

BILL ANALYSIS

S.B. 403
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Legislature created the Texas State Board of Examiners of Perfusionists in 1993 to ensure that health care professionals who operate cardiopulmonary bypass equipment during open heart surgeries provide safe and quality services to the public. To accomplish its mission, the Board licenses qualified individuals to practice perfusion, sets rules, and enforces the Act by investigating and resolving complaints.

The Texas State Board of Examiners of Perfusionists is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Board, the Sunset Advisory Commission recommended continuing the regulation of perfusionists, replacing the Governor-appointed Perfusionist Board with an advisory committee, and several other statutory modifications contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Executive Commissioner of the Health and Human Services Commission in SECTION 23, SECTION 37, and SECTION 60 of this bill.

It is the committee's opinion that rulemaking authority is expressly transferred from the Texas State Board of Examiners of Perfusionists to the Executive Commissioner of the Health and Human Services Commission in SECTION 21, SECTION 25, SECTION 30, SECTION 32, SECTION 35, SECTION 40, SECTION 42, SECTION 50, SECTION 52, and SECTION 53 of this bill. In addition, under the general rulemaking authority already granted to the Executive Commissioner, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

Continuation of Perfusion Regulation

The bill continues the regulation of perfusionists until September 1, 2017.

Abolishment of Board and Establishment of Advisory Committee

The bill abolishes the Governor-appointed Board while continuing the regulation of perfusionists. The bill also establishes the Perfusionist Advisory Committee to advise the Executive Commissioner of the Health and Human Services Commission on perfusion rules, and the Department of State Health Services on the administration of the Act. The bill removes authority for the Board members to receive compensatory per diem payments. A member of the committee is entitled to reimbursement as provided by the General Appropriations Act.

Committee Appointments

The bill grants authority to the Commissioner of State Health Services to make appointments to the Perfusionist Advisory Committee and to designate the advisory committee's presiding officer. The bill updates standard Sunset language requiring impartial appointments to the advisory committee and applies standard Sunset language restricting public membership on the advisory committee to persons without financial ties to the agency or the regulated industry. The bill updates standard Sunset language requiring staggered terms for the committee. The bill removes provisions that allowed the former Perfusionist Board members to receive payments for attendance at meetings. The bill updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill also applies standard Sunset language requiring

members of the advisory committee to complete training before assuming their duties and specifies the grounds for removing a Board member.

Licensing Process

The bill requires applicants to pass a jurisprudence exam as a requirement for licensure. The bill applies standard guidelines on the use of criminal convictions in licensing perfusionists. The bill establishes for licenses expired for 90 days or less the renewal fee would be equal to 1¼ times the normal renewal fee, while for licenses expired for more than 90 days the fee would be equal to 1½ times the normal renewal fee, instead of the examination fee. The bill also specifies that a person whose license has been expired for more than one year may not renew the license, but must comply with all requirements for obtaining a new license.

Complaints and Enforcement

The bill updates statutory language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints. The bill authorizes the Department to require refunds as part of settlements. The bill also requires the Executive Commissioner of the Health and Human Services Commission to adopt a penalty matrix with dollar amounts associated with violations. The bill authorizes the Department to order refunds as part of the settlement conference process, not to exceed the amount the consumer paid to the license holder. The bill authorizes a civil penalty not to exceed \$5,000 per day. The bill grants the Department cease-and-desist authority to quickly stop unlicensed activity, and authorizes the Department to refuse to renew a license as an administrative sanction.

Rules on Advertising

The substitute prohibits the Board from proposing rules that restrict advertising or competitive bidding by licensees except to prohibit false, misleading, or deceptive practices.

Administrative Process

The bill adds standard Sunset across-the-board language requiring the Executive Commissioner of the Health and Human Services Commission to adopt a policy requiring the Department to make effective use of technology in its delivery of services and provision of information to the public. The bill also requires the Executive Commissioner to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

EFFECTIVE DATE

September 1, 2005.