

ORTHOTICS and PROSTHETICS
Administrative Rules
16 Texas Administrative Code, Chapter 114
(Effective October 1, 2016)

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114.1. Authority. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 605.

114.10. Definitions. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

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) Custom-fabricated--An orthosis or prosthesis designed, prescribed, fabricated, fitted and aligned for a specific individual in accordance with sound biomechanical principles.
- (12) Custom-fitted--An orthosis or prosthesis adjusted, prescribed, fitted and aligned for a specific individual in accordance with sound biomechanical principles.
- (13) Department--The Texas Department of Licensing and Regulation.
- (14) 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.
- (15) Executive director--the executive director of the department.

- (16) 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.
- (17) 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.
- (18) Health care professional--A chiropractor, podiatrist, or advanced practice registered nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Texas Occupations Code, Chapter 157, Subchapter B and rules adopted by the Texas Medical Board.
- (19) 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.
- (20) 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.
- (21) Licensed physician--A physician licensed and in good standing with the Texas Medical Board.
- (22) Licensee--Includes a person holding a current license or registration issued by the department, to engage in an activity regulated under the Act.
- (23) NCOPE--The National Commission on Orthotic and Prosthetic Education.
- (24) 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.
- (25) Orthotic facility--A physical site, including a building or office, where the orthotic profession and practice normally take place.
- (26) 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.
- (27) 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 or health care professional.
- (28) Practitioner--A person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

- (29) Practitioner in charge--The orthotist in charge, the prosthetist in charge, or the prosthetist/orthotist in charge.
- (30) Prosthetic facility--A physical site, including a building or office, where the prosthetic profession and practice normally take place.
- (31) Prosthetic/Orthotic facility--A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.
- (32) 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.
- (33) 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.
- (34) 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.
- (35) 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.
- (36) 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.
- (37) Safety manager--An employee of an accredited facility who is assigned to develop, carry out and monitor an accredited facility's safety program.
- (38) Texas resident--A person whose home or fixed place of habitation to which one returns after a temporary absence is in Texas.
- (39) Voluntary charity care--The practice of a licensed practitioner without compensation or expectation of compensation.

114.20. Applications. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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 subsection (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(16), 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(17), 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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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(38), 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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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 hand sanitizer or soap and water before providing service to each patient.
 - (2) Patient examination and treatment rooms shall be cleaned after each patient.
 - (3) Hand sanitizer or 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, repairs and adjustments of orthoses and prostheses, as applicable.

114.30. Professional Clinical Residency Requirements. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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 (1).
 - (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 practitioners 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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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 subsection (d) in a calendar year.

114.70. Responsibilities of Licensees. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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 or health care professional'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 or health care professional;
 - (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 or made in bad faith.

114.95. Complaints. *(New Section adopted effective October 1, 2016, 41 TexReg 4467)*

- (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.