semester hours must be in speech disorders; and

(D) the 24 semester hours excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than twenty-five (25) hours of clinical observation in the area of speech-language pathology and twenty-five (25) hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of

employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past ten (10) years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a), were earned more than ten (10) years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the department.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences or disorders may qualify for the assistant license. The department shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed twenty-four (24) semester credit hours in communicative sciences or disorders, which may include some leveling hours.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a). The applicant must bear all expenses incurred during the procedure. The department shall evaluate the documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the department.

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and

§111.154 and shall submit:

(A) the Supervisory Responsibility Statement Form; and

(B) the prescribed Clinical Deficiency Plan.

(2) The department shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within sixty (60) days of the issue date of the assistant's license or the licensed assistant must submit a new plan.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the licensed assistant's performance; and

(C) a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, in person supervision. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Department staff shall evaluate the documentation required in paragraph (4) and inform the licensed assistant and licensed speech-language pathologist who provided the training if acceptable.

(6) A licensed assistant may continue to practice under 100% direct, in person supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4).

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a Supervisory Responsibility Statement Form shall be submitted to the department seeking approval for the change in supervision. If the documentation required by paragraph (4), has not been received and approved by the department, approval for the change in supervision shall not be granted.

(f) A Supervisory Responsibility Statement Form shall be completed and signed by both the applicant and the proposed department-approved supervisor who agrees to assume responsibility for all services provided by the licensed assistant or submitted in a manner prescribed by the

department. The proposed department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant. The Supervisor Responsibility Statement Form shall be submitted upon:

(A) application for an assistant license;

(B) license renewal when there is a change in supervisor;

(C) other changes in supervision; and

(D) the addition of other department-approved supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the licensed assistant, each licensed speech-language pathologist department-approved supervisor shall be identified on the Supervisor Responsibility Statement Form, and meet the minimum requirement of supervision as referenced in subsection (g)(4). The licensed assistant shall only provide services for the caseload of the licensed speech-language pathologist department-approved supervisors.

(3) A licensed assistant may renew the license if there is a change in supervision, but may not practice until a new Supervisory Responsibility Statement Form is approved.

(4) In the event the licensed speech-language pathologist department-approved supervisor ceases supervision of the licensed assistant, the licensed speech-language pathologist department-approved supervisor shall notify the department, in writing, and shall inform the licensed assistant to stop practicing immediately. The department shall hold the licensed department-approved supervisor responsible for the practice of the licensed assistant until written notification has been received by the department.

(5) Should the licensed assistant practice without approval from the department, disciplinary action may be initiated against the licensed assistant. If the licensed speech-language pathologist department-approved supervisor had knowledge of this violation, disciplinary action against the licensed speech-language pathologist department-approved supervisor may also be initiated.

(g) A licensed speech-language pathologist department-approved supervisor shall assign duties and provide appropriate supervision to the licensed assistant.

(1) Initial contacts directly with the client shall be conducted by the licensed speech-language pathologist department-approved supervisor.

(2) Following the initial contact, the licensed speech-language pathologist department-approved supervisor shall determine whether the licensed assistant has the competence to perform specific duties before delegating tasks.

(3) The licensed speech-language pathologist department-approved supervisor shall provide a minimum of eight (8) hours per month of supervision, at least four (4) hours of which are direct, and at least one (1) hour of which is in person and onsite supervision where the licensed assistant is providing the therapy. This paragraph applies whether the licensed assistant's practice is employed full- or part-time. For the purposes of this paragraph the telehealth and telepractice provisions allowed by §§111.212 - 111.214, may be used for up to seven (7) hours of supervision. When determining the amount and type of supervision, the department-approved supervisor must consider the skill and experience of the licensed assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the department-approved supervisor.

(4) Supervisory records shall be maintained for a period of three years by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the licensed assistant's and client's performance. Such documentation may be requested by the department.

(A) A licensed assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(B) A licensed assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the licensed assistant has been appropriately trained and the assessments are conducted under the direction of the licensed speech-language pathologist department-approved supervisor. A licensed assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(h) Although the licensed speech-language pathologist department-approved supervisor may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist department-approved supervisor shall ensure that all services provided are in compliance with this chapter.

(1) The licensed speech-language pathologist department-approved supervisor need not be present when the licensed assistant is completing the assigned tasks; however, the licensed speech-language pathologist department-approved supervisor shall document all services provided and the supervision of the licensed assistant.

(2) The licensed speech-language pathologist department-approved supervisor shall keep job descriptions and performance records of the licensed assistant. Records shall be current and made available upon request to the department.

(3) The licensed speech-language pathologist department-approved supervisor of the licensed assistant shall:

(A) in writing, determine the skills and assigned tasks the licensed assistant is able to carry out within the licensed assistant's scope of practice. This document must be agreed upon by the licensed assistant and the licensed speech-language pathologist department-approved supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;

(C) develop the client's treatment program in all settings and review them with the licensed assistant who will provide the service; and

(D) maintain responsibility for the services provided by the licensed assistant.

(4) The licensed assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist department-approved supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist department-approved supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(5) Examples of duties that a licensed speech-language pathologist department-approved supervisor may assign to a licensed assistant who has received appropriate training include the following:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist department-approved supervisor;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests if the test developer does not specify a graduate degreed examiner and the department-approved supervisor has determined the licensed assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials;

(H) participate with the licensed speech-language pathologist department-approved supervisors' research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed

speech-language pathologist department-approved supervisor;

(I) may write lesson plans based on the therapy program developed by the licensed speech-language pathologist department-approved supervisor. The lesson plans shall be reviewed and approved by the licensed speech-language pathologist department-approved supervisor; and

(J) must only work with assigned cases of the licensed speech-language pathologist department-approved supervisor's caseload.

(i) The licensed assistant shall not:

(1) conduct evaluations, even under supervision, since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the licensed assistant's supervising speech-language pathologist department-approved supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the department;

(12) perform invasive procedures;

(13) screen or diagnose clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to clients, family, or staff;

(16) provide client or family counseling;

(17) sign any formal document relating to the reimbursement for or the provision of speech-language pathology services without the licensed assistant's licensed speech-language pathologist department-approved supervisor's signature; or

(18) use "SLP-A" or "STA" as indicators for their credentials. Licensees shall use "Assistant SLP" or "SLP Assistant" to shorten their professional title.

(j) The licensed speech-language pathologist department-approved supervisor of the licensed assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by a licensed assistant and that the licensed assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objectives and review them with the licensed assistant; and

(3) maintain undiminished responsibility for the services provided and the actions of the licensed assistant.

(k) A licensed assistant may represent special education and speech pathology at the ARD meetings with the following stipulations.

(1) The licensed assistant shall have written documentation of approval from the licensed, speech-language pathologist department-approved supervisor.

(2) The licensed assistant shall have three years experience as a licensed assistant in the school setting.

(3) The licensed assistant may attend, with written approval of the speech-language pathologist department-approved supervisor, a student's annual review ARD meeting if the meeting involves a student for whom the licensed assistant provides services. If a licensed assistant attends a meeting as provided by this rule, the licensed speech-language pathologist department-approved supervisor is not required to attend the meeting. A licensed speech-language pathologist department-approved supervisor must attend an ARD meeting if the purpose of the meeting is to develop a student's initial IEP or if the meeting is to consider the student's dismissal, unless the licensed speech-language pathologist department-approved supervisor has submitted his or her recommendation in writing on or before the date of the meeting.

(4) The licensed assistant shall present IEP goals and objectives that have been developed by the licensed speech-language pathologist department-approved supervisor and reviewed with the parent by the licensed speech-language pathologist department-approved supervisor.

(5) The licensed assistant shall discontinue participation in the ARD meeting, and contact the department-approved supervising speech-language pathologist, when questions or changes arise regarding the IEP document.

(l) In any professional context the licensee must indicate the licensee status as a licensed speech-language pathology assistant.

(m) The department may audit a random sampling of licensed assistants for compliance with this section and §111.154.

(1) The department shall notify a licensed assistant and licensed speech-language pathologist department-approved supervisor in a manner prescribed by the department that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant and the licensed speech-language pathologist department-approved supervisor, who agreed to accept responsibility for the services provided by the licensed assistant, shall provide in a manner prescribed by the department the requested proof of compliance to the department.

(3) The licensed assistant and the licensed speech-language pathologist department-approved supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(n) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.55. Assistant in Speech-Language Pathology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an assistant in speech-language pathology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) a Supervisory Responsibility Statement Form completed by the licensed supervisor who agrees to accept responsibility for the services provided by the assistant and signed

by both the applicant and the proposed department-approved supervisor or submitted in a manner prescribed by the department;

(3) an original or certified copy of the transcript(s) showing the conferred degree of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech-language pathology and/or audiology;

(4) if not previously submitted, a Clinical Observation and Clinical Experience Form completed by the university program director or designee of the college or university training program verifying the applicant completed the requirements set out in §111.50(a)(3);

(5) for an applicant who did not obtain the hours referenced in paragraph (4), a Clinical Deficiency Plan Form to obtain the hours lacking;

(6) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(7) the initial application fee required under §111.160.

(c) An applicant for an assistant in speech-language pathology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.56. Assistant in Speech-Language Pathology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An assistant in speech-language pathology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.57. Assistant in Speech-Language Pathology License--License Terms; Renewals.

(a) An assistant in speech-language pathology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an assistant in speech-language pathology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete twenty (20) hours of continuing education as required under §111.30;

(4) comply with the continuing education audit process described under §111.32, if selected for an audit;

(5) submit, in a manner prescribed by the department, a Supervisory Responsibility Statement Form or information from each department-approved supervisor providing the supervision unless the assistant is currently not practicing or the department-approved supervisor(s) has not changed; and

(6) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology.

SUBCHAPTER G. REQUIREMENTS FOR TEMPORARY CERTIFICATE OF REGISTRATION IN SPEECH-LANGUAGE PATHOLOGY.

§111.60. Temporary Certificate of Registration in Speech-Language Pathology--Registration Requirements.

(a) An individual shall not practice as a temporary speech-language pathologist without a current certificate of registration issued by the department. An applicant for a temporary certificate of registration in speech-language pathology shall meet the requirements of the Act and this section.

(b) Education. The graduate degree shall be completed at a college or university which has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965

(20 U.S.C. §1001, *et seq.).*

(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:

(A) at least thirty-six (36) semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least twenty-four (24) semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) for applications filed before January 1, 2015, six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C).

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the department has an original transcript showing completion of a master’s degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the ASHA Council on Academic Accreditation shall submit an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience. The applicant shall bear all expenses incurred during the procedure.

(c) Clinical Work. An applicant shall complete at least twenty-five (25) clock hours of supervised observation before completing the minimum of the following hours of supervised clinical direct client contact, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) Supervised Professional Experience. An applicant must have completed supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §111.40.

(1) An individual shall be licensed under §111.40, prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §111.40 shall:

(A) be licensed in that other state; or

(B) hold the ASHA Certificate of Clinical Competence in speech-language pathology if the other state did not require licensing.

(e) If issued, this certificate entitles an applicant approved for examination as required by §111.21, to practice speech-language pathology under the supervision of a department-approved speech-language pathologist for a period of time ending eight weeks after the next scheduled examination. During each eight week time period, no fewer than four hours of direct in person supervision and four hours of indirect supervising activities shall be completed.

(f) A temporary certificate of registration shall not be renewed.

(g) The department-approved supervisor and applicant shall complete the Temporary Supervisory Form and submit it to the department. The applicant shall not practice until the application is approved by the department.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.65. Temporary Certificate of Registration in Speech-Language Pathology -- Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for a temporary certificate of registration in speech-language pathology must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communication sciences and disorders;

(3) if the applicant graduated from a college or university with a program not accredited by the ASHA Council on Academic Accreditation, an original signed letter from ASHA stating the Council for Clinical Certification accepted the course work and clinical experience;

(4) a Course Work and Clinical Experience Form or information completed by the university program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.60(b) - (c);

(5) a Report of Completed Speech-Language Pathology Internship Form or information completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's degree in one of the areas of communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Temporary Supervisory Form completed by the applicant's proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(8) the temporary certificate of registration fee required under §111.160.

(c) An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all certificate of registration requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a

new application and all required materials in addition to paying a new application fee.

§111.66. Temporary Certificate of Registration in Speech-Language Pathology--Issuing Registration.

(a) The department will issue to an applicant whose application has been approved, a temporary certificate of registration containing the registrant's name, registration number, and expiration date.

(b) The certificate of registration shall expire eight weeks after the next scheduled examination as required by §111.21.

(c) The certificate of registration is non-renewable.

(d) A certificate of registration issued by the department remains the property of the department.

(e) The department will issue a duplicate certificate of registration upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

SUBCHAPTER H. REQUIREMENTS FOR AUDIOLOGY LICENSE.

§111.70. Audiology License--Licensing Requirements.

(a) An individual shall not practice as an audiologist without a current license issued by the department. An applicant for the audiology license shall meet the requirements set out in the Act and this section.

(b) Education. The doctoral degree in audiology or a related hearing science shall be completed at a college or university that has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.).

(c) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) shall have the ASHA Council for Clinical Certification evaluate the course work to determine whether the applicant qualified for the Certificate of Clinical Competence. The applicant shall bear all expenses incurred during the procedure.

(d) Examination. An applicant shall pass the examination referenced under §111.21, within the past 10 years from the date of the application.

(e) An applicant who previously held the ASHA Certificate of Clinical Competence or the ABA certification may have the certificate reinstated and apply for licensure under §111.75(d).

§111.75. Audiology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an audiology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred doctoral degree in audiology or a related hearing science;

(3) if the degree was not earned at an institution as described in §111.70(b), official documentation from the ASHA Council on Academic Accreditation that the conferred doctoral degree is adequate for ASHA Certification or from the ABA that the conferred doctoral degree is adequate for ABA Certification;

(4) if not previously submitted when applying for an intern's license, a Course Work and Clinical Experience Form completed by the program director or designee of the college or university attended which verifies the applicant has met the requirements under §111.70(b) - (c);

(5) if the applicant currently holds an intern in audiology license, a Report of Completed Audiology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's or doctoral degree in communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Praxis Exam Score Report showing the applicant passed the examination described in §111.21;

(8) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(9) the initial application fee required under §111.160.

(c) An applicant for an audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) Waiver of Clinical Experience and Examination Requirements. An applicant who currently holds either the ASHA Certificate of Clinical Competence or the ABA Certification may submit official documentation from ASHA or ABA as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act and this subchapter for an audiology license. Such an applicant must submit:

(1) an original or certified copy of a signed letter from ASHA or ABA which verifies the applicant currently holds the ASHA Certificate of Clinical Competence or ABA Certification in the area of audiology;

(2) an original or certified copy of the transcript(s) showing the conferred degree of all relevant course work which also verifies that the applicant possesses a minimum of a doctoral degree in audiology or a related hearing science; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency; and

(3) the required documents and fees under subsections (b)(1), (8) and (9) and subsection (c).

(e) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.76. Audiology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An audiology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.77. Audiology License--License Terms; Renewals.

(a) An audiology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete 20 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(5) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in audiology.

SUBCHAPTER I. REQUIREMENTS FOR INTERN IN AUDIOLOGY LICENSE.

§111.80. Intern in Audiology License--Licensing and Internship Requirements.

(a) An individual shall not practice as an intern in audiology without a current license issued by the department. An applicant for the intern in audiology license shall meet the requirements set out in the Act and this section.

(b) Education. The doctoral degree in audiology or a related hearing science shall be completed at a college or university that has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.).

(c) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) shall have the ASHA Council for Clinical Certification evaluate the course work to determine whether the applicant qualified for the Certificate of Clinical Competence. The applicant shall bear all

expenses incurred during the procedure.

(d) The applicant shall submit the department prescribed form signed by the university program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the department.

(e) Intern Plan and Agreement of Supervision. The department prescribed Intern Plan and Agreement of Supervision for an Intern in Audiology Form shall be completed and signed in a manner prescribed by the department by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern in audiology. The proposed department-approved supervisor shall: hold a valid Texas license in audiology; possess a master's degree or higher with a major in one of the areas of communicative sciences or disorders, if the supervisor applied for the audiology license before September 1, 2011, or possess a doctoral degree or higher in audiology or a related hearing science, if the supervisor applied for the audiology license on or after September 1, 2011; and meet the requirements set out in the Act and §111.154.

(1) Written approval from the department shall be required prior to practice by the intern in audiology. The Intern Plan and Agreement of Supervision of An Intern in Audiology Form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and/or

(D) addition of other proposed department-approved supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the intern in audiology, the department-approved supervisor shall be identified and separate forms shall be submitted by each department-approved supervisor.

(3) In the event the department-approved supervisor ceases supervision of the intern, the intern in audiology shall stop practicing immediately until a new supervisor is approved by the department.

(4) Should the intern in audiology practice without approval from the department, disciplinary action shall be initiated against the intern. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor shall also be initiated.

(f) Internship Requirements. The internship shall:

(1) consist of 1,600 hours of supervised clinical work as defined in paragraph (2). The internship shall begin after completion of all academic course work; and

(2) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals.

(g) Changes. Prior to implementing changes in the internship, written approval from the department is required.

(1) If the intern in audiology changes his or her department-approved supervisor or adds additional department-approved supervisors, a current Intern Plan and Agreement of Supervision of An Intern in Audiology Form shall be submitted by the new proposed supervisor and approved by the department before the intern in audiology may resume practice. A Report of Completed Internship of An Intern in Audiology Form shall be completed by the previous department-approved supervisor and the intern in audiology and submitted to the department upon completion of that portion of the internship. It is the decision of the department-approved supervisor to determine whether the internship meets the department's requirements. The department shall review the form and inform the intern in audiology of the results.

(2) A department-approved supervisor who ceases supervising an intern in audiology shall submit a Report of Completed Internship of An Intern in Audiology Form or information for the portion of the internship completed under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(3) If the intern in audiology changes his or her employer but the department-approved supervisor and the number of hours employed per week remain the same, the department-approved supervisor shall submit a signed statement or submit in a manner prescribed by the department giving the name, address and phone number of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(4) In any professional context the licensee must indicate the licensee's status as an intern in audiology.

(h) The intern in audiology may continue to practice under supervision if he or she holds a valid intern in audiology license while awaiting the processing of the audiology license. If the intern in audiology changes department-approved supervisors, the new department-approved supervisor shall first submit the Intern Plan and Agreement of Supervision of An Intern in Audiology Form or information and receive department approval before the intern in audiology may resume practice.

(i) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.85. Intern in Audiology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an intern in audiology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the most current transcript(s);

(3) a Course Work and Clinical Experience Form for Audiology Intern completed by the university program director or designee of the college or university attended which verifies the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the department, and has completed all required academic and clinical course work;

(4) an Intern Plan and Agreement of Supervision Form completed by the proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(5) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(6) the initial application fee required under §111.160.

(c) An applicant for an intern in audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.86. Intern in Audiology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An intern in audiology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.87. Intern in Audiology License--License Terms; Renewals.

(a) An intern in audiology license is valid for one year from the date of issuance and may be renewed annually.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an intern in audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) submit an evaluation of the intern's progress or performance from all department-approved supervisors and any intern plans and supervisory evaluations for completed segments;

(4) submit an Intern Plan and Agreement of Supervision Form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern shall provide an explanation of the reason for not practicing; and

(5) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in audiology.

SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE.

§111.90. Assistant in Audiology License--Licensing Requirements.

(a) An individual shall not practice as an assistant in audiology without a current license issued by the department. An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section.

(b) An assistant in audiology shall meet the following requirements:

(1) reach the minimum age of 18 years old and possess a high school diploma or equivalent;

(2) complete the approved 20-hour certification course from the Council for Accreditation of Occupational Hearing Conservation (CAOHC) and earn a passing score on the examination; and

(3) submit the department-prescribed Supervisory Responsibility Statement for an Assistant in Audiology Form, that shall include:

(A) an agreement signed by both the licensed proposed department-approved supervisor (who must meet the requirements set out in the Act and §111.154) and the applicant, to enter into a supervisory relationship, in which the proposed department-approved supervisor agrees to assume responsibility for the applicant's activities, and the applicant agrees to perform only those activities assigned by the department-approved supervisor that are not prohibited under this section; and

(B) a plan for a minimum of twenty-five (25) hours of job-specific competency-based training to be carried out by the department-approved supervisor. Until this training is complete, the licensed assistant in audiology may practice only under direct supervision by the department-approved supervisor.

(c) Upon satisfactory completion of job-specific competency-based training, the department-approved supervisor shall submit the Report of Completed Training for an Assistant in Audiology Form on behalf of the licensed assistant in audiology. After the department approves the report, the licensed assistant may practice only in compliance with the supervision requirements under subsection (e)(3).

(d) The Supervisory Responsibility Statement for an Assistant in Audiology Form must be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the licensed assistant in audiology. The department-approved supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant in audiology. The Supervisory Responsibility Statement for an Assistant in Audiology Form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) addition of other department-approved supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the licensed assistant in audiology, each licensed audiologist shall be identified and a separate Supervisory Responsibility Statement for an Assistant in Audiology Form be submitted by each department-approved supervisor in a manner prescribed by the department.

(3) A licensed assistant in audiology may renew the license but may not practice until a new Supervisory Responsibility Statement for an Assistant in Audiology Form is approved.

(4) In the event the department-approved supervisor ceases supervision of the licensed assistant in audiology, the licensed assistant in audiology shall stop practicing immediately.

(5) Should the licensed assistant in audiology practice without approval from the department, disciplinary action shall be initiated against the licensed assistant in audiology. If the department-approved supervisor had knowledge of this violation, disciplinary action against the department-approved supervisor shall also be initiated.

(e) A licensed audiologist department-approved supervisor shall assign duties and provide appropriate supervision to the licensed assistant in audiology.

(1) All diagnostic contacts shall be conducted by the licensed audiologist department-approved supervisor.

(2) Following the initial diagnostic contact, the licensed audiologist department-approved supervisor shall determine whether the licensed assistant in audiology has the competence to perform specific non-diagnostic and non-prohibited duties before delegating tasks (as referenced in subsection (f)(4)).

(3) The licensed audiologist department-approved supervisor shall be on-site at the licensed assistant in audiology's employment location for at least ten (10) hours per week, or forty (40) hours per month, and provide at least one (1) hour per week or four (4) hours per month of direct supervision, at the location where the assistant is employed. However, the licensed audiologist department-approved supervisor shall be on-site and provide direct supervision for the duties described under subsections (f)(4)(A) - (D). This paragraph applies whether the licensed assistant in audiology is employed full- or part-time. For the purposes of this paragraph, the telehealth and telepractice provisions described under §111.215 may be used except for duties described under subsections (f)(4)(A) - (D) where the department-approved supervisor must be on-site and provide direct supervision. When determining the amount and type of supervision, the department-approved supervisor must consider the skill and experience of the licensed assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the department-approved supervisor.

(4) Supervisory records shall be maintained by the licensed audiologist department-approved supervisor for a period of three years which verify regularly scheduled

monitoring, assessment, and evaluation of the licensed assistant in audiology's and client's performance. Such documentation may be requested by the department.

(A) A licensed assistant in audiology may conduct assessments for the purpose of documenting patient's progress in aural rehabilitation therapy. Such assessments are not diagnostic in nature and include data collection and clinical observation, if the licensed assistant in audiology has been appropriately trained and the assessments are conducted under the direction of the licensed audiologist department-approved supervisor.

(B) A licensed assistant in audiology may not conduct an evaluation which includes diagnostic testing, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(f) Although the licensed audiologist department-approved supervisor may delegate specific clinical tasks to a licensed assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist department-approved supervisor shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist department-approved supervisor need not be in direct supervision when the licensed assistant is completing the assigned tasks; however, the licensed audiologist department-approved supervisor shall document all services provided and the supervision of the licensed assistant.

(2) The licensed audiologist department-approved supervisor shall keep job descriptions and performance records. Records shall be current and be made available upon request to the department.

(3) The licensed assistant may execute specific components of the clinical hearing program if the licensed audiologist department-approved supervisor determines that the licensed assistant has received the training and has the skill to accomplish that task, and the licensed audiologist department-approved supervisor provides sufficient supervision to ensure appropriate completion of the task assigned to the licensed assistant.

(4) Examples of duties that a licensed audiologist department-approved supervisor may assign to a licensed assistant who has received appropriate training include the following:

(A) conduct or participate in, with the department-approved supervisor on-site, hearing screening including screening otoscopy, tympanometry, otoacoustic emissions procedures and pure tone air conduction procedures, but may not diagnose hearing loss or disorders of the auditory system, or make statements of severity or implication;

(B) assist the audiologist, who must be on-site, with play audiometry, visual reinforcement audiometry, and tasks such as picture-pointing speech audiometry;

(C) assist the audiologist, who must be on-site, in the evaluation of difficult-to-test patients;

(D) assist the audiologist, who must be on-site, with technical tasks for diagnostic evaluation such as preparing test rooms, attaching electrodes, and preparing patients prior to procedures;

(E) maintain clinical records;

(F) prepare clinical materials;

(G) participate with the department-approved supervisor in research projects, staff development, public relations programs, or similar activities as designated and supervised by the department approved supervisor;

(H) maintain equipment by conducting biologic and electroacoustic calibration of audiometric equipment, perform preventative maintenance checks and safety checks of equipment;

(I) explain the proper care of hearing instruments and assistive listening devices to patients;

(J) maintain hearing instruments including cleaning, replacing ear mold tubing, minor hearing instrument repairs, determining need for repair, and performing biologic and electroacoustic checks of hearing instruments;

(K) provide case history and/or self-assessment forms and clarify questions on the forms to patients as needed;

(L) conduct basic record keeping and prepare paperwork for signature by the audiologist;

(M) coordinate ear mold and hearing instrument records or repairs and other orders;

(N) attach hearing aids to computers and use software to verify internal electroacoustic settings; and

(O) perform other non-diagnostic duties not prohibited in paragraph (5), for which the assistant has been trained and demonstrates appropriate skills, as assigned by the licensed audiologist department-approved supervisor.

(5) The licensed assistant shall not:

(A) conduct aural habilitation or rehabilitation activities or therapy;

(B) provide carry-over activities (therapeutically designed transfer of a newly acquired communication ability to other contexts and situations) for patients in aural rehabilitation therapy;

(C) collect data during aural rehabilitation therapy documenting progress and results of therapy;

(D) administer assessments during aural rehabilitation therapy to assess therapeutic progress;

(E) conduct any audiological procedure that requires decision-making or leads to a diagnosis, even under direct supervision;

(F) interpret results of procedures and evaluations, except for screening tests;

(G) make diagnostic statements, or propose or develop clinical management strategies;

(H) make ear impressions;

(I) cause any substance to enter the ear canal or place any instrument or object in the ear canal for the purpose of removing cerumen or debris;

(J) make any changes to the internal settings of a hearing instrument manually or using computer software;

(K) represent audiology at staff meetings or on an admission, review and dismissal (ARD) committee;

(L) attend staffing meetings or ARD committee meetings without the department-approved supervisor being present;

(M) design a treatment program;

(N) determine case selection;

(O) present written or oral reports of client information, except to his or her department-approved supervisor;

(P) refer a client to other professionals or other agencies;

(Q) use any title which connotes the competency of a licensed audiologist; or

(R) practice as a licensed assistant in audiology without a valid Supervisory Responsibility Statement for an Audiology Assistant Form or information on file with the department.

(g) In any professional context the licensee must indicate the licensee's status as a licensed audiology assistant.

(h) A licensed assistant in audiology may not engage in the fitting, dispensing or sale of a hearing instrument; however, a licensed assistant in audiology who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant in audiology license when performing those activities.

(i) The department may audit a random sampling of licensed assistants in audiology for compliance with this section and §111.154.

(1) The department shall notify a licensed assistant in audiology and the licensed audiologist department-approved supervisor in a manner prescribed by the department that the licensee has been selected for an audit.

(2) Upon receipt of an audit notification, the licensed assistant in audiology and the licensed audiologist department-approved supervisor, who agreed to accept responsibility for the services provided by the licensed assistant in audiology, shall provide the requested proof of compliance to the department in a manner prescribed by the department.

(3) The licensed assistant in audiology and the licensed audiologist department-approved supervisor shall comply with the department’s request for documentation and information concerning compliance with the audit.

(j) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.95. Assistant in Audiology License--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for an assistant in audiology license must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) a Supervisory Responsibility Statement Form or information completed by the proposed department-approved supervisor who agrees to accept responsibility for the services provided by the assistant and signed by both the applicant and the proposed department-approved supervisor or submitted in a manner prescribed by the department;

(3) certification on the application that the applicant is at least 18 years old;

(4) high school diploma or equivalent;

(5) an original or certified copy of the Council for Accreditation of Occupational Hearing Conservation (CAOHC) certificate indicating that the applicant has completed the required CAOHC training and passed the required examination;

(6) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(7) the initial application fee required under §111.160.

(c) An applicant for an assistant in audiology license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.96. Assistant in Audiology License--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) An assistant in audiology license issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.97. Audiology Assistant License--License Terms; Renewals.

(a) An assistant in audiology license is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew an assistant in audiology license, a licensee must:

(1) submit a completed renewal application on a department-approved form;

(2) successfully pass a criminal history background check;

(3) complete 20 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit;

(5) submit, in a manner prescribed by the department, a Supervisory Responsibility Statement Form or information from each department-approved supervisor providing the supervision unless the assistant is currently not practicing or the department-approved supervisor(s) has not changed; and

(6) submit the license renewal fee required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in audiology.

SUBCHAPTER K. REQUIREMENTS FOR AUDIOLOGY TEMPORARY CERTIFICATE OF REGISTRATION.

§111.100. Temporary Certificate of Registration in Audiology--Registration Requirements.

(a) An individual shall not practice as a temporary audiologists without a current certificate of registration issued by the department. An applicant for a temporary certificate of registration in audiology must meet the requirements of the Act and this section.

(b) Education. The doctoral degree in audiology or a related hearing science shall be completed at a college or university that has a program accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C., §1001 et seq.).

(c) An applicant who graduated from a college or university program not accredited by a national accrediting organization that is approved by the department and recognized by the United States Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. §1001 et seq.) shall have the ASHA Council for Clinical Certification evaluate the course work to determine whether he applicant qualified for the Certificate of Clinical Competence. The applicant shall bear all expenses incurred during the procedure.

(d) Examination. An applicant shall pass the examination referenced under §111.21, within the past ten (10) years from the date of the application.

(e) If issued, this certificate entitles an applicant approved for examination as required by §111.21, to practice audiology under a department-approved supervisor for a period of time ending eight weeks after the next scheduled examination.

(f) A temporary certificate of registration shall not be renewed.

(g) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.105. Audiology Temporary Certificate of Registration--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for a temporary certificate of registration in audiology must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) an original or certified copy of the transcript(s) showing the conferred doctoral degree in audiology or a related hearing science;

(3) if the degree was not earned at an institution as described in §111.100(b), official documentation from the ASHA Council on Academic Accreditation that the conferred doctoral degree is adequate for ASHA Certification or from the ABA that the conferred doctoral degree is adequate for ABA Certification;

(4) if not previously submitted when applying for an intern's license, a Course Work and Clinical Experience Form completed by the university program director or designee of the college or university attended which verifies the applicant has met the requirements established in §111.100(b) - (c);

(5) if the applicant currently holds an intern in audiology license, a Report of Completed Audiology Internship Form completed by the applicant's department-approved supervisor and signed by both the applicant and the department-approved supervisor;

(6) if the internship was completed out-of-state, the following documents regarding the supervisor must be submitted:

(A) a copy of the supervisor's diploma or transcript showing a master's or doctoral degree in one of the areas of communicative sciences or disorders; and

(B) one of the following:

(i) if that state requires licensure, a copy of the supervisor's valid license to practice in that state; or

(ii) if that state does not require licensure, an original letter from ASHA stating the supervisor held the Certificate of Clinical Competence when the applicant completed the internship;

(7) a Temporary Supervisory Form completed by the applicant's proposed department-approved supervisor and signed by both the applicant and the proposed department-approved supervisor;

(8) the temporary certificate of registration fee required under §111.160.

(c) An applicant must successfully pass a criminal history background check.

(d) An applicant must complete all certificate of registration requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§111.106. Temporary Certificate of Registration in Audiology--Issuing Registration.

(a) The department will issue to an applicant whose application has been approved, a temporary certificate of registration containing the registrant's name, registration number, and expiration date.

(b) The temporary certificate of registration shall expire eight weeks after the next scheduled examination as required by §111.21.

(c) The temporary certificate of registration is non-renewable.

(d) A temporary certificate of registration issued by the department remains the property of the department.

SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY.

§111.110. Dual License in Speech-Language Pathology and Audiology--Licensing Requirements.

An applicant for a dual license in speech-language pathology and in audiology as referenced in the Act shall meet the requirements set out in §111.30 and §111.70.

§111.115. Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant for a dual license in speech-language pathology and audiology must submit the following required documentation:

(1) all of the documentation required under §111.35 for a Speech-Language Pathology License;

(2) all of the documentation required under §111.75 for an Audiology License;

(3) proof of successfully completing the Texas Jurisprudence Examination under §111.23; and

(4) two separate initial application fees required under §111.160, or if the applicant already holds one of the licenses, the initial application fee required under §111.160 for the other license.

(c) An applicant for a dual license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety for the purpose of obtaining criminal history record information, unless the applicant has already submitted fingerprints as part of a single license. An applicant must successfully pass a criminal history background check.

(d) An applicant that qualifies for a waiver under §111.35 or §111.75 must submit the waiver documentation required under those two sections.

§111.116. Dual License in Speech-Language Pathology and Audiology--Issuing License.

(a) The department will issue an applicant, whose application has been approved, a license containing the licensee's name, license number, and expiration date.

(b) A dual license in speech-language pathology and audiology issued by the department remains the property of the department.

(c) The department will issue a duplicate license upon written request using a department-approved form or in a manner prescribed by the department and payment of the duplicate/replacement fee under §111.160.

§111.117. Dual License in Speech-Language Pathology and Audiology--License Terms; Renewals.

(a) A dual license in speech-language pathology and audiology is valid for two years from the date of issuance and may be renewed biennially.

(b) A licensee is responsible for submitting all required documentation and information and paying the renewal application fee prior to the expiration date of the license.

(c) To renew a dual license in speech-language pathology and audiology, a licensee must:

(1) submit a separate renewal application form and other documents required under §111.37 and §111.77;

(2) successfully pass a criminal history background check;

(3) complete 30 hours of continuing education as required under §111.130;

(4) comply with the continuing education audit process described under §111.132, if selected for an audit; and

(5) pay two separate license renewal fees required under §111.160.

(d) The department may deny the renewal of the license pursuant to Texas Occupations Code §401.451.

(e) If all conditions required for renewal are met prior to expiration, the department shall issue a renewed license.

(f) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(g) A person whose license has expired may not practice or engage in speech-language pathology or audiology.

SUBCHAPTER N. CONTINUING PROFESSIONAL EDUCATION.

§111.130. Continuing Professional Education--Requirements and Hours.

(a) Continuing professional education is required for the following licenses under this chapter:

(1) speech-language pathology license;

(2) intern in speech-language pathology license;

(3) assistant in speech-language pathology license;

(4) audiology license;

(5) assistant in audiology license; and

(6) dual license in speech-language pathology and audiology.

(b) The intern in audiology license is exempt from the continuing professional education requirements.

(c) A continuing education unit (CEU) is the basic unit of measurement used to credit individuals with continuing education activities for licensure. One CEU is defined as 10 clock hours of participation in an approved continuing education experience.

(d) Pursuant to 16 Texas Administrative Code (TAC) Chapter 59, a continuing education hour (clock hour) shall be 50 minutes of attendance in an approved continuing education course.

(e) The following minimum continuing education hours and units are required to renew a license:

(1) License issued for a two-year term: 20 clock hours (two CEUs), with 2 clock hours (0.2 CEUs) in ethics;

(2) Dual license in speech-language pathology and audiology (two-year term): 30 clock hours (three CEUs), with 2 clock hours (0.2 CEUs) in ethics; and

(3) Intern in speech-language pathology license (one-year term): 10 clock hours (1 CEUs), with 1 clock hour (0.1 CEU) in ethics.

(f) Continuing education hours earned before the original effective date of a license are not acceptable.

(g) Earned continuing education hours exceeding the minimum requirement in a previous renewal period shall first be applied to the continuing education requirement for the current renewal period.

(1) A maximum of 10 additional clock hours may be accrued during a license period to be applied to the next consecutive renewal period. Two of the 10 additional clock hours of the rollover hours may be in ethics.

(2) A maximum of 15 additional clock hours may be accrued by dual speech-language pathology and audiology licensees during a license period to be applied to the next consecutive renewal period.

§111.131. Continuing Professional Education--Courses and Credits.

(a) Continuing professional education shall be earned in one of the following areas:

(1) basic communication processes;

(2) speech-language pathology;

(3) audiology;

(4) ethics; or

(5) an area of study related to the areas listed in paragraphs (1) - (4).

(b) Any continuing education activity shall be provided by a department approved provider with the exception of activities referenced in subsection (c). A list of department approved providers shall be made available to all licensees on the department's website.

(c) University or college course work completed with a grade of at least a "C" or for credit from an accredited college or university in the areas listed in subsection (a)(1) - (4) shall be approved for 10 continuing education hours per semester hour, with a maximum of 20 continuing education hours per course.

(d) Completion of the Jurisprudence Examination shall count as one hour of the continuing education requirement for professional ethics per renewal period.

§111.132. Continuing Professional Education--Records and Audits.

(a) The licensee shall be responsible for maintaining a record of his or her continuing education experiences for at least three years.

(b) Proof of completion of a valid continuing education experience shall include the name of the licensee, the provider of the event, the title and date of the event, and the number of continuing education hours earned. Acceptable verification shall be:

(1) a letter, Continuing Education (CE) registry, or form bearing a valid signature or verification as designated by the department approved provider;

(2) in the event verification referenced in paragraph (1) of this subsection cannot be obtained, the department may accept verification from the presenter of an approved event if the presenter can also provide proof that the event was acceptable to an approved provider; or

(3) an original or certified copy of the university or college transcript if earned under §111.131(c).

(c) The documentation, certificates, diplomas, or other documentation verifying earning of continuing education hours shall not be forwarded to the department at the time of renewal unless the department selected the licensee for audit.

(d) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until Continuing Education requirements have been met.

SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT.

§111.140 . Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Speech-Language Pathologists and Audiologists program. Pursuant to 16 TAC §60.22, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules without being proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS.

§111.150. Changes of Name, Address or Other Information.

(a) A licensee is required to provide current name, address, telephone number, and employment information. The licensee shall notify the department of any changes within thirty (30) days of such changes on a department-approved form or using a department-approved method.

(b) A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name. The licensee shall submit the duplicate/replacement fee required under §111.160.

§111.151. Consumer Information and Display of License.

(a) A licensee shall notify each client of the name, mailing address, telephone number and website of the department for the purpose of directing complaints to the department. A licensee shall display this notification:

(1) on a sign prominently displayed in the primary place of business of each licensee; and

(2) on a written document such as a written contract, a bill for service, or office information brochure provided by the licensee to a client or third party.

(b) A licensee shall display the license certificate with a current license card as issued by the department in the primary location of practice.

(c) A holder of a temporary certificate of registration shall display the certificate as issued by the department in the primary location of practice.

(d) A licensee shall not make any alteration on official documents issued by the department.

§111.152. Advertising.

A licensee shall not present false, misleading, deceptive, or non-verifiable information relating to the services of the licensee or any person supervised or employed by the licensee.

§111.153. Recordkeeping and Billing.

(a) A licensee shall maintain accurate records of professional services rendered.

(b) Records must be maintained for a minimum of five consecutive years or longer as warranted.

(c) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(d) Records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(e) A licensee shall bill a client or a third party only for the services actually rendered in the manner agreed to by the licensee and the client or the client's authorized representative.

(f) A licensee shall provide, in clear language, a written explanation of the charges for speech-language pathology and/or audiology services previously made on a bill or statement for the client upon the written request of a client, a client's guardian, or a client's parent, if the client is a minor.

(g) A licensee shall comply with the Health and Safety Code §311.0025, which prohibits

improper, unreasonable, or medically unnecessary billing by hospitals or health care professionals.

(h) A licensee shall use current and appropriate diagnostic and procedure codes.

§111.154. Requirements, Duties, and Responsibilities of Supervisors.

(a) A licensee must have two years of professional experience in providing direct client services in the area of licensure in order to supervise an intern or assistant. The licensee's internship year shall be counted toward the two years of experience.

(b) A licensee may not supervise an individual that is related to the licensee within the first degree of consanguinity.

(c) A department-approved supervisor of an intern in speech-language pathology must possess at least a master's degree with a major in one of the areas of communicative sciences or disorders.

(d) A department-approved supervisor of an intern in audiology must possess either:

(1) at least a master's degree with a major in one of the areas of communicative sciences or disorders, if the department-approved supervisor applied for the audiology license before September 1, 2011; or

(2) at least a doctoral degree in audiology or a related hearing science, if the department-approved supervisor applied for the audiology license on or after September 1, 2011.

(e) A department-approved supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a current license;

(B) the supervisor has been approved by the department;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the department approves the supervisory agreement; and

(4) comply with the following supervision ratios:

(A) supervise no more than a total of four (4) speech-language pathology interns and/or assistants;

(B) supervise no more than a total of four (4) audiology interns and/or assistants, if an assistant holds a baccalaureate degree; or

(C) supervise no more than a total of two (2) audiology interns and/or assistants, if an assistant holds a high school diploma or equivalent.

(f) In addition to the provisions listed in subsection (e), a department-approved supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD) meetings, except as provided by §111.50.

(g) A licensed intern or assistant shall abide by the decisions made by his or her department-approved supervisor relating to the intern's or assistant's scope of practice. In the event the department-approved supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the department and any other appropriate authority.

§111.155. Standards of Ethical Practice (Code of Ethics).

(a) A licensee shall:

(1) engage in only those aspects of the profession that are within the scope of the licensee's competence considering level of education, training, and experience;

(2) insure a safe therapy environment;

(3) provide services as specified in the treatment plan, Individual Education Plan (IEP), or Individualized Family Service Plans (IFSP);

(4) seek appropriate medical consultation whenever indicated;

(5) seek to identify competent, dependable referral sources for clients;

(6) maintain objectivity in all matters concerning the welfare of the client;

(7) ensure that all equipment used is in proper working order and is properly calibrated;

(8) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided;

(9) provide accurate information to clients and the public about the nature and of communication disorders and about the profession and the services rendered;

(10) notify the department in writing of changes of name, highest academic degree granted, address, and telephone number. The department is not responsible for lost, misdirected, or undelivered mail;

(11) notify the department of changes in name or mailing address within 30 days of such change(s). Notification must include the name, mailing address, and zip code, and be mailed, faxed, or sent by electronic mail to the department;

(12) inform the department of violations of the Act, this code of ethics, or of any other provision of this chapter;

(13) comply with any order relating to the licensee which is issued by the department;

(14) report in accordance with the Family Code §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person;

(15) cooperate with the department by promptly furnishing required documents and by promptly responding to a request for information from, or a subpoena issued by, the department or the department's designee;

(16) be subject to disciplinary action by the department if the licensee or registrant is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Article 56.31 (relating to the Crime Victims Compensation Act);

(17) comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers; and

(18) fully inform clients of the:

(A) results of an evaluation within sixty (60) days, upon request;

(B) nature and possible effects of the services rendered; and

(C) nature, possible effects, and consequences of activities if the client is participating in research or teaching activities.

(b) A licensee shall not:

(1) engage in the medical treatment of speech-language and hearing disorders;

(2) jeopardize a client's safety by any inattentive behavior;

(3) guarantee, directly or by implication, the results of any therapeutic procedures except as follows:

(A) a reasonable statement of prognosis may be made; and

(B) caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(4) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(5) provide services if the services cannot be provided with reasonable skill or safety to the client;

(6) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(7) engage in sexual contact, including intercourse, kissing, or fondling, with a client or an assistant, intern, or student supervised by the licensee;

(8) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's provision of professional services;

(9) reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community;

(10) participate in activities that constitute a conflict of professional interest which may include the following:

(A) exclusive recommendation of a product that the licensee owns or has produced;

(B) lack of accuracy in the performance description of a product a licensee or registrant has developed; or

(C) restriction of freedom of choice for sources of services or products;

(11) use his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee's or registrant's personal gain or profit;

(12) misrepresent his or her training or competence;

(13) falsify records;

(14) aid or abet the practice of an unlicensed person when that person is required to have a license under the Act;

(15) interfere with a department investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or the department's designee or by the use of threats or harassment against any person;

(16) intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage for or from any health care professional. The provisions of the Texas Health and Safety Code §161.091, concerning the prohibition of illegal remuneration apply to licensees;

(17) endanger the health, welfare, or safety of the public; or

(18) use threats, threatening behavior, or acts of violence towards clients, employees, or employers.

SUBCHAPTER Q. FEES.

§111.160. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Speech Language Pathology License:

(1) Initial application fee (includes two-year initial license)--$150.

(2) Renewal application fee (for two-year license)--$100.

(c) Intern in Speech Language Pathology License:

(1) Initial application fee (includes one-year initial license)--$75.

(2) Renewal application fee (for one year license)--$75;

(d) Assistant in Speech Language Pathology License:

(1) Initial application fee (includes two-year initial license)--$150.

(2) Renewal application fee (for two-year license)--$100.

(e) Temporary Certificate of Registration in Speech Language Pathology: Initial application fee (includes certificate of registration)--$55.

(f) Audiology License:

(1) Initial application fee (includes two-year initial license)--$150.

(2) Renewal application fee (for two-year license)--$100.

(g) Intern in Audiology License:

(1) Initial application fee (includes one-year initial license)--$75.

(2) Renewal application fee (for one-year license)--$75.

(h) Assistant in Audiology License:

(1) Initial application fee (includes two-year initial license)--$150.

(2) Renewal application fee (for two-year license)--$100.

(i) Temporary Certificate of Registration in Audiology: Initial application fee (includes certificate of registration)--$55.

(j) Dual License in Speech Language Pathology and Audiology:

(1) Initial application fee (includes two-year initial license):

(A) An applicant for a dual license in speech-language pathology and audiology shall submit two separate initial application fees for speech-language pathology and audiology.

(B) An applicant who currently holds one license and wishes to obtain a dual license shall submit the initial application fee for the other license.

(2) Renewal application fee (for two-year license): Each license must be renewed separately and fees will be determined separately.

(k) A duplicate/replacement fee for a license or certificate issued under this chapter is $25.

(l) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(m) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(n) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

SUBCHAPTER R. COMPLAINTS.

§111.170. Telephone Number for Complaints.

The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

§111.171. Complaints Regarding Standard of Care.

The commission will adopt rule related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

SUBCHAPTER S. ENFORCEMENT PROVISIONS.

§111.180. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 401, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 401 and any associated rules.

§111.181. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 401 and any associated rules may be used to enforce Texas Occupations Code, Chapter 401 and this chapter.

§111.182. Refunds.

(a) The commission or executive director may order an audiologist to pay a refund to a consumer who returns a hearing instrument(s) during the 30-day trial period required by the rules adopted under Subchapter W (regarding Joint Rule Regarding the Sale of Hearing Instruments).

(b) If the 30-day period ends on a Sunday or a holiday, then the 30-day period shall not expire until the next business day.

(c) The licensee shall have thirty (30) days from the date of a consumer's return of the hearing instrument(s) to reimburse the consumer.

(d) In the event that the licensee fails to reimburse the consumer within the prescribed period in subsection (c), then the licensee may be subject to additional penalties and/or sanctions provided for under the Act and rules.

§111.183. Surrender of License.

(a) A licensee may offer to surrender the license to the executive director. The executive director will accept the voluntary surrender of the license and void it immediately.

(b) When a licensee has offered the surrender of the license after a complaint has been filed alleging violations of the Act or this chapter, and the executive director has accepted the surrender, that surrender is deemed to be the result of a formal disciplinary action.

(c) A license which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

SUBCHAPTER T. SCREENING PROCEDURES.

§111.190. Communication Screening.

(a) Individuals licensed under the Act may participate in communication screening.

(b) Communication screening should include cursory assessments of language and speech to determine if further testing is indicated. Formal instruments and informal observations may be used for the assessment. If the screening is not passed, a detailed evaluation is indicated.

(1) The aspects of language to be screened may include phonology, morphology, syntax, semantics, and pragmatics.

(2) The aspects of speech to be screened may include articulation or speech sound production, voice (including phonation and resonation), and fluency.

(c) Language and speech screening should be conducted in the client's dominant language and primary mode of communication.

§111.191. Hearing Screening.

(a) Individuals licensed under the Act may participate in hearing screening.

(b) Hearing screening shall be performed and interpreted as follows.

(1) Use a screening level of 25 dB HL (ANSI, 1996) for pre-kindergarten and kindergarten, and 20 dB HL (ANSI, 1996) for grades 1 through 12, at the frequencies of 1,000, 2,000, and 4,000 hertz (Hz) in both ears.

(2) The criterion for failure is no response at the screening level at any one frequency in either ear.

(3) Screening failures shall be followed with a second pure-tone air conduction screening

utilizing the same protocol within four weeks.

(c) If the second pure-tone air conduction screening is failed, a recommendation shall be made for a professional evaluation by a licensed physician or a licensed audiologist. If the person screened was a minor, the recommendation shall be made to a parent or guardian.

§111.192. Newborn Hearing Screening.

(a) Individuals licensed under the Act may participate in universal newborn hearing screening as defined by the Texas Health and Safety Code, Chapter 47.

(b) Individuals licensed under this Act are subject to 25 TAC Chapter 37, regarding reporting hearing screening or audiologic outcomes to the Department of State Health Services (DSHS) through the designated electronic tracking system and 40 TAC §108.9, regarding referral of children under the age of three years to Early Childhood Intervention (ECI) within two days of identification.

SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS.

§111.200. Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments.

(a) The audiology license constitutes registration to fit and dispense hearing instruments.

(b) The audiology intern license and the temporary audiology certificate constitute registration to fit and dispense hearing instruments under the supervision of a licensed audiologist approved by the department to supervise the internship.

§111.201. General Practice Requirements of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology registered to fit and dispense hearing instruments shall:

(1) adhere to the federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations §801.420 and §801.421;

(2) insure that all equipment used by the licensee within his or her scope of practice shall be calibrated to insure compliance with the American National Standards Institute (ANSI), S3.6, 1989, Specification for Audiometers, or S3.6, 1996, Specification for Audiometers;

(3) receive a written statement before selling a hearing instrument that is signed by a licensed physician preferably one who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing instrument. If the client is age 18 or

over, the registered audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the registered audiologist or intern in audiology:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing instrument. I do not wish medical evaluation before purchasing a hearing instrument;" and

(4) verify appropriate fit of the hearing instrument(s), which may include real ear measures, functional gain measures, or other professionally accepted measures.

§111.202. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology who fits and dispenses hearing instruments, shall comply with this section when testing hearing for the purpose of determining the need for amplification and the verification of the appropriate fit of hearing instrument(s).

(1) Licensees must adhere to the most current American National Standards Institute (ANSI) octave band criteria for permissible ambient noise levels during audiometric testing.

(2) This requirement is best met when a stationary acoustical enclosure is utilized.

(3) A stationary acoustical enclosure is any fixed enclosed space in which an individual is located for the purpose of testing hearing to threshold. A stationary acoustical enclosure may also be known as an audiometric or hearing test booth, room, suite, area, or space.

(4) Procedures referenced in Texas Occupations Code §401.401, should be followed when testing outside of a stationary acoustical enclosure.

(A) Hearing testing that occurs in an area that does not meet the standard of a stationary acoustical enclosure for the purpose of determining the need for amplification is not considered a diagnostic or threshold measurement.

(B) In the event amplification is fit and verification measures cannot be completed in a stationary acoustical enclosure, instrumentation that is minimally affected by

ambient noise including but not limited to, real ear measures, shall be utilized to assure the appropriate fit of the amplification.

SUBCHAPTER V. TELEHEALTH.

§111.210. Definitions Relating to Telehealth.

Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings.

(1) Client--A consumer or proposed consumer of speech-language pathology or audiology services.

(2) Client site--The physical location of the client at the time the services are being furnished via telecommunications.

(3) Consultant--Any professional who collaborates with a provider of telehealth services to provide services to clients.

(4) Facilitator--The individual at the client site who assists with the delivery of the telehealth services at the direction of the audiologist or speech-language pathologist.

(5) Provider--An individual who holds a current, renewable, unrestricted speech-language pathology or audiology license under Texas Occupations Code §401.302 and §401.304; or an individual who holds an audiology intern license under Texas Occupations Code §401.311.

(6) Provider site--The physical location at which the speech-language pathologist or audiologist delivering the services is located at the time the services are provided via telecommunications which is distant or remote from the client site.

(7) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(8) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image

capture and storage and forward; and

(C) other technology that facilitates the delivery of telepractice services.

(9) Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to a client from a provider.

(10) Telehealth services--The application of telecommunication technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention, and/or consultation.

(11) Telepractice--The use of telecommunications technology by a license holder for an assessment, intervention, or consultation regarding a speech-language pathology or audiology client.

(12) Telepractice services--The rendering of audiology and/or speech-language pathology services through telepractice to a client who is physically located at a site other than the site where the provider is located.

§111.211. Service Delivery Models of Speech-Language Pathologists.

(a) Telehealth may be delivered in a variety of ways, including, but not limited to those set out in this section.

(1) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another.

(2) Clinician interactive model is a synchronous, real time interaction between the provider and client or consultant that may occur via telecommunication links.

(b) Self-monitoring/testing model refers to when the client or consultant receiving the services provides data to the provider without a facilitator present at the site of the client or consultant.

(c) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.

§111.212. Requirements for the Use of Telehealth by Speech-Language Pathologists.

(a) The requirements of this section apply to the use of telehealth by speech-language pathologists.

(b) A provider shall comply with the commission's Code of Ethics and Scope of Practice requirements when providing telehealth services.

(c) The scope, nature, and quality of services provided via telehealth are the same as that

provided during in-person sessions by the provider.

(d) The quality of electronic transmissions shall be equally appropriate for the provision of telehealth services as if those services were provided in person.

(e) A provider shall only utilize technology which they are competent to use as part of their telehealth services.

(f) Equipment used for telehealth services at the clinician site shall be maintained in appropriate operational status to provide appropriate quality of services.

(g) Equipment used at the client/patient site at which the client or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.

(h) The initial contact between a licensed speech-language pathologist and client shall be at the same physical location to assess the client's candidacy for telehealth, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications prior to the client receiving telehealth services.

(i) A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the telehealth services and adjust their practice to maximize the client or consultant level of comfort.

(j) When a provider collaborates with a consultant from another state in which the telepractice services are delivered, the consultant in the state in which the client receives services shall be the primary care provider for the client.

(k) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telehealth services were provided in person.

(l) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(m) Upon request, a provider shall submit to the department data which evaluates effectiveness of services provided via telehealth including, but not limited to, outcome measures.

(n) Telehealth providers shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(o) Notification of telehealth services shall be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints.

§111.213. Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

(a) The limitations of this section apply to the use of telecommunications technology by speech-language pathologists.

(b) Supervision of a licensed assistant and/or intern in speech-language pathology shall not be undertaken through the use of telecommunications technology unless an exception to this prohibition is secured pursuant to the terms of this section.

(c) An exception to subsection (b) shall be requested by the speech-language pathologist submitting the prescribed alternate supervision request form for review by the department. The department shall approve or not approve the plan. The plan shall be for not more than one year's duration.

(d) If the exception referenced in subsection (c) is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the department. The department shall approve or not approve the plan.

(e) Telehealth services may not be provided by correspondence only, e.g., mail, email, faxes, although they may be adjuncts to telepractice.

§111.214. Requirements for Providing Telehealth Services in Speech-Language Pathology.

(a) A provider of telehealth services who practices in the State of Texas shall be licensed by the department.

(b) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

§111.215. Requirements for Providing Telepractice Services in Audiology.

(a) Unless otherwise legally authorized to do so, an individual shall not render telepractice services in audiology from the State of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as that term is defined in this subchapter and renders only those telepractice services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telepractice services. Modes of communication that do not utilize such telecommunications technology, including facsimile and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telepractice services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telepractice services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telepractice session.

(e) The provider of telepractice services, prior to allowing a facilitator to assist the provider in rendering telepractice services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the rendering of audiology services for which no form of license, permit, authorization or exemption under the Texas Occupations Code is required; and

(2) a task for which the facilitator holds and acts in accordance with any license, permit, authorization or exemption required under the Texas Occupations Code to perform the task.

(g) A provider shall not render telepractice services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telepractice services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telepractice services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telepractice services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent audiology service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) Providers and facilitators involved in the provider's delivery of telepractice services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telepractice services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(k) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

SUBCHAPTER W. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS.

§111.220. Requirements Regarding the Sale of Hearing Instruments.

(a) This subchapter constitutes the rules required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the commission with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board. The requirements of this subchapter shall be repealed or amended only through consultation with, and mutual action by, both advisory boards.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the department.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed audiologist or licensed intern in audiology may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed audiologist or licensed intern in audiology.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed audiologist or licensed intern in audiology and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive day trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: “The client has been advised that any examination or representation made by a licensed audiologist or licensed intern in audiology in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice.”;

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: “If you have a complaint against a licensed audiologist or intern in audiology, you may contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone (512) 463-6599, Toll-Free (in Texas): (800) 803-9202”;

(9) the printed name, license type, signature and license number of the licensed audiologist or licensed intern in audiology who dispensed the hearing instrument;

(10) the supervisor's name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within thirty (30) days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b); and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the department's inspection and shall include, but are not limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this section, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

SUBCHAPTER X. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE.

§111.230. Purpose.

Pursuant to Texas Occupations Code §401.2022 and §402.1023, the commission, with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, shall adopt rules to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. This subchapter contains rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

§111.231. Definitions.

Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Client--A consumer or proposed consumer of services.

(3) Client site--The site at which the client is physically located.

(4) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(5) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post fitting counseling for the purpose of fitting and dispensing hearing instruments.

(6) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(7) Provider--An individual who holds a current, renewable, unrestricted audiology license under Texas Occupations Code, §401.302 and §401.304; an individual who holds an audiology intern license under Texas Occupations Code, §401.311; or an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision.

(8) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(9) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(10) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(11) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(12) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

§111.232. Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.

(a) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the State of Texas, unless the individual qualifies as a provider as that term is defined in this subchapter and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this section.

(b) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(c) Subject to the requirements and limitations of this section, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(d) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(e) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(f) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the

facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption is required by law; and

(2) those tasks for which the individual who is acting as a facilitator otherwise holds and acts in accordance with any license, permit, authorization or exemption required by law to perform the tasks.

(g) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(h) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(i) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(j) A client's initial professional contact with a provider shall be in person at the same physical location.

(k) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(l) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

Occupations Code
Effective: 09/01/2009
TOWING, STORAGE, and BOOTING ADVISORY BOARD

Sec. 2308.051. TOWING, STORAGE, and BOOTING ADVISORY BOARD. (a) The advisory board consists of the following members appointed by the presiding officer of the commission with the approval of the commission:

(1) one representative of a towing company operating in a county with a population of less than one million;
(2) one representative of a towing company operating in a county with a population of one million or more;
(3) one owner of a vehicle storage facility located in a county with a population of less than one million;
(4) one owner of a vehicle storage facility located in a county with a population of one million or more;
(5) one parking facility owner;
(6) one law enforcement officer from a county with a population of less than one million;
(7) one law enforcement officer from a county with a population of one million or more;
(8) one representative of property and casualty insurers who write automobile insurance in this state,
(9) one representative of a booting company; and
(10) one public member.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2308.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2308.055. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

VEHICLE TOWING AND BOOTING

Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 86

86.650. Towing, Storage, and Booting Advisory Board.

(a) The advisory board consists of the ten members appointed by the chairman of the commission with the approval of the commission. The ten members include:

(1) one representative of a towing company operating in a county with a population of less than one-million;

(2) one representative of a towing company operating in a county with a population of one-million or more;

(3) one owner of a vehicle storage facility located in a county with a population of less than one-million;

(4) one owner of a vehicle storage facility located in a county with a population of one-million or more;

(5) one law enforcement officer from a county with a population of less than one-million;

(6) one law enforcement officer from a county with a population of one-million or more;

(7) one parking facility owner;

(8) one representative of property and casualty insurers who write automobile insurance in this state;

(9) one member of a booting company; and

(10) one public member.

(b) The advisory board shall include representation for each classification of towing.

(c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The chairman of the commission appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

Towing, Storage and Booting Advisory Board

Meeting of January 14, 2016
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Joann Messina called the meeting to order at 10:08 a.m.

Presiding Officer, Joann Messina moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Board members Joann Messina, Hector Cabello, Chris Confer, Gene Forester, Amy Milstead, John Stinnett, Jeanette Rash, and James Spears were present. Board member Vince Griffin was absent. A quorum was present. James Spears was welcomed as a new board member and he is from USAA. Ms. Messina also thanked former Board Members, Doug Remmert and Bill Roland for their service to the State of Texas.

Presiding Officer, Joann Messina moved to agenda item C. Approval of Minutes – meeting of November 5, 2015. There was a last minute correction made to the Minutes of November 5, 2015 - page 2 – Environmental Hazard should read "Board Member Chris Confer suggested that the matrix would be the appropriate calculation method – no final action was taken". Board member Jeanette Rash, made a motion to approve the minutes with changes. Board member Gene Forrester, seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Joann Messina moved to agenda item E. Public Comment. There was no public comment at this time.

Presiding Officer, Joann Messina moved to agenda item F.1. Staff Reports – Executive Office. Brian Francis reported that the Attorney General's opinion on release of vehicle without proof of insurance may not condition release of a vehicle impounded for lack of evidence of financial responsibility. Board members discuss how this can best be handled and suggested the making of forms or development of a policy. No final direction was offered.

Presiding Officer, Joann Messina moved to agenda item F.2. Staff Reports – Compliance Division. Todd Forrester and Latasha Poland, Program Specialists, reported on outreach efforts review of rules and internal training policies and procedures.

Presiding Officer, Joann Messina moved to agenda item F.3. Staff Reports – Education and Examination Division. Kim Whitt, Program Specialist, provided updates on staff activities and the education statistics.

Presiding Officer, Joann Messina moved to agenda item F.4. Staff Reports – Enforcement Division. Mark Black, Prosecutor, highlighted selected cases, presented key statistics, average penalty amounts, Top 10 Violations and outreach efforts.

Draft

Presiding Officer, Joann Messina moved to agenda item F.5. Staff Reports – Field Operations Division. Tanya Gauthreaux, Director of Field Operations, reported on the use of technology such as: route optimization and e-inspections and further reported on the tow truck round up process.

Presiding Officer, Joann Messina moved to agenda item F.6. Staff Reports – Licensing Division. Laura Hernandez, Program Specialist, reported on licensing statistics.

Presiding Officer, Joann Messina called for a break at 10:55 a.m. and reconvened at 11:25 a.m.

Presiding Officer, Joann Messina moved to agenda item G. Discussion and possible recommendation regarding proposed rule amendments to an existing rule at 16 Texas Administrative Code, Chapter 86, §86.10, to implement Senate Bill 1820, 84th Legislature, Regular Session (2015), relating to the definition of a tow truck. Board member Amy Milstead, seconded by Chris Confer, made motion to withdraw this rule and allow for the development of a definition for *car hauler*. Motion passes unanimously. Assistant General Counsel, Charles Johnson suggested the formation of a work group composed of Amy Milstead, Jeanette Rash and Gene Forrester.

Presiding Officer, Joann Messina moved to agenda item H. Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter §§86.225, 86.226, 86.227 and 86.228, regarding emergency consent tow truck license, emergency consent tow operator license, and emergency consent tow company permit. Charles Johnson reported that the rule was published in the Texas Register and received comments for the Boards review. Board members discussed the intent of the rules and the impact. Board member, Amy Milstead, seconded by Jeanette Rash made a motion to recommend this rule to the Commission for approval. Motion passes unanimously.

Presiding Officer, Joann Messina moved to agenda item I. Discussion of environmental hazard fee. Assistant General Counsel, Charles Johnson suggested that the previous work groups have failed to provide a solution for assessing an environmental hazard fee. Board members discussed the way in which this matter should proceed. Ken Ulmer offered a public comment on the cost of the cleanup. Todd Forrester will do some additional research and gather data to determine the appropriate fee.

Presiding Officer, Joann Messina moved to agenda item J. Discussion on new credit card rule. Presiding Officer, Joann Messina reported that the Commission approved a recommendation of all credit cards as opposed to the Board's recommendation of limiting the cards to US cards and excluding American Express.

Presiding Officer, Joann Messina moved to agenda item K. Recommendation for agenda items for the next meeting. Car hauler work group report; assign a work group for environmental hazard fee report; Tod Forrester to provide a calendar for reviewing the rules; assign a work group for VSF Operator responsibilities; assign a work group for signs; and assign a work group for VSF notifications workgroup.

Presiding Officer, Joann Messina moved to agenda item L. Discussion of date, time, and location of next Board meeting. The Board set the next meeting for May 12, 2016, at 10:00 a.m.

Draft

Presiding Officer, Joann Messina moved to agenda item M. Adjournment. Board member, Amy Milstead made a motion to adjourn the meeting. Board member, Jeanette Rash seconded the motion. The motion passed with a unanimous vote in favor. Presiding Officer, Joann Messina adjourned the meeting at 12:01 p.m.

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Joann Messina, Presiding Officer
Towing, Storage and Booting
Advisory Board

Draft

Towing, Storage and Booting Advisory Board

Meeting of November 5, 2015
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Joann Messina called the meeting to order at 10:11 a.m.

Presiding Officer, Joann Messina moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Board members Joann Messina, Hector Cabello, Chris Confer, Amy Milstead, Vince Griffin, and Jeanette Rash were present. Board members Gene Forester and John Stinnett were absent. A quorum was present.

Presiding Officer, Joann Messina moved to agenda item C. Approval of Minutes – meeting of August 27, 2015. Board member Amy Milstead, made a motion to approve the minutes as presented. Board member Hector Cabello, seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Joann Messina moved to agenda item E. Public Comment. There was no public comment at this time.

Presiding Officer, Joann Messina moved to agenda item F.1. Staff Reports – Compliance Division. Todd Forrester and Latasha Poland, Program Specialists, reported on outreach efforts including online training resources and internal training to better inform staff on providing services to the towing booting and storage communities.

Presiding Officer, Joann Messina moved to agenda item F.2. Staff Reports – Education and Examination Division. Kim Whitt, Program Specialist, introduced new staff members and provided the education statistics.

Presiding Officer, Joann Messina moved to agenda item F.3. Staff Reports – Enforcement Division. Mark Black, Prosecutor, highlighted selected cases including a booting case resulting in a fine. Board member, Chris Confer questioned the staff on the booting case. Mr. Black also reported on outreach efforts, key statistics and Top 10 Violations.

Presiding Officer, Joann Messina moved to agenda item F.4. Staff Reports – Field Operations Division. Tanya Gauthreaux, Director of Field Operations, and Juliane Crocker, Lead Facilitator reported on the Top 10 Most Common Inspection Violations, Overview of the MOBI route optimization program assisting in the inspection process, and inspection statistics.

Presiding Officer, Joann Messina moved to agenda item F.5. Staff Reports – Licensing Division. Laura Hernandez, Program Specialist, reported on licensing statistics, and email reminders of Towing License renewals.

Presiding Officer, Joann Messina moved to agenda item G. Discussion and possible recommendation regarding proposed rule amendments at 16 Texas Administrative Code, Chapter 85 § 85.711 regarding required forms of payment; this rule is proposed to implement House Bill 804, 84th Legislature, Regular Session (2015). The board heard public comment from Ken Ulmer regarding forms of payment and requirements to accept credit cards. Charles Johnson, Assistant General Counsel, provided an overview of the comments provided in response to the rules. The Board discussed the problems with requiring accepting payments over all four major credit networks and the hardship on small business. Board member Jeanette Rash, seconded by Hector Cabello, made a motion to recommend the Commission pass the rules as published, with the amendment to the credit card requirements that they be limited to domestic credit cards only. Amy Milstead, offered a friendly amendment to Ms. Rash's motion to exclude the requirement to accept American Express credit cards as well as reject international credit cards. Chris Confer seconded the motion. The motion passed by a vote of 5-1 with Vince Griffin opposed.

Presiding Officer, Joann Messina moved to agenda item H. Discussion and possible recommendation regarding sign changes relating to required forms of payment at 16 Texas Administrative Code §85.1003(e). The Board discussed the requirements for changes to the sign requirements. No vote was required for this issue.

Presiding Officer, Joann Messina moved to agenda item I. Discussion and possible recommendation regarding proposed new rules at 16 Texas Administrative Code, Chapter §§86.225, 86.226, 86.227 and 86.228, regarding emergency consent tow truck license, emergency consent tow operator license, and emergency consent tow company license. Charles Johnson, Assistant General Counsel, outlined the changes to address emergency licensing rules. The board discussed additional changes to respond to emergency situations. Amy Milstead, seconded by Jeanette Rash, made a motion to recommend the proposed rules for publication in the Texas Register for public comment. The motion passed by unanimous vote.

Presiding Officer, Joann Messina moved to agenda item J. Discussion and possible recommendation on the environmental hazard fee. The Board heard a public comment on the environmental fee from Ken Ulmer. Charles Johnson, Assistant General Counsel, provided a history of the proposed rule and the foundation for the expense assessed. He further recommended that staff and industry work together later this month to determine a fee that is appropriate and sustainable. Board member Chris Confer suggested that metrics would be the appropriate calculation method. No final action was taken.

Presiding Officer, Joann Messina moved to agenda item K. Recommendations for agenda items for next meeting. The Board decided to place the proposed rules for environmental hazard fee, discussion of tow truck definition, update on the Attorney General's Opinion regarding verifying insurance, discussion and review of emergency rules, report on Commission actions, review of the penalty matrix, sign changes related to the proposed rules changes, and comments on the proposed rules on the next agenda.

Presiding Officer, Joann Messina moved to agenda item L. Discussion of date, time, and location of next Board meeting. The Board set the next meeting for January 14, 2016, at 10:00 a.m.

Presiding Officer, Joann Messina moved to agenda item M. Adjournment. Board member, Amy Milstead made a motion to adjourn the meeting. Board member, Gene Forester seconded the motion. The motion passed with a unanimous vote in favor. Presiding Officer, Joann Messina adjourned the meeting at 12:22 p.m.

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Joann Messina, Presiding Officer
Towing, Storage and Booting
Advisory Board

Towing, Storage and Booting Advisory Board

Meeting of August 27, 2015
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Joann Messina called the meeting to order at 9:06 a.m.

Presiding Officer, Joann Messina moved to agenda item B. Roll Call, Certification of Quorum, and Introductions. Board members Joann Messina, Hector Cabello, Chris Confer, Amy Milstead, and Jeanette Rash were present. Board member Gene Forester joined the meeting at 9:13 a.m. Board members Vince Griffin and John Stinnett were absent. A quorum was present.

Presiding Officer, Joann Messina moved to agenda item C. Approval of Minutes – meeting of February 10, 2015. Board member Hector Cabello, made a motion to approve the minutes as presented. Board member, AmyMilstead seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Joann Messina moved to agenda item D. Public Comment. The Board heard public comment from Pat Johnson.

Presiding Officer, Joann Messina moved to agenda item E.1. Staff Reports – Executive Office. Executive Director, Bill Kuntz gave an update on the Legislative session, the bill implementation timeline, discussion of the Attorney General opinion regarding vehicle release and introduction the office of Strategic Relations and Communications.

Presiding Officer, Joann Messina moved to agenda item E.2. Staff Reports – Compliance Division. Todd Forrester, Program Specialist, introduced new staff member Latasha Polland, review of department contact information on forms has been completed, reported on outreach efforts including media outreach, and status of Disaster Declarations on towing recovery.

Presiding Officer, Joann Messina moved to agenda item E.3. Staff Reports – Education and Examination Division. Kim Whitt, Program Specialist, introduced new staff members and provided the education statistics. Board member Jeanette Rash introduced a training program available to the industry.

Presiding Officer, Joann Messina moved to agenda item E.4. Staff Reports – Enforcement Division. Ken Sharp, Prosecutor, reported on key statistics, highlighted selected cases and top 10 violations. Staff reported on outreach efforts to the industry and consumers. There was Board discussion regarding improper signage on trucks and the Top 10 Enforcement Violations document.

Presiding Officer, Joann Messina moved to agenda item E.5. Staff Reports – Field Operations Division. Tanya Gauthreaux, Director of Field Operations, reported on the Top 10 Most Common Inspection Violations, personnel changes, new technology assisting in the inspection process, and inspection statistics.

Presiding Officer, Joann Messina moved to agenda item E.6. Staff Reports – Licensing Division. Laura Hernandez, Program Specialist, reported on licensing statistics, and email reminders of Towing License renewals.

Presiding Officer, Joann Messina moved to agenda item F. Discussion and possible recommendation regarding proposed rule amendments, at 16 Texas Administrative Code, Chapter 85, §85.711 regarding required forms of payments; this rule is proposed to implement House Bill 804, 84th Legislature, Regular Session (2015). Charles Johnson, Assistant General Counsel, provided an overview of the proposed rules regarding credit card payment processing requirements for release of vehicles. The Board discussed the problems with requiring accepting payments over all four major credit networks and the hardship on small business. Board member Gene Forester suggested that the discussion include alternate forms of payments such as electronic devices. Board member Amy Milstead made a motion to publish the rules for public comment in the Texas Register with the addition of the word *and* also adding the definition of *credit card* to sections85.10 and 85.711 for clarity purposed. Board member Gene Forester, seconded the motion. The motion passed by a unanimous vote.

Presiding Officer, Joann Messina moved to agenda item G. Discussion and possible recommendation regarding proposed rule amendments, at 16 Texas Administrative Code, Chapter 86, §86.10 regarding vehicle exemptions; these rules are proposed to implement senate Bill 1820, 84th Legislature, Regular Session (2015). Charles Johnson, Assistant General Counsel, provided an overview of the proposed rules regarding clarification of car hauler. The Board discussed this matter. Board member Amy Milstead made a motion to publish the rules for public comment in the Texas Register as presented. Board member Gene Forester, seconded the motion. The motion passed by a unanimous vote.

Presiding Officer, Joann Messina moved to agenda item H. Recommendations for agenda items for next meeting. The Board decided to place the proposed rules for environmental hazard fee, update on the Attorney General's Opinion, sign changes related to the proposed rules changes, and comments on the proposed rules on the next agenda.

Presiding Officer, Joann Messina moved to agenda item I. Discussion of date, time, and location of next Board meeting. The Board set the next meeting for November 5, 2015 at 10:00 a.m.

Presiding Officer, Joann Messina moved to agenda item I. Adjournment. Board member, Chris Confer made a motion to adjourn the meeting. Board member, Gene Forester seconded the motion. The motion passed with a unanimous vote in favor. Presiding Officer, Joann Messina adjourned the meeting at 10:44 a.m.

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Joann Messina, Presiding Officer
Towing, Storage and Booting
Advisory Board

Chapter 85. Vehicle Storage Facilities

Proposal Filed: September 4, 2015 – Published in the *Texas Register*: September 18, 2015
Deadline for Public Comment: October 19, 2015

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.
[**Double-underlined text**] is recommended proposed new language from published rules.
[**~~Double-strike-thru text~~**] is recommended proposed deleted language from published rules.

§85.10. Definitions.

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

(1) - (4) (No change.)

~~(5) Credit card--A form of payment processed over the Visa, Mastercard, American Express, and Discover networks.~~

~~(6)~~ [(5)] Day--Twenty-four continuous hours.

~~(7)~~ [(6)] Department--The Texas Department of Licensing and Regulation.

~~(8)~~ [(7)] Executive director--The executive director of the department.

~~(9)~~ [(8)] Fence--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.

~~(10)~~ [(9)] Immediate family--A vehicle owner's parents, spouse, children, brothers, and sisters.

~~(11)~~ [(10)] Impoundment--The following actions when performed on a stored vehicle:

(A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; or

(D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.

~~(12)~~ **[(11)]** License holder or Licensee--The person to which the department issued a license.

~~(13)~~ **[(12)]** Main entrance--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.

~~(14)~~ **[(13)]** Notice of Right of Possession for Salvage--A form prescribed by the department and executed by persons licensed under 16 Texas Administrative Code Chapter 86 as agents for an insurance company that has documented authority from the vehicle owner obtained prior to execution of the form, certifying right of possession of a total loss vehicle stored at a vehicle storage facility.

~~(15)~~ **[(14)]** Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

~~(16)~~ **[(15)]** Primary lien holder--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.

~~(17)~~ **[(16)]** Principal--An individual who:

(A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) an ownership interest in a business that is equivalent to a fair market value of more than $25,000;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;

(D) holds a position as a member of the board of directors or other governing body of a business; or

(E) holds a position as an elected officer of a business.

~~(18)~~ **[(17)]** Proof of loss claim form--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.

~~(19)~~ **[(18)]** Registered owner--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.

~~(20)~~ [(19)] Vehicle--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.

~~(21)~~ [(20)] Vehicle owner--A person:

(A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;

(B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;

(C) who holds a vehicle through a valid lease agreement;

(D) who is an unrecorded lienholder with a right to possession; or

(E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.

~~(22)~~ [(21)] Vehicle storage facility (VSF)--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.

~~(23)~~ [(22)] Vehicle transfer--Any movement of a vehicle out of a VSF, prior to its release as prescribed in this chapter.

§85.711. Responsibilities of Licensee--Forms of Payment for Release of Vehicle.

~~(a) For purposes of this section , credit card means a form of payment processed over the Visa, Mastercard, American Express, and Discover networks.~~

(a) ~~(b)~~] In addition to other forms of payment accepted by the VSF, including a governmental VSF, a VSF must accept cash, debit cards and credit cards[~~, debit cards or electronic checks~~].

(b) ~~(c)~~] A VSF in violation of subsection **(a) ~~(b)~~]**, in addition to administrative penalties, may not charge for the storage of a vehicle beyond the date payment by credit card is tendered.

§85.1003. Technical Requirements--Storage Lot Signs.

(a) - (d) (No change.)

(e) A VSF must conspicuously post a sign that states: "This vehicle storage facility must accept payment by cash, debit cards and credit cards [~~an electronic check, credit card, or debit card~~] for any fee or charge associated with delivery or storage of a vehicle."

(f) - (g) (No change.)

Chapter 86. Vehicle Towing and Booting

Proposal Filed: September 3, 2015 – Published in the *Texas Register*: September 18, 2015
Deadline for Public Comment: October 19, 2015

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§86.10. Definitions.

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

(1) - (20) (No change.)

(21) Tow truck--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; [~~or~~]

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(G) a truck-trailer combination that is owned or operated by a dealer licensed under Chapter 2301 and used to transport new vehicles during the normal course of a documented transaction in

which the dealer is a party and ownership or the right of possession of the transported vehicle is conveyed or transferred; or

(H) a car hauler that is used solely to transport, other than in a consent or nonconsent tow, two or more motor vehicles as cargo in the course of a prearranged shipping transaction or for use in mining, drilling, or construction operations. This does not include:

(i) the movement of a motor vehicle pursuant to the vehicle owner's or operator's request for assistance because of a mechanical malfunction, damage, or similar disablement of the vehicle;

(ii) the movement of a motor vehicle pursuant to the vehicle owner's request because of an inability to obtain an operator to move the vehicle;

(iii) obtaining possession of a motor vehicle pursuant to a repossession, levy, or other debt collection or judicial process;

(iv) the movement of a motor vehicle from the scene of a traffic accident or incident; or

(v) the removal of a motor vehicle from private property without the consent of the vehicle's owner or operator.

(22) Towing company--An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(23) Towing operator--The person to which the department issued a towing operator license.

(24) Unauthorized vehicle--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(25) Vehicle--A device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(26) Vehicle owner--A person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(27) Vehicle storage facility--A vehicle storage facility, as defined by Texas Occupations Code, §2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

Chapter 2309
Occupations Code
Effective: September 1, 2009

SUBCHAPTER B. ADVISORY BOARD

USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD

Sec. 2309.051. USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD. (a) The advisory board consists of five members representing the used automotive parts industry in this state appointed by the presiding officer of the commission with the approval of the commission.

(b) The advisory board shall include members who represent used automotive parts businesses owned by domestic entities, as defined by Section 1.002, Business Organizations Code.

(c) The advisory board shall include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) The advisory board may not include more than one member from any one used automotive parts business entity.

(e) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2309.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2309.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 2309.054. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Sec. 2309.055. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2309.056. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

USED AUTOMOTIVE PARTS RECYCLERS

Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 87

87.65. Advisory Board.

(a) The advisory board consists of the five members representing the used automotive parts industry in this state appointed by the presiding officer of the commission with the approval of the commission. The five members include:

(1) members who represent used automotive parts businesses owned by domestic entities, as defined by Business Organizations Code, §1.002; and

(2) one member who represents a used automotive parts business owned by a foreign entity, as defined by Business Organizations Code, §1.002.

(b) The advisory board may not include more than one member from any one used automotive parts business entity.

(c) Advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(1) A member may not serve more than two full consecutive terms.

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The presiding officer of the commission shall appoint one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, may be reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the presiding officer of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Used Automotive Parts Recyclers Advisory Board

Meeting of October 23, 2013
North Campus Building, 1st Floor Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Bruce Ormand called the meeting to order at 9:35 a.m.

Presiding Officer, Bruce Ormand moved to agenda item B. Roll Call and Certification of Quorum. Board members Bruce Ormand, Chip Collins, Byron Ferril, Timothy Claude Straney, and Tchad Taormina were present. A quorum was certified.

Presiding Officer, Bruce Ormand moved to agenda item C. Approval of minutes – December 9, 2009 meeting and October 12, 2011 meeting. Board member, Timothy Claude Straney made a motion to accept the minutes as presented. Board member, Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item D. Public Comment. There was no public comment.

Presiding Officer, Bruce Ormand moved to agenda item E.1. Staff Reports – Executive Office. Brian Francis, Deputy Executive Director, gave Legislative update.

Presiding Officer, Bruce Ormand moved to agenda item E.2. Staff Reports – Enforcement Division. Michael Shirk, Prosecutor, introduced himself and reported on outreach efforts, cases, statistics and penalties.

Presiding Officer, Bruce Ormand moved to agenda item E.3. Staff Reports – Field Operations Division. Tanya Gauthreaux, Director, gave an overview of the new division and the division moving to an electronic inspection system. Ms. Gauthreaux also reported on outreach efforts, inspection statistics and the Top 10 Violations.

Presiding Officer, Bruce Ormand moved to agenda item E.4. Staff Reports – Licensing Division. Laura Hernandez, Program Specialist, reported on the licensing statistics.

Presiding Officer, Bruce Ormand moved to agenda item F. Discussion and possible recommendation to approve Used Automotive Parts Recyclers Penalty Matrix. Christina Kaiser, Director of Enforcement, gave an overview on how the penalty matrix is used and the changes made to the penalty matrix. There was Board discussion regarding the changes made and additional changes to be made to the penalty matrix. Presiding Officer, Bruce Ormand made a recommendation to approve the Used Automotive Parts Recyclers Penalty Matrix as presented with the following changes: splitting the one violation in Class B that relates to the citations 87.24(c) and 87.25(b), splitting into two violations one for the employee and one for the company; adding the word "employee" in two places in Class B, one for the violation that we just mentioned that was split and would read, "worked at a used automotive recycling business without holding an employee license" and the second place add the word "employee" in the bullet right below that "performing a function of a used automotive parts recycler while the employee license was expired" that relates to rule

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citation §87.26(c); adding back in the two violations that were left out, one in Class B for the expired company license which arises from §87.23(b) in the rules and one in Class C for failure to maintain insurance which arises from §87.40 in the rules; putting in the single dollar amount for first violations in Classes A, B and C with Class A being $500, Class B being $1,500 and C being $3,000; moving the violation for a company employing a truly unlicensed employee to Class C, that would be the violation that arises from 87.25(b) of the rules; and moving the heavy machinery violation from Class C to Class B and that violation arises from 2309.402(a) of the statue and 87.81(b) of the rules. Board member, Chip Collins seconded the motion. The motion passed with unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item G. Discussion and possible recommendation on proposed amendments to 16 Texas Administrative Code, Section 87.85, including reducing fees based on the Department's annual fee review. Charles Johnson, Assistant General Counsel, gave an overview of the fee reduction rules and pointed out to the board that §87.85(a)(2)(B) should read $25 rather than $30 in the second part of the subsection. Board member, Timothy Claude Straney recommended the proposed rules be sent to the Commission for approval with the change to §87.85(a)(2)(B). Board member, Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item H. Discussion regarding the licensing requirements and process for the sale or transfer of a business. Charles Johnson, Assistant General Counsel gave an overview of the discussion at the last Advisory Board meeting. Mr. Johnson gave an overview of TDLR's involvement in the transfer of the license and that our license issuing process is pretty quick but we cannot control the processes of other agencies. The Board agreed that there is no clear cut answer on this issue due to other agencies' involvement.

Presiding Office, Bruce Ormand moved to agenda item I. Discussion regarding licensing requirements for individuals who sell used automotive parts but not a facility. Charles Johnson, Assistant General Counsel reported that §2309.1518 of the statute states that the selling of used automotive parts requires a license regardless of if you are selling them in a facility or from your home. Board member, Chip Collins inquires as to whether or not there was a certain percentage that had to be sold to require a license. Presiding Officer, Bruce Ormand responded that it is not based on a percentage.

Presiding Officer, Bruce Ormand moved to agenda item J. Recommendations for agenda items for next meeting. There were none given.

Presiding Officer, Bruce Ormand moved to agenda item K. Discussion of date, time, and location of next Board meeting. The Board requested that various dates and times be emailed to them to schedule the next meeting.

Presiding Officer, Bruce Ormand moved to agenda item H. Adjournment. Presiding Officer, Bruce Ormand adjourned the meeting at 11:10 a.m.

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Bruce Ormand, Presiding Officer
Used Automotive Parts Recyclers
Advisory Board

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Used Automotive Parts Recyclers Advisory Board

Meeting of October 12, 2011
North Campus Building, 1st Floor Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Bruce Ormand called the meeting to order at 9:31 a.m.

Presiding Officer, Bruce Ormand moved to agenda item B. Roll Call and Certification of Quorum. Board members Bruce Ormand, Byron Ferril, Timothy Claude Straney, and Tchad Taormina were present. Board member Chip Collins was absent. A quorum was present.

Presiding Officer, Bruce Ormand moved to agenda item C. Public Comment. There was no public comment.

Presiding Officer, Bruce Ormand moved to agenda item D.1. Staff Reports – Executive Office. Brian Francis, Deputy Executive Director, gave an update on SB 1733 regarding military spouses and HB 3287 regarding late renewals. He also mentioned that the Used Automotive Parts Recyclers' inspections have begun.

Presiding Officer, Bruce Ormand moved to agenda item D.2. Staff Reports – Compliance Division. Russ Taulli, Program Specialist, introduced George Ferrie, Director of Compliance, who discussed the inspection checklist. Mr. Ferrie informed the board that the Department will only pursue unlicensed activity for this first round of inspections. Chair Ormand inquired about what the procedure will be if a violation is found. Mr. Ferrie stated the inspector will check to see if the violation is corrected at the next inspection. Mr. Taulli gave an overview of statistics and recent developments.

Presiding Officer, Bruce Ormand moved to agenda item G.3. Staff Reports – Enforcement Division. Stacey McLarty, Prosecutor, gave an overview the enforcement statistics. Chair Ormand inquired about the complaint process. Ms. MsLarty gave a summary of the complaint process. Chair Ormand inquired about what will happen if an anonymous complaint is filed. Ms. McLarty gave a summary of an anonymous complaint filed. Board member Ferril asked if a respondent is notified of who filed the complaint if not filed anonymously. Christina Kaiser, Director of Enforcement, responded yes.

Presiding Officer, Bruce Ormand moved to agenda item G.4. Staff Reports – Licensing Division. Tanya Gauthreaux, Program Specialist gave a history of statistics. Ms. Gauthreaux also informed the board of the renewal process and late renewals in regard to HB 3287. Board member Taormina thanked the Licensing Division for their quick turn around and keeping the website updated with current licensing information.

Presiding Officer, Bruce Ormand moved to agenda item E. Discussion and possible recommendation to approve Used Automotive Parts Recyclers Penalty Matrix. Charlotte Melder, Prosecutor, gave an overview of the penalty matrix. Brian Francis, Deputy Executive

Director, suggested that the board take their time in reviewing the matrix. The board discussed the penalty matrix. Board member Ferril required that the removal of unexpired license plate removal be moved to Class A. Chair Ormand requested that we change the first violation to "Warning to $500" in Class A. Chair Orman requested that we move §87.26(c) to Class B violation. The board decided to review the penalty matrix further and send changes to the Department by October 26, 2011.

Presiding Officer, Bruce Ormand moved to agenda item F. Recommendations for agenda items for next meeting. The board suggested we include the enforcement penalty matrix, sale changes, and stand alone individuals being licensed.

Presiding Officer, Bruce Ormand moved to agenda item G. Discussion of date, time, and location of next Board meeting. The Board requested that various dates and times be emailed to them to schedule the next meeting.

Presiding Officer, Bruce Ormand moved to agenda item H. Adjournment. Presiding Officer, Bruce Ormand made a motion to adjourn the meeting. Board member, Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor. Presiding Officer, Bruce Ormand adjourned the meeting at 10:49 p.m.

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Bruce Ormand, Presiding Officer
Used Automotive Parts Recyclers
Advisory Board

Used Automotive Parts Recyclers Advisory Board

Meeting of December 9, 2009
North Campus Building, 1st Floor Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer, Bruce Ormand called the meeting to order at 1:04 p.m. Presiding Officer, Bruce Ormand reminded those attendees wishing to speak to complete the Public Comment Form and that they would have four minutes to speak before the Board.

Presiding Officer, Bruce Ormand moved to agenda item B. Roll Call and Certification of Quorum. Board members Bruce Ormand, Byron Ferril, Timothy Claude Straney, and Tchad Taormina were present. Board member Chip Collins was absent. A quorum was present. Commission Chairman Frank Denton welcomed the board and expressed the Commission's appreciation for their membership on the board.

Presiding Officer, Bruce Ormand moved to agenda item C. Training for Board Members. Charles Johnson, Assistant General Counsel reviewed the Open Meetings Act, Public Information Act, and Administrative Procedures Act giving the Board members guidance on conducting meetings.

Presiding Officer, Bruce Ormand made a motion to excuse board member Chip Collins' absence. Board member Bryon Ferril seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item D. Nomination and Vote for Vice-Presiding Officer. Presiding Officer, Bruce Ormand made a motion nominating Timothy Claude Straney as Vice-Presiding Officer. Board member Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item E. Public Comment. There was no public comment.

Presiding Officer, Bruce Ormand moved to agenda item F. Overview of the Texas Department of Licensing and Regulation. Brian Francis, Deputy Executive Director gave the board an overview of TDLR. Commission Chairman, Frank Denton informed the board that the program funds are used for the Used Automotive Parts Recyclers program; that programs are self-sufficient; that the cost of the program dictates the fees; and that fees are reviewed annually.

Presiding Officer, Bruce Ormand moved to agenda item G.1. Staff Reports – Executive Office. Bill Kuntz, Executive Director welcomed the board to the new facility and announced that the meeting was being broadcast with audio and video equipment. Mr. Kuntz reported that the Department is on schedule to implement the program according to the statute mandated deadlines.

Presiding Officer, Bruce Ormand moved to agenda item G.2. Staff Reports – Compliance Division. Mike Yuhr, Program Specialist introduced staff and gave an overview of their job duties and TDLR's team approach. Mr. Yuhr gave an update on the program implementation team activities including a report.

Presiding Officer, Bruce Ormand moved to agenda item G.3. Staff Reports – Enforcement Division. Charlotte Melder, Prosecutor gave an overview of the enforcement process and enforcement statistics.

Presiding Officer, Bruce Ormand moved to agenda item G.4. Staff Reports – Licensing Division. Tanya Gauthreaux, Program Specialist gave an overview of the licensing process and the functional alignment of the division.

Presiding Officer, Bruce Ormand opened the meeting up for public comments on the proposed rules. There was not public comment on the rules.

Presiding Officer, Bruce Ormand moved to agenda item H. Discussion and possible recommendation regarding new rules at 16 Texas Administrative Code, Chapter 87, §§87.1, 87.10, 87.15, 87.20 – 87.26, 87.30, 87.40, 87.44 – 87.47, 87.50, 87.65, 87.70 – 87.81, 87.85, and 87.90 – 87.92 regarding the licensing and regulation of used automotive parts recyclers and used automotive parts employees engaged in the buying of vehicles and the selling of used automotive parts. Assistant General Counsel, Charles Johnson gave an overview of the proposed new rules. The Board engaged in discussions regarding the used automotive parts recyclers rules. The Board requested that §87.30 include exemption for insurance and that "fewer than three" be changed to "fewer than five" and that the exemption for insurance companies by removed from §88.80. Presiding Officer, Bruce Ormand made a motion to recommend adoption of the rules to the Commission for approval with the changes from comments discussed. Board member Timothy Claude Straney seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item I. Possible creation of and appointments to Work Groups.

1. Administrative Rules Work Group – Bruce Ormand and Timothy Claude Straney
2. Enforcement Work Group – Byron Ferril and Tchad Taormina
3. Licensing Work Group – Bruce Ormand and Timothy Claude Straney

Presiding Officer, Bruce Ormand made a motion for staff to make non-substantive changes to rules for clean-up. Board member Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item J. Discussion and possible recommendation to approve the Used Automotive Parts Recyclers Criminal Conviction Guidelines. Charlotte Melder, Prosecutor gave an overview of the criminal conviction guidelines. Presiding Officer, Bruce Ormand made a motion to adopt the criminal conviction guidelines. Board member Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor.

Presiding Officer, Bruce Ormand moved to agenda item K. Recommendations for agenda items for next meeting. No agenda items were recommended.

Presiding Officer, Bruce Ormand moved to agenda item L. Discussion of date, time, and location of next Board meeting. The Board requested that various dates and times be emailed to them to schedule the next meeting.

Presiding Officer, Bruce Ormand moved to agenda item M. Adjournment. Presiding Officer, Bruce Ormand made a motion to adjourn the meeting. Board member, Byron Ferril seconded the motion. The motion passed with a unanimous vote in favor. Presiding Officer, Bruce Ormand adjourned the meeting at 2:47 p.m.

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Bruce Ormand, Presiding Officer
Used Automotive Parts Recyclers
Advisory Board

Chapter 87. Used Automotive Parts Recyclers
Proposal Filed: September 23, 2013 – Published in the *Texas Register*: October 4, 2013
Deadline for Public Comment: November 4, 2013

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.

§87.85. Fees.

(a) Application Fees.

(1) Permit Used Automotive Parts Facility Business.

(A) Original Application--$75 [~~$120~~]

(B) Renewal--$120 for permits expiring before February 1, 2014; $75 for permits expiring on or after February 1, 2014

[~~(C) Duplicate Permit--$25~~]

[~~(D) Permit Amendment--$25~~]

(2) Used Automotive Parts Recycling Employee License.

(A) Original Application--$25 [~~$30~~]

(B) Renewal--$30 for licenses expiring before February 1, 2014; $30 for licenses expiring on or after February 1, 2014

[~~(C) Duplicate License--$25~~]

[~~(D) Permit Amendment--$25~~]

(b) Risk-based inspections--$150

(c) Revised/Duplicate License/Certificate/Permit/Registration--$25

(d) [~~(c)~~] Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(e) [~~(d)~~] All fees are non-refundable [~~nonrefundable~~] except as provided for by commission rules or statute.

Vehicle Protection Product Warrantors
Occupations Code, Chapter 2306
Effective 9/1/2003

SUBCHAPTER C. ADVISORY BOARD

Sec. 2306.101. Advisory Board.

(a) The Vehicle Protection Product Warrantor Advisory Board is an advisory body to the commission.

(b) The advisory board consists of six members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) two members who are officers, directors, or employees of a warrantor who has been approved or expects to be approved by the department;

(2) two members who are officers, directors, or employees of a retail outlet or other entity located in this state that sells vehicle protection products and is approved or expected to be approved by the department; and

(3) two members who are residents of this state and, at the time of appointment, are consumers of vehicle protection products issued by warrantors registered or expected to be registered under this chapter.

(c) The executive director or the executive director's designee serves as an ex officio nonvoting member of the advisory board.

(d) Chapter 2110, Government Code, does not apply to the advisory board.

Sec. 2306.102. Advisory Board Duties.

The advisory board shall advise the commission on adopting rules, enforcing and administering this chapter, and setting fees.

Sec. 2306.103. Terms; Vacancy.

(a) Members of the advisory board serve staggered six-year terms, with the terms of two members expiring on February 1 of each odd-numbered year.

(b) The presiding officer of the commission, with the commission's approval, shall fill any vacancy on the advisory board by appointing an individual who meets the qualifications for the vacant advisory board position to serve the remainder of the unexpired term.

Sec. 2306.104. Presiding Officer.

The presiding officer of the commission, with the commission's approval, shall designate one member of the advisory board to serve as presiding officer of the board for two years.

Sec. 2306.105. Meetings.

(a) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer of the board or the presiding officer of the commission.

(b) The advisory board shall meet at a location in this state designated by the advisory board.

Sec. 2306.106. Vote Required for Action.

A decision of the advisory board is not effective unless it receives the affirmative vote of at least four members.

Sec. 2306.107. Compensation; Reimbursement.

(a) Advisory board members serve without compensation.

(b) A member of the advisory board appointed under Section 2306.101(b)(3) is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Occupations Code
Chapter 1901, Title 12. Practices and Trades Related to Water, Health, and Safety

Subchapter C. Texas Water Well Drillers Advisory Council

§ 1901.101. Council Membership

(a) The Texas Water Well Drillers Advisory Council consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:
- (1) six members who are drillers experienced in the well drilling business and familiar with well drilling, completion, and plugging methods and techniques; and
- (2) three public members.

(b) One member appointed under Subsection (a)(1) must be selected from the state at large and the remaining five driller members must be selected from each of the following geographic areas of the state:
- (1) Gulf Coast area;
- (2) Trans-Pecos area;
- (3) Central Texas area;
- (4) Northeast Texas area; and
- (5) Panhandle-South Plains area.

(c) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

§ 1901.102. Eligibility of Members

(a) A person is not eligible to serve as a member under Section 1901.101(a)(1) if:
- (1) the person is employed by or owns an interest in a company, firm, or business association engaged in any phase of the well drilling business; and
- (2) a member serving under Section 1901.101(a)(1) is employed by or owns an interest in the same company, firm, or business association.

(b) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:
- (1) is licensed by an occupational regulatory agency in the field of well drilling; or
- (2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling.

§ 1901.103. Membership and Employee Restrictions

(a) An officer, employee, or paid consultant of a trade association in the well drilling industry may not be a council member or an employee of the department connected with the administration of this chapter.

(b) A council member or an employee of the department connected with the administration of this chapter may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the well drilling industry.

(c) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities on behalf of a trade or professional association in the well drilling industry.

§ 1901.104. Terms

Council members serve six-year terms expiring September 15.

§ 1901.105. Presiding Officer

The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

§ 1901.106. Grounds for Removal

It is a ground for removal from the council that a member:

(1) does not have at the time of appointment the qualifications required by Section 1901.101 or 1901.102;
(2) does not maintain during service on the council the qualifications required by Section 1901.101 or 1901.102;
(3) violates a prohibition established by Section 1901.103; or
(4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend each year.

§ 1901.107. Meetings; Quorum

(a) The council shall hold meetings at the call of the presiding officer.

(b) The council shall conduct meetings in compliance with Chapter 551, Government Code.

(c) A majority of the council constitutes a quorum.

§ 1901.108. Per Diem; Reimbursement

(a) A council member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the council.

(b) A council member may be reimbursed for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as prescribed by the General Appropriations Act.

§ 1901.109. Council Powers and Duties

(a) The council may propose rules for adoption by the commission relating to the regulation of drillers registered under this chapter.

(b) The council shall advise the department on the contents of licensing examinations.

(c) The council may:

(1) recommend standards for continuing education programs, including standards relating to:
    (A) the qualifications of program providers and instructors; and
    (B) the amount of program fees; and
(2) recommend topics to be covered in a continuing education course.

(d) The council shall assist the commission in evaluating continuing education programs.

WATER WELL DRILLERS ADVISORY COUNCIL

Meeting of November 4, 2015
North Campus, 1st Floor Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Lonnie Ball called the meeting to order at 10:00 a.m.

Presiding Officer, Lonnie Ball moved to agenda item B., Roll Call and Certification of Quorum. Council members: Lonnie Ball, Virgil Clark, Raymond Whisenant, Brandon Barchus and, Ray Reed were present. Council members Andrew Walters, John Pyburn, Billy Lange, and Rusty Gilmore, were absent. A quorum was present.

Presiding Officer, Lonnie Ball moved to agenda item C., Approval of Minutes – meeting of August 26, 2015. Council member Ray Reed, seconded by Brandon Barchus, moved that the minutes be approved as presented. The motion passed with a unanimous vote in favor.

Presiding Officer, Lonnie Ball moved to agenda item D., TDLR video presentation on Public Comment Process. Video presentation on Public Comment Process was shown.

Presiding Officer, Lonnie Ball moved to agenda item E., Public Comment. No public comment.

Presiding Officer, Lonnie Ball moved to agenda item F., Staff Reports. David Gunn, Program Manager provided the Compliance Division report with an updated report which included update on meetings attended, update on field activities, and number of inspections and investigations; Kim Whitt, Program Specialist provided the Education and Examination Division report which included personnel updates, examination statistics and continuing education statistics; Ron Foster, Enforcement Prosecutor provided the Enforcement Division report on enforcement statistics; and Lisa Houdek, Program Specialist provided the Licensing Division report on statistics – licensee population.

Presiding Officer, Lonnie Ball moved to agenda item G., Discussion of the public comments and possible recommendation on proposed rules at 16 Texas Administrative Code, Chapter 76, §§76.10, 76.20, 76.21, 76.25, 76.26, 76.27, 76.28, 76.70,76.78, 76.80 and 76.100, regarding the Water Well Driller and Pump Installer Program. Deputy General Counsel, Della Lindquist and Program Manager, David Gunn outlined the proposed rules changes as required by HB 930. Staff answered questions from the Committee and recommended changes to 16 Texas Administrative Code, Chapter 76, §§76.10, 76.20, 76.21, 76.25, 76.26, 76.27, 76.28, 76.70,76.78, 76.80 and 76.100, regarding the Water Well Driller and Pump Installer program. The Council discussed getting a workgroup together to address the comments that were received from the Texas Groundwater Association and rules that need updating for unlicensed assistants and the supervising driller requirements. The workgroup will consist of Ray Reed, Raymond Whisenant and Brandon Barchus. David Gunn will schedule the workgroup. Committee member Raymond Whisenant, seconded by Ray Reed, made a motion to recommend the

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proposed rules as presented to the Commissioners for approval. The motion passed by a unanimous vote.

Presiding Officer, Lonnie Ball moved to agenda item H, Discussion on the use of fiberglass in water well casing with possible recommendation by the Council on the inclusion of fiberglass casing in the recommended procedures for completing wells. Jade Lammers with Burgess Well Co., Inc., from Minden, Nebraska, and Kate Makhlouf with Burgess Well Fiberglass from Austin, Texas, presented a flyer and spoke about a variance request and rule changes for fiberglass casing.

Presiding Officer, Lonnie Ball moved to agenda item I., Recommendations for agenda items for next meeting. The Council placed apprentice licenses and fiberglass casing, on the next meeting agenda.

Presiding Officer L Ball moved back to agenda item E – Pubic Comment - Leroy Goodson commented on the workshop that is being scheduled and doesn't see a reason why it's needed.

Presiding Officer, Lonnie Ball moved to agenda item J., Discussion of date, time, and location of next meeting. The Committee agreed to hold the next meeting on February 17, 2016 at 10:00 a.m.

Presiding Officer, Lonnie Ball moved to agenda item K., Adjournment. Presiding Officer, Lonnie Ball adjourned the meeting at 11:13 a.m.

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Lonnie C. Ball, Presiding Officer
Water Well Drillers Advisory Council

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Ray Reed, Secretary
Water Well Drillers Advisory Council

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WATER WELL DRILLERS ADVISORY COUNCIL

Meeting of August 26, 2015
North Campus, 1st Floor Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Lonnie Ball called the meeting to order at 1:03 pm

Presiding Officer, Lonnie Ball moved to agenda item B., Roll Call and Certification of Quorum. Council members: Lonnie Ball, Virgil Clark, Billy Lange, Andrew Walters, and, Ray Reed were present. Council members Brandon Barchus, John Pyburn, Rusty Gilmore, and Ray Whisenant were absent. A quorum was present.

Presiding Officer, Lonnie Ball moved to agenda item C., Open Government Training for Council Members. Della Lindquist, Deputy General Counsel provided an overview of the Open Meetings Act, Public Information Act, and Administrative Procedures Act.

Presiding Officer, Lonnie Ball moved to agenda item D., Approval of Minutes – Meeting of August 11, 2014. Council member, Billy Lange, seconded by Ray Reed, moved that the minutes be approved as presented. The motion passed with a unanimous vote in favor.

Presiding Officer, Lonnie Ball moved to agenda item E., Public Comment. No public comment.

Presiding Officer, Lonnie Ball moved to agenda item F., Staff Reports. Deputy Executive Director, Brian Francis provided the Executive Office staff report; David Gunn provided the Compliance report; Kim Whitt provided the Education and Examination Division report; Ron Foster provided the Enforcement report; Lisa Houdek provided the Licensing Division report.

Presiding Officer, Lonnie Ball moved to agenda item G., Discussion and possible recommendation on proposed rules at 16 Texas Administrative Code, Chapter 76, §§76.10, 76.20, 76.21, 76.25, 76.26, 76.27, 76.28, 76.70,76.78, 76.80 and 76.100, regarding the Water Well Driller and Pump Installer Program. Deputy General Counsel, Della Lindquist and Program Manager, David Gunn outlined the proposed rules as required by HB 930. Staff answered questions from the Committee and made changes to §§76.21(a), 76.21(e), 76.25(e), 76.27, 76.28 and 76.100(g). Committee member Ray Reed, seconded by Virgil Clark, made a motion to recommend the proposed rules as amended for publication in the Texas Register for public comment. The motion passed by a unanimous vote.

Presiding Officer, Lonnie Ball moved to agenda item H., Recommendations for agenda items for next meeting. The Council placed proposed rules and comments on the next meeting agenda.

Presiding Officer, Lonnie Ball moved to agenda item I., Discussion of date, time, and location of next meeting. The Committee agreed to hold the next meeting November 4, 2015.

Presiding Officer, Lonnie Ball moved to agenda item J., Adjournment. Committee member, Virgil Clark, seconded by Ray Reed, made a motion to adjourn the meeting. The motion passed by unanimous vote. Presiding Officer, Lonnie Ball adjourned the meeting at 3:45 p.m.

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Lonnie C. Ball, Presiding Officer
Water Well Drillers Advisory Council

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Ray Reed, Secretary
Water Well Drillers Advisory Council

WATER WELL DRILLERS ADVISORY COUNCIL

Meeting of August 11, 2014
North Campus, 1st Floor Meeting Room
1106 Clayton Lane - Austin, Texas

Summary of Minutes

Presiding Officer, Lonnie Ball called the meeting to order at 1:05 pm

Presiding Officer, Lonnie Ball moved to agenda item B., Roll Call and Certification of Quorum. Council members: Lonnie Ball, Virgil Clark, Rusty Gilmore, Billy Lange, Brandon Barchus, Ray Whisenant, Ray Reed and John Pyburn, were present. Council member Andrew Walters was absent. A quorum was present.

Presiding Officer, Lonnie Ball moved to agenda item C., Approval of Minutes – Meeting of January 14, 2013. Council member, Ray Reed, seconded by Ray Whisenant, moved that the minutes be approved with the amendment suggested. The motion passed with a unanimous vote in favor.

Presiding Officer, Lonnie Ball moved to agenda item D., Public Comment. The Council heard public comment and a presentation by Ty H. Embrey, attorney with Lloyd Gosselink, Austin, Texas concerning the work of the Texas Water Conservation Association and possible upcoming legislative initiatives.

Presiding Officer, Lonnie Ball moved to agenda item E., Staff Reports. Executive Director, William Kuntz provided the Executive Office staff report: update on the Strategic Plan and Legislative Appropriation Request. Lee Parham, Business and Mechanical Section Manager provided the Compliance report: regarding introduction of a new staff member, meetings attended, Field Activities, and Well reports. Andreea Vasile, Program Specialist provided the Education and Examination Division report regarding: examination development and statistics. Mary Winston, Prosecutor provided the Enforcement report which included statistics, and case highlights. Lisa Houdek, Program Manager provided the Licensing Division report on statistics in the licensee population. Staff answered questions from the Board members on their staff reports.

Presiding Officer, Lonnie Ball moved to agenda item F. Discussion and possible recommendation on proposed amendments to existing rules at 16 Texas Administrative Code, Chapter 76, §§76.1, 76.10, 76.20, 76.21, 76.22, 76.24, 76.25, 76.26, 76.30, 76.62, 76.65, 76.70, 76.71, 76.72, 76.74, 76.76, 76.101-76.106, 76.108, 76.110 and 76.111, proposed repeal of current §76.100, and proposed new rule at §76.100, regarding the Water Well Drillers and Pump Installers program, and public comments. Assistant General Counsel, Della Lindquist and Section Manager, Lee Parham outlined the proposed rules and comments submitted in response to the publication. Staff answered questions from the Committee. Della Lindquist highlighted the changes:

76.10 the term *undesirable water* will remain in the rules as it comes from the statute, and is defined in the rules for clarification

76.21 requires two years of experience as a driller or installer to get a license.

76.26 requires two years of experience as a licensee in order to supervise unlicensed installers and drillers.

76.70 requires that well logs contain a well's longitude and latitude.

Comments on the published rules were received from 3 individuals and the Panola County Groundwater Conservation District (Panola). Individual commenters were concerned with the number of rules, the use of the term potable water in 76.100 which the commenter believed should require chlorination of drinking water, and a change to the exemptions under 76.30. These comments were discussed but not recommended as they would either require statutory changes or not add additional clarity to the rules. Panola County Groundwater Conservation District suggested that direct supervision requires the licensee be present at all times. The Department and the Board felt this was not practical and proposed no change. Panola also recommended clarification on how a driller knows if he has encountered injurious water and suggested that the Driller test the water. The Department and the Board did not think conducting a test was a viable option because testing would not be reliable in every region of the state. One of Panola's comments was regarding the meaning of 'injurious water' and Staff suggested that a definition of the term 'injurious water' would be helpful. Panola was also concerned with the water well completion requirement of a 10 foot atmospheric barrier when leaving the annular space open. Panola stated that when plugging a well using the proposed standards, the open annular space is left open to contamination. Panola would like to see a requirement to remove the casing similar to encountering injurious water. The Department did not suggest a change to this rule.

Committee member Virgil Clark, seconded by Ray Whisenant, made a motion to recommend the proposed rules as amended to the Commission for adoption. The motion passed by a unanimous vote.

Presiding Officer, Lonnie Ball moved to agenda item G., Recommendations for agenda items for next meeting. The Council placed work group reports from the monitoring wells work group regarding South Texas Monitoring wells (Whisenant, Lange, and Pyburn) on the next meeting agenda.

Presiding Officer, Lonnie Ball moved to agenda item J., Discussion of date, time, and location of next meeting. The Committee agreed to hold the next meeting November 2014.

Presiding Officer, Lonnie Ball moved to agenda item K., Adjournment. Presiding Officer, Lonnie Ball adjourned the meeting.

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Lonnie C. Ball, Presiding Officer
Water Well Drillers Advisory Council

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Ray Reed, Secretary
Water Well Drillers Advisory Council

Chapter 76. Water Well Drillers and Water Well Pump Installers
Proposal Filed: September 4, 2015 – Published in the *Texas Register*: September 18, 2015
Deadline for Public Comment: October 19, 2015

Underlined text is new language.
[~~Strike-thru text~~] is deleted language.
[**Double-underlined text**] is recommended proposed new language from published rules.
[**~~Double-strike-thru text~~**] is recommended proposed deleted language from published rules.

§76.10. Definitions.

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

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

(4) Apprentice--An individual registered by the department to act or offer to act as a driller or installer under the supervision of, and pursuant to a training program developed by the supervising licensed driller or pump installer.

(5) [~~(4)~~] Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(6) [~~(5)~~] Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(7) [~~(6)~~] Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(8) [~~(7)~~] Borehole or well bore--The drilled hole.

(9) [~~(8)~~] Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(10) [~~(9)~~] Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing--New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(11) [~~(10)~~] Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(12) [~~(11)~~] Cessation of drilling--When the borehole has been drilled to total depth and casing has been placed in the borehole.

(13) [~~(12)~~] Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(14) [~~(13)~~] Closed Loop Geothermal Well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(15) [~~(14)~~] Code--Refers to Texas Occupations Code, Chapters 1901 and 1902.

(16) [~~(15)~~] Commingling--The mixing, mingling, blending or combining through the borehole casing annulus or the filter pack of waters that differ in chemical quality, which causes quality degradation of any aquifer or zone.

(17) [~~(16)~~] Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering injurious water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(18) [~~(17)~~] Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains injurious water.

(19) [~~(18)~~] Completed water well--A water well, which has sealed off access of injurious water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.

(20) [~~(19)~~] Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(21) [~~(20)~~] Deteriorated well--A well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.

(22) [~~(21)~~] Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(23) [~~(22)~~] Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(24) [~~(23)~~] Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, Williamson, and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(25) [~~(24)~~] Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(26) [~~(25)~~] Filter pack--The media that is used in the annular space around the well screen to create a filter to prevent sand or sediment from entering the well.

(27) [~~(26)~~] Flapper--The clapper, closing, or checking device within the body of the check valve.

(28) [~~(27)~~] Foreign substance--Constituents that include recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(29) [~~(28)~~] Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(30) [~~(29)~~] Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(31) [~~(30)~~] Grout--This term shall include cement or bentonite mixed with water, or a combination of bentonite and cement mixed with water and/or department-approved additives.

(32) [~~(31)~~] Injection well--This term includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(33) [~~(32)~~] Injurious water--Water that is harmful to vegetation, land or other water as set forth in §1901.254(a) and §1902.252(a) of the Code.

(34) [~~(33)~~] Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(35) [~~(34)~~] Monitoring well--An artificial excavation that is constructed to measure or monitor the quantity or movement of substances below the surface of the ground, and that is not used in conjunction with the production of oil, gas, or other minerals.

(36) [~~(35)~~] Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(37) [~~(36)~~] Offering to act [~~perform~~]--Making a written or oral proposal, contracting in writing or orally to perform well drilling or pump installing work, or advertising in any form through any medium that a person or business entity is a well driller or pump installer, or that implies in any way that a person or business entity is available to contract for, act as a driller or installer, or perform well drilling or pump installing work.

(38) [~~(37)~~] Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(39) [~~(38)~~] Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(40) [~~(39)~~] Placement and preparation for operation of equipment and materials--Includes but is not limited to removing the pump.

(41) [~~(40)~~] Plugging--An absolute sealing of the well bore.

(42) [~~(41)~~] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(43) [~~(42)~~] Positive Displacement method--The process in which the cement, bentonite or a combination of the two sealing materials is forced through the well casing followed by water or drilling fluids, via a mechanical pump and out through relief holes in the casing at the maximum depth of the zone to be grouted. The grout then returns under pressure to the surface through the annular space and upon curing or setting causing an annular seal.

(44) [~~(43)~~] Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

(45) [~~(44)~~] Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.

(46) [~~(45)~~] Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Commission on Environmental Quality.

(47) [~~(46)~~] Reconditioning--The process where a well is cleaned out to original depth and the water production is restored. This term shall include any procedures that make the well operable.

(48) [~~(47)~~] Re-completion--The process to bring an existing well into compliance with §76.100 or §76.105 by installing any and all sanitary seals, safeguards, casing, grouting, and the re-setting of well screens as required.

(49) [~~(48)~~] Recovery well--A well constructed for the purpose of recovering injurious groundwater for treatment or removal of contamination.

(50) [~~(49)~~] Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(51) [~~(50)~~] Test well--A well drilled to explore for groundwater.

(52) [~~(51)~~] Tremie pipe method--The process in which a small diameter pipe or tubing is inserted in the annular space of the well to the maximum depth of the zone to be sealed, before the grouting procedure is commenced to pump sealing material through. The tubing or pipe may be retrieved during the grouting process, causing an annular seal.

(53) [~~(52)~~] Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(54) [~~(53)~~] State of Texas Well Report (Well Log)--A log recorded on forms prescribed by the department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the executive director.

§76.20. Licensing Requirements--General.

A person may not act or offer to act as a driller or pump installer unless the person is licensed or registered by the executive director pursuant to the [~~Texas Occupations~~] Code, and this **Chapter** [~~**chapter**~~] [~~Chapters 1901 and 1902~~].

§76.21. Requirements for Issuance of a Driller or Pump Installer License.

(a) An applicant must submit a completed application, the required fee, and have the required two (2) years of experience drilling wells or installing pumps.

(b) - (c) (No change.)

(d) An applicant must have sufficient installation/drilling experience as set forth in paragraphs (1) and (2) to be eligible to take each applicable endorsement examination.

(1) Drillers Endorsements--Qualifying number of installation/drillings

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

(F) Master Driller (A)--All of the above endorsements required.

(2) Pump Installer Endorsements--Qualifying number of installation/drillings

(A) - (D) (No change.)

(E) Master Installer (I)-All of the above endorsements required.

(e) An applicant who has all of the endorsements in (1)(A) - (E) above [~~demonstrated competency in all types of well drilling~~] is qualified to be [~~for~~] a master driller [~~driller's license~~].

(f) An applicant who has all of the endorsements in (2)(A) - (D) above [~~demonstrated competency in all types of pump installation~~] is qualified to be [~~for~~] a master pump installer [installer's license].

§76.25. Continuing Education.

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

(c) To renew a registration as an apprentice, a registrant must complete a one (1) hour department-approved continuing education course dedicated to the Water Well Driller and Pump Installer statutes and rules.

(d) [~~(c)~~] The continuing education hours must have been completed within the term of the current license or registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of the late renewal.

(e) [~~(d)~~] A licensee or registrant may not receive continuing education credit for attending the same course more than once during their license term.

(f) [~~(e)~~] Licensees and registrants must retain a copy of the certificate of course completion for one year after the date of completion. In conducting any inspection or investigation of the licensee or registrant, the department may examine the licensee's or registrant's records to determine compliance with this subsection.

(g) [~~(f)~~] To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b), and the provider must be registered under Chapter 59 of this title.

(h) [~~(g)~~] A licensee whose license has been placed on "inactive" status pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to "active" status.

§76.26 A Person Assisting Licensed Driller or Licensed Pump Installers.

(a) A person not licensed or registered to perform drilling or pump installing work may assist a licensed driller or pump installer, pursuant to the Code, provided that the unlicensed person is not primarily responsible for the drilling or installation operations, and provided that the unlicensed person:

(1) performs drilling work under the direct supervision of a licensed driller who has been licensed for a minimum of two (2) years; or

(2) performs pump installing work under the direct supervision of a licensed pump installer who has been licensed for a minimum of two (2) years.

[~~(b) A licensed driller or pump installer may directly supervise no more than three (3) unlicensed persons at any time.~~]

[~~(c) At the time of license renewal, the licensed driller or pump installer must provide a department-approved form with a list of all unlicensed assistants the licensee directly supervises to perform drilling or pump installing work at the time of the renewal, including those supervised at any time during the previous twelve (12) month period.~~]

(b) [~~(d)~~] For purposes of this **Chapter** [~~**chapter**~~] and the Code, a licensed driller or pump installer provides "direct supervision" to an unlicensed assistant if the licensed driller or pump installer [~~:~~]

(1) is present at the well site at all times during all drilling or pump installing operations performed by the assistant; [~~;~~] or

(2) is represented at the well site by the [~~an~~] unlicensed assistant, capable of immediate communication with the licensed driller or pump installer at all times and the licensed driller or pump installer is no more than a reasonable distance from the well site, but no further than a two (2) hour arrival time; and

(3) inspects the well site at least once in every twenty-four (24) hour period of operation.

(4) The requirements of paragraphs (2) and (3) will expire June 1, 2016.

(c) [~~(e)~~] The supervising licensee is responsible for direct supervision of the unlicensed assistant, and for ensuring that the unlicensed assistant [~~person~~] performs drilling or pump installing work in compliance with the Code and this **Chapter** [~~**chapter**~~].

(d) [~~(f)~~] Any allegation of a violation of this **Chapter** [~~**chapter**~~] or the Code against an unlicensed person performing drilling or installing work as an unlicensed assistant to a driller without direct supervision, [~~set forth in this chapter, shall~~] may be opened as a complaint against both the [~~supervising~~] licensee responsible for supervising the unlicensed person, and the unlicensed person.

[~~(g) The provisions listed in subsection (c) are effective for water well driller and pump installer licenses that expire on or after May 1, 2013.~~]

(e) [~~(h)~~] An unlicensed assistant may not contract, bid, advertise or [~~and/or~~] accept payment for drilling or pump installing services.

§76.27. Registration for Driller and/or Pump Installer Apprenticeship.

(a) A person who wishes to participate in a driller or installer apprentice program under the supervision of a licensed well driller and/or a licensed pump installer who has been licensed for a minimum of two (2) years, must submit a registration form to the **department** [~~**Department**~~], provide a detailed copy of the training program, including the effective commencement and termination date, and provide proof that the licensed well driller and/or pump installer has agreed to accept the responsibility of supervising the training.

(b) To qualify for an apprentice registration the person must:

(1) Be at least eighteen (18) years old;

(2) Participate in an apprentice program developed by a licensed driller or installer who has been licensed as a driller or installer for at least two years;

(3) Submit an application on a department-approved form, and

(4) Pay the registration fee.

(c) The application form for an apprentice shall include:

(1) the name, business address, and permanent mailing address of the apprentice;

(2) the name and license number of the licensed driller and/or pump installer who will supervise the training;

(3) a detailed description of the training program ,including the types of wells to be drilled and/or the classifications of pumps to be installed, the effective commencement and termination dates of the program, equipment used, safety training and procedures, and experience, knowledge, and qualification benchmarks while under the apprenticeship ;

(4) a statement by the licensed driller and/or pump installer that the licensed driller or installer takes responsibility for the apprentice's acts under the Code and this Chapter for the activities of the apprentice associated with the training program; and

(5) the signatures of the apprentice and the licensed driller and/or pump installer and the certification of the licensee and apprentice that the information provided is true and correct.

§76.28 Standards of Conduct- Apprentice and Supervising Licensee.

(a) A registered driller or pump installer apprentice may only accept bids in the name of the supervising licensee, or perform or offer to perform well construction under the Code or this Chapter that the supervising licensee authorizes in writing pursuant to the apprentice program.

(b) A supervising licensee shall determine the manner and type of supervision for every apprentice under his supervision.

(c) A supervising licensee is ultimately responsible for the drilling of a well or installation of a pump according to the **Code [~~code~~]** and this Chapter. The licensee shall supervise the drilling activities of an apprentice, pursuant to the Code, this Chapter and the written apprentice program developed by the licensee.

(d) A registered driller or pump installer apprentice may not act or offer to act as a driller or pump installer except under the authority of a licensed driller or pump installer and according to the supervising driller or pump installer's direction.

(e) A registered apprentice who is not currently participating in an apprentice program, may assist a licensed driller or installer as an unlicensed assistant, under direct supervision pursuant to §76.26 of this title.

(f) A driller or pump installer apprentice must have the registration issued by the department in his possession at all times and must present the registration upon request.

(g) A complaint alleging a violation of this **Chapter [~~chapter~~]** and the Code involving a person performing work as an apprentice, may be opened against both, the apprentice and the supervising licensee for failing to properly supervise the apprentice.

(h) A licensed driller or installer shall notify the department in writing within 10 days of the termination of a registered apprentice.

§76.70. Responsibilities of the Licensee--State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State of Texas Well Report on a department-approved form. Each copy of a State of Texas Well Report, other than a department copy, shall include the name, mailing address, web address and telephone number of the department.

(1) Every well driller shall transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by first-class [~~certified~~] mail, a copy [~~the original~~] of the State of Texas Well Report to the department. Every well driller shall deliver, transmit electronically, or send by first-class mail a copy [~~photocopy~~] to the groundwater conservation district in which the well is located, if any. Every well driller shall also deliver, transmit electronically, or send by first-class mail a copy [~~photocopy~~] to the owner or person for whom the well was drilled, within sixty (60) days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) Each State of Texas Well Report and Plugging Report shall include the specific geographic coordinates with the longitude and latitude of the subject well.

(3) The person that plugs a well shall, within thirty (30) days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by first-class [~~certified~~] mail, a copy [~~the original~~] of the State of Texas Plugging Report to the department. The person that plugs the well shall deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Plugging Report to the groundwater conservation district in which the well is located, if any. The person that plugs the well shall deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Plugging Report to the owner or person for whom the well was plugged.

(4) The department shall furnish State of Texas Plugging Reports on request.

(5) The executive director shall prescribe the contents of the State of Texas Plugging Reports.

§76.78. Responsibilities of the Licensee--Adherence to Manufacturer's Recommended Well Construction Materials and Equipment.

(a) Unless waived by the landowner, a licensee shall use a manufacturer's well screen, and select the correct slot size for the screen in the installation of a domestic (household use) or landscape irrigation water well to prevent sand or sediment from entering the well.

(b) The waiver must be on a department-approved form, signed by the landowner or person having the well drilled and the driller, and presented to the landowner.

(c) A licensee shall adhere to manufacturers' recommended pump sizing and wiring specifications.

(d) A licensee shall select the proper hydraulic collapse pressure for casing to be installed.

§76.80. Fees.

(a) Application Fees

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

(4) Apprentice registration--$65

(5) Combination Apprentice registration--$115

(b) Renewal Fees

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

(4) Apprentice registration--$65

(5) Combination Apprentice registration--$115

(6) [~~(4)~~] Late renewal fees for licenses issued under this **Chapter** [~~**chapter**~~] are provided in §60.83 of this title.

(c) Lost, revised, or duplicate license--$25

(d) Adding an endorsement to a current license--$25

(e) [~~(d)~~] Variance request fee--$100

(f) [~~(e)~~] Inactive License Status

(1) The fee for an inactive license--No charge.

(2) The fee to renew a license marked "inactive" is the renewal fee as stated in subsection (b).

(3) The fee to change from an inactive license to an active license is $25.

§76.100. Technical Requirements--Locations and Standards of Completion for Wells.

(a) - (f) (No change.)

(g) Alternative Surface Completion. In wells where a steel or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness and shall be a minimum of twenty-four (24) inches in length. The plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 sun resistant and be twenty-four (24) inches in length, and either sleeve used shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph(2) is used. The casing shall extend to a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve's inside diameter [~~sleeve~~] shall be two (2) inches larger in diameter than the outside diameter of the plastic casing being used and filled entirely with cement; or

(2) (No change.)

(h) (No change.)

WEATHER MODIFICATION
Agriculture Code, Title 9, Weather and Climate, Chapter 301
Effective 9/1/2007

Section 301.053. Advisory Committees.

The commission may establish advisory committees to advise the commission and to make recommendations to the commission concerning legislation, policies, administration, research, and other matters related to the duties, powers, or functions of the department under this chapter. If the commission establishes an advisory committee under this section, the presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as the presiding officer of the committee for a two-year term.

Weather Modification Advisory Committee

Meeting of January 28, 2016
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Acting Presiding Officer James Nance called the meeting to order at 10:00 a.m.

Acting Presiding Officer James Nance moved to agenda item B, Roll Call and Certification of Quorum. Committee members, James Pat Nance, Gary Foster, and Alan Zeman were present. Presiding Officer Frank Reilly and Don Parish were absent.

Acting Presiding Officer James Pat Nance moved to agenda item C, Approval of Minutes – Meeting of August 20, 2015. Committee Member, Gary Foster, seconded by Alan Zeman, moved to approve the minutes as presented. The minutes were approved by a unanimous vote.

Presiding Officer Frank Reilly moved to agenda item D, Public Comment. The Committee heard public comment from public citizen Christina Green-Martinez commented regarding climate change and weather modification.

Acting Presiding Officer James Pat Nance moved to agenda item E, Staff Reports. George Ferrie, Director of Compliance provided the Executive Office staff report on Legislative update and recent developments. Provided a legislative update and reported on additional programs from health services, TEA and DPS, future interim studies; George Bomar, Program Specialist for Office of Innovation, reported on the status of permitted weather modification operations in Texas for 2016; radar-derived statistical assessment of 2015 cloud-seeding operations in Texas; Geoengineering and contrails and funding for project infrastructure upgrades.

Acting Presiding Officer James Pat Nance moved to agenda item F, Field meteorologists' report on ongoing weather modification activities in 2015. Jonathan Jennings with West Texas Weather Modification Association (WTWMA) provided the Field meteorologists report and gives a recap of 2015 cloud seeding and answered questions from the Committee. Craig Funke – West Texas Weather Modification, South Texas Weather Modification, also provided a report on weather modification activities and answered questions from the Committee. Kendall LaRoache – Meteorologist for South Texas Weather Modification introduced himself and provided his credentials to the Committee.

Acting Presiding Officer James Pat Nance moved to agenda item G, Consideration and possible recommendation on applications for amendment to weather modification licenses for Fiscal Year 2016. George Bomar reported on an application for South Texas Weather Modification to amend their existing license to add Kendall LaRoache and informed the Committee that Mr. LeRoache does have all qualifications needed as required by law and is in training as a meteorologist. Committee Member, Alan Zeman, seconded by Gary Foster moved to recommend conditional approval of the amendment to weather modification license. The motion passed by a unanimous vote.

Acting Presiding Officer James Pat Nance moved to agenda item H, Consideration and possible recommendation on the rule relating to permit validity and the suspension/termination of weather modification "operations". George Bomar and Jonathan Jennings with WTWMA reported on the rule relating to permit validity and answered questions from the Committee. Committee Member, Gary Foster, seconded by Alan Zeman recommend that permit stays. The motion passed by a unanimous vote.

Acting Presiding Officer James Pat Nance moved to agenda item I, Recommendations for agenda items for the next meeting: Discussion and possible action on the review of the rules and statutes pertaining to the issue of preventing the businesses from continuing to operate in future years if the permit has not been used within the year. See b

Acting Presiding Officer James Pat Namce moved to agenda item J, Discussion of date, time, and location of the next Committee meeting. The next Committee meeting date was tentatively set for August 11, 2016 at 10:00 a.m.

Presiding Officer Frank Reilly moved to agenda item J, Adjournment. The meeting was adjourned at 11:21 a.m.

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Frank Reilly, Presiding Officer
Weather Modification Advisory Committee

Weather Modification Advisory Committee

Meeting of August 20, 2015
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Frank Reilly called the meeting to order at 10:04 a.m.

Presiding Officer Frank Reilly moved to agenda item B, Roll Call and Certification of Quorum. Committee members Frank Reilly, James Pat Nance, Gary Foster, and Alan Zeman were present. Don Parish was absent.

Presiding Officer Frank Reilly moved to agenda item C, Approval of Minutes – Meeting of April 30, 2015. Committee member, Gary Foster, seconded by James Nance, moved to approve the minutes as presented. The minutes were approved by a unanimous vote.

Presiding Officer Frank Reilly moved to agenda item D, Public Comment. The Committee heard public comment Christina Green Martinez regarding Rain Enhancement monitoring and long term effects on the weather.

Presiding Officer Frank Reilly moved to agenda item E, Staff Reports. Bill Kuntz, Executive Director, provided a legislative update and reported on additional programs from health services, TEA and DPS, future interim studies; George Bomar, Program Specialist, reported to the Committee on funding for project infrastructure upgrades; reinstatement of the cloud-seeding operations in new target areas; and notice of a publication on "Guidelines for Operational Hail Suppression Programs".

Presiding Officer Frank Reilly moved to agenda item F, Field meteorologists' report on status of ongoing weather modification activities in 2015. George Bomar reports that Jonathan Jennings, West Texas Weather Modification Association and Craig Funke, West Texas Weather Modification, Texas Weather Modification and South Texas Weather Modification, were unable to attend due to possible cloud seeding operations. Trans Pecos Group has obtained two permits, one expires in February 2016 and the other expires March 2018. Permits have not been used in the last year but the rules prevent the operation from continuing in future years. Define what it means to continue to operate, to prevent organizations from being in violation. The Board suggested a discussion item for a future agenda to review rules and statutes.

Presiding Officer Frank Reilly moved to agenda item G, Consideration and possible recommendation on applications for renewal of weather modification permit: George Bomar reports that the Panhandle Water Conservation District permit expires in February, 2016 and has maintained a rain enhancement permit since 2000. It has renewed its permit on three different occasions. All paperwork is in order and only publication of the notice of intention is pending for three consecutive weeks as required by law, in a newspaper of general circulation. Staff has reviewed the application for renewal and everything is in order, the District has paid the permit fee and they have provided a detailed operations plan. Board member, Gary Foster, seconded by

Alan Zeman, moved to recommend approval of the renewal of the permit for the Panhandle Water Conservation District. The motion passed by a unanimous vote.

Presiding Officer Frank Reilly moved to agenda item H, Consideration and possible recommendation on applications for renewal of weather modification licenses for 2016: George Bomar reports that there are currently 8 active licenses and only 7 are requesting renewal, West Texas Weather Modification Association, South Texas Weather Modification Association, Belding Farms, SOAR, Panhandle Groundwater Conservation District, Southwest Texas Rain Enhancement Association and Trans Pecos Weather Modification Association and they all have an expiration date of August 31, 2015. The City of Wichita Falls permit also expires on August 31, 2015 and they have decided not to renew it at this time. He says that once a permitted weather modification program is suspended or terminated – and the license is not renewed for the next fiscal year – the permit becomes invalid and the holder will need to go through the process of getting a new license and permit. The 7 that are requesting license renewal have no changes to their applications and payment has been received for these licensees. Board member, James P. Nance, seconded by Gary Foster, moved to recommend approval of the renewal of the permits for the West Texas Weather Modification Association, South Texas Weather Modification Association, Belding Farms, SOAR, Panhandle Groundwater Conservation District, Southwest Texas Rain Enhancement Association and Trans Pecos Weather Modification Association. The motion passed by a unanimous vote.

Presiding Officer Frank Reilly moved to agenda item I, Recommendations for agenda items for the next meeting: Discussion and possible action on the review of the rules and statutes pertaining to the issue of preventing the businesses from continuing to operate in future years if the permit has not been used within the year.

Presiding Officer Frank Reilly moved to agenda item J, Discussion of date, time, and location of the next Committee meeting. The next Committee meeting date was tentatively set for January 28, 2016 at 10:00 a.m.

Presiding Officer Frank Reilly moved to agenda item J, Adjournment. The meeting was adjourned at 10:47 a.m.

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Frank Reilly, Presiding Officer
Weather Modification Advisory Committee

Weather Modification Advisory Committee

Meeting of April 30, 2015
North Campus Building – 1st Floor Public Meeting Room
1106 Clayton Lane, Austin, Texas

Summary of Minutes

Presiding Officer Frank Reilly called the meeting to order at 10:05 a.m.

Presiding Officer Frank Reilly moved to agenda item B, Roll Call and Certification of Quorum. Committee members Frank Reilly, James Pat Nance, Gary Foster, and Alan Zeman were present. Don Parish was absent.

Presiding Officer Frank Reilly moved to agenda item C, Approval of Minutes – Meeting of November 6, 2014. Committee member, Alan Zeman, seconded by James Nance, moved to approve the minutes as presented. The minutes were approved by a unanimous vote.

Presiding Officer Frank Reilly moved to agenda item D, Public Comment. There were no public comments offered.

Presiding Officer Frank Reilly moved to agenda item E, Staff Reports. Bill Kuntz, Executive Director, introduced Commissioner Catherine J. Rodewald and provided a report on the legislative session; Brad Bowman, General Counsel provided a report on the rule review project which the Commission approved at its April 2015 meeting; George Bomar, Program Specialist, reported to the Committee on the statistical analysis of cloud seeding operations and the rainfall-enhancements projects for the coming year, Cost-benefit analysis by TAES, Wyoming's pilot program in winter precipitation enhancement, and a summary of the benefits of cloud seeding for the USBR.

Presiding Officer Frank Reilly moved to agenda item F, Field meteorologists' report on status of ongoing rain enhancement/hail suppression operations. Jonathan Jennings, West Texas Weather Modification Association provided an outline of past and future projects, and a grant sought by the Legislature to continue the funding of the Weather Modification program; and Todd Flanagan, of STWMA provided an outline of past and future projects including a 19 year history of data collection.

Presiding Officer Frank Reilly moved to agenda item G, Consideration and possible recommendation on applications for amendment to weather modification licenses: City of Wichita Falls, SOAR to add Duncan Axisa to the permits for both operations. James Nance, seconded by Alan Zeman, moved to recommend approval of the amendment to the permit. The motion passed by a unanimous vote.

Presiding Officer Frank Reilly moved to agenda item H, recommendations for agenda items for the next meeting: legislative update; update on California projects; and permit renewals for fiscal year 2016.

Presiding Officer Frank Reilly moved to agenda item I, Discussion of date, time, and location of the next Committee meeting. The next Committee meeting date was tentatively set for August 20, 2015 at 10:00 a.m.

Presiding Officer Frank Reilly moved to agenda item J, Adjournment. The meeting was adjourned at 11:08 a.m.

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Frank Reilly, Presiding Officer
Weather Modification Advisory Committee

TEXAS DEPARTMENT OF LICENSING AND REGULATION

PO Box 12157 - Austin Texas 78711-2157
(800) 803-9202 - (512) 936-4313 - FAX (512) 463-7198
www.tdlr.texas.gov - weather.modification@tdlr.texas.gov

APPLICATION FOR: **WEATHER MODIFICATION LICENSE**

PURSUANT TO AGRICULTURE CODE, TITLE 9, WEATHER AND CLIMATE, CHAPTERS 301 AND 302

CHECK ONE ☐ **LICENSE—$750.00** ☑ **LICENSE ~~RENEWAL~~—$750.00**

AMENDMENT

RENEWALS: Date of the Original License: _____

Renewals obtained for which years: _____

1. Applicant's Full Name:

SOAR
Last First Middle Suffix (JR, SR, III)

4515 OLD JACKSBORO HWY WICHITA FALLS TX 76302
Business Address

806.445.4505
Telephone Number

Occupation

2. List the name, business address, telephone number and occupation (if different from the applicant's) of the technical and scientific people who will make the day-to-day decisions and carry out the proposed weather modification operation that is described in the Notice of Intention.

Applicant's Full Name:

ALISA DUNCAN
Last First Middle Suffix (JR, SR, III)

P O BOX 3000 BOULDER, COLO 80307
Business Address

720.988.7642
Telephone Number

METEOROLOGIST
Occupation

Applicant's Full Name:

Last First Middle Suffix (JR, SR, III)

Business Address

Telephone Number

Occupation

3. Has any person named above been denied a weather modification license, or had a license suspended or revoked in Texas or elsewhere?

☐ Yes ☑ ~~No~~ If yes, please explain

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4. Complete and attach the Weather Modification License Qualifications Statement for each person named in item #2 and #3.

2002 - 2007 SOAR METEOROLOGIST
2007 - PRESENT NCAR ATMOSPHERIC RESEARCH

I CERTIFY THAT I HAVE READ AND WILL ABIDE BY THE TEXAS WEATHER MODIFICATION ACT, AND THE TEXAS DEPARTMENT OF LICENSING AND REGULATION RULES, TEX. ADMIN. CODE, CHAPTER 79 (THE RULES) PROMULGATED THEREUNDER. UPON REQUEST OF THE DEPARTMENT, I AGREE TO MAKE AVAILABLE ALL RECORDS MAINTAINED UNDER THE ACT AND THE RULES.

WITH KNOWLEDGE OF THE PENALTIES FOR FALSE STATEMENTS, I CERTIFY THAT ALL INFORMATION SUBMITTED ON THIS APPLICATION, AND ALL ATTACHED DOCUMENTS IS TRUE AND CORRECT.

Gary L. Walker FOR SOAR
Applicant Signature

26 FEB 2015
Date

THE AREA BELOW THIS LINE IS FOR DEPARTMENT USE ONLY

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