

Article 40.

Perfusionist Licensure Act.

**§ 90-681. Legislative findings.**

The General Assembly finds that the practice of perfusion is an area of health care that is continually evolving to include more sophisticated and demanding patient care activities. The General Assembly further finds that the practice of perfusion by unauthorized, unqualified, unprofessional, and incompetent persons is a threat to public health, safety, and welfare, and therefore it is necessary to establish minimum standards of education, training, and competency for persons engaged in the practice of perfusion. (2005-267, s. 1.)

**§ 90-682. Definitions.**

The following definitions apply in this Article:

- (1) Certified clinical perfusionist. – A person who has successfully completed the examination process and has been issued a certificate by the American Board of Cardiovascular Perfusion or its successor organization.
- (2) Committee. – The Perfusionist Advisory Committee of the North Carolina Medical Board.
- (3) Extracorporeal circulation. – The diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidneys, liver, or other organs.
- (4) Licensee. – A person who has been issued a license to practice perfusion under this Article.
- (5) Medical Board. – The North Carolina Medical Board, as established under Article 1 of this Chapter.
- (6) Perfusion protocols. – Perfusion-related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals.
- (7) Practice of perfusion. – The performing of functions, under the supervision of a licensed physician, necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of those functions, and the ensuring of safe management of physiological function by monitoring and analyzing the parameters of the systems during any medical situation where it is necessary to support or replace the patient's cardiopulmonary or circulatory function. The term also includes the use of extracorporeal circulation, long-term cardiopulmonary support techniques, including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies; counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion; the use of techniques involving blood management, advanced life support, and other related functions; and, in the performance of the acts described in this subdivision, (i) the administration of pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician; (ii) the performance and use of anticoagulation monitoring and analysis, physiologic monitoring and

analysis, blood gas and chemistry monitoring and analysis, hematological monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution, and hemodialysis in conjunction with perfusion service; and (iii) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures. (2005-267, s. 1; 2007-525, s. 5.)

**§ 90-682.1. Medical Board approval required.**

(a) The Committee shall report to the Medical Board all actions taken by the Committee pursuant to this Article, except for actions taken by the Committee pursuant to G.S. 90-684. No action by the Committee is effective unless the action is approved by the Medical Board. The Medical Board may also rescind or supersede, in whole or in part, any action taken by the Committee in carrying out the provisions of this Article, except for actions taken by the Committee pursuant to G.S. 90-684. In rescinding or superseding an action by the Committee, the Board may remand the matter back to the Committee with instructions to perform some act consistent with this Article or Article 1 of Chapter 90. Members of the Medical Board may be selected by the President of the Board to participate in the matter that is the subject of the Order remanding the matter back to the Committee.

(b) The Board may waive any requirements of this Article consistent with G.S. 90-12.5. (2005-267, s. 1; 2007-346, s. 7; 2007-525, s. 6.)

**§ 90-683. License required; exemptions.**

(a) On or after July 1, 2006, no person shall practice or offer to practice perfusion as defined in this Article, use the title "licensed perfusionist" or "provisional licensed perfusionist", use the letters "LP" or "PLP", or otherwise indicate or imply that the person is a licensed perfusionist or a provisionally licensed perfusionist unless that person is currently licensed as provided in this Article.

(b) The provisions of this Article shall not apply to:

- (1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State if the person is performing work incidental to the practice of that profession or occupation and the person does not represent himself or herself as a licensed perfusionist or a provisionally licensed perfusionist.
- (2) A student enrolled in an accredited perfusion education program if perfusion services performed by the student are an integral part of the student's course of study and are performed under the direct supervision of a licensed perfusionist.
- (3) A perfusionist employed by the United States government when performing duties associated with that employment.
- (4) A person performing autotransfusion or blood conservation techniques under the direct supervision of a licensed physician. (2005-267, s. 1.)

**§ 90-684. Perfusion Advisory Committee.**

(a) **Composition and Terms.** – The North Carolina Perfusion Advisory Committee is created. The Committee shall consist of seven members who shall serve staggered terms. The initial Committee members shall be selected on or before October 1, 2005, as follows:

- (1) The North Carolina Medical Board shall appoint three licensed perfusionists, two of whom shall serve a term of three years and one of whom shall serve a term of two years.
- (2) The North Carolina Medical Board shall appoint one physician who is licensed under Article 1 of Chapter 90 of the General Statutes and is a cardiothoracic surgeon or a cardiovascular anesthesiologist, who shall serve a term of two years.
- (3) The North Carolina Hospital Association shall appoint two hospital administrators, one of whom shall serve a term of two years and one of whom shall serve a one-year term.
- (4) The Governor shall appoint one public member who shall serve a one-year term.

Upon the expiration of the terms of the initial Committee members, members shall be appointed by the appointing authorities designated in subdivisions (1) through (4) of this subsection for a term of three years and shall serve until a successor is appointed. No member may serve more than two consecutive full terms.

(b) **Qualifications.** – Members of the Committee shall be citizens of the United States and residents of this State. The perfusionist members shall hold current licenses from the Committee and shall remain in good standing with the Committee during their terms. Public members of the Committee shall not be: (i) trained or experienced in the practice of perfusion, (ii) an agent or employee of a person engaged in the practice of perfusion, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Committee.

(c) **Vacancies.** – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) **Removal.** – The Committee may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed perfusionist shall be disqualified from participating in the official business of the Committee until the charges have been resolved.

(e) **Compensation.** – Each member of the Committee shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(f) **Officers.** – The officers of the Committee shall be a chair, a vice-chair, and other officers deemed necessary by the Committee to carry out the purposes of this Article. All officers shall be elected annually by the Committee for two-year terms and shall serve until their successors are elected and qualified. The chair of the Committee shall be a licensed perfusionist.

(g) **Meetings.** – The Committee shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Committee. The Committee shall

establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Committee members constitutes a quorum.

(h) Qualified Immunity. – The Committee and its members and staff shall not be held liable in any civil or criminal proceeding for exercising, in good faith, the powers and duties authorized by law. A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting, investigating, or providing an expert medical opinion to the Committee regarding the acts and omissions of a licensee or applicant that violates the provisions of G.S. 90-691(a) or any other provision of law relating to the fitness of a licensee or applicant to practice perfusion and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Committee in good faith and without fraud or malice in any proceeding involving a violation of G.S. 90-961(a) or any other law relating to the fitness of an applicant or licensee to practice perfusion, or for making a recommendation to the Committee in the nature of peer review, in good faith and without fraud and malice. (2005-267, s. 1; 2007-525, s. 7.)

#### **§ 90-685. Powers of the Committee.**

The Committee shall have the power and duty to:

- (1) Administer this Article.
- (2) Issue interpretations of this Article.
- (3) Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
- (4) Employ and fix the compensation of personnel that the Committee determines is necessary to carry into effect the provisions of this Article and incur other expenses necessary to effectuate this Article.
- (4a) Establish the standards for qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.
- (5) Determine the qualifications and fitness of applicants for licensure, provisional licensure, licensure renewal, and reciprocal licensure.
- (6) Issue, renew, deny, suspend, or revoke licenses, order probation, issue reprimands, and carry out any other disciplinary actions authorized by this Article.
- (7) Set fees for licensure, provisional licensure, reciprocal licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Article.
- (8) Establish continuing education requirements for licensees.
- (9) Establish a code of ethics for licensees.
- (10) Maintain a current list of all persons who have been licensed under this Article.
- (11) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining licensees exist.
- (12) Maintain a record of all proceedings and make available to all licensees and other concerned parties an annual report of all Committee action.
- (13) Adopt a seal containing the name of the Committee for use on all official documents and reports issued by the Committee.

- (14) Summon and issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the Committee.
- (15) Order that any patient records, documents, or other material concerning any matter to be heard before or inquired into by the Committee shall be produced before the Committee or made available for inspection, notwithstanding any other provisions of law providing for the application of any physician-patient privilege with respect to such records, documents, or other material. The Committee shall withhold from public disclosure the identity of a patient, including information relating to dates and places of treatment, or any other information that would tend to identify the patient, unless the patient or the representative of the patient expressly consents to the disclosure.
- (16) Order a licensee whose health and effectiveness have been significantly impaired by alcohol, drug addiction, or mental illness to attend and successfully complete a treatment program as deemed necessary and appropriate. (2005-267, s. 1; 2007-525, s. 8.)

**§ 90-685.1. Confidentiality of Committee investigative information.**

(a) All records, papers, investigative files, investigative reports, other investigative information, and other documents containing information in the possession of or received or gathered by the Committee or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with a licensing, complaint, or disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes and are privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the Committee, its employees, or agents involved in the application for license or discipline of a license holder, except as provided in subsection (b) of this section. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a perfusionist, or other person performing an expert review for the Committee.

(b) The Committee shall provide the licensee or applicant with access to all information in its possession that the Committee intends to offer into evidence in presenting its case in chief at the contested hearing on the matter, subject to any privilege or restriction set forth by rule, statute, or legal precedent, upon written request from a licensee or applicant who is the subject of a complaint or investigation, or from the licensee's or applicant's counsel, unless good cause is shown for delay. The Committee is not required to provide any of the following:

- (1) A Committee investigative report.
- (2) The identity of a nontestifying complainant.
- (3) Attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Rules of Civil Procedure or the Rules of Evidence. (2007-525, s. 9.)

**§ 90-686. Qualifications for licensure.**

(a) An applicant shall be licensed to practice perfusion if the applicant meets all of the following qualifications:

- (1) Is at least 18 years old.
- (2) Completes an application on a form provided by the Committee.

- (3) Successfully completes a perfusion education program approved by the Committee.
  - (4) Pays the required fee under G.S. 90-689.
  - (5) Is a certified clinical perfusionist.
- (b) All persons licensed under this section shall practice perfusion under the supervision of a physician licensed under Article 1 of Chapter 90 of the General Statutes. (2005-267, s. 1.)

**§ 90-687. Reciprocity.**

The Committee may grant, upon application and payment of proper fees, a license to a person who has been licensed to practice perfusion in another state or territory of the United States whose standards of competency are substantially equivalent to those provided in this Article or holds a current certificate as a certified clinical perfusionist. (2005-267, s. 1.)

**§ 90-688. Provisional license.**

The Committee may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed an approved perfusion education program and pays the required fee under G.S. 90-689. A provisional license shall allow the individual to practice perfusion under the supervision and direction of a licensed perfusionist and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires. Provisional licenses shall be renewed in accordance with the provisions of G.S. 90-690. (2005-267, s. 1.)

**§ 90-689. Expenses; fees.**

(a) All fees shall be payable to the Medical Board and deposited in the name of the Medical Board in financial institutions designated by the Medical Board as official depositories. These fees shall be used to carry out the purposes of this Article.

(b) All salaries, compensation, and expenses incurred or allowed to carry out the purposes of this Article shall be paid by the Medical Board exclusively out of the fees received by the Medical Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligation authorized by this Article be charged against the State treasury.

(c) The Committee, upon the approval of the Medical Board, shall establish fees not exceeding the following amounts:

|     |                             |          |
|-----|-----------------------------|----------|
| (1) | License application         | \$350.00 |
| (2) | Biennial renewal of license | \$350.00 |
| (3) | Late renewal of license     | \$100.00 |
| (4) | Provisional license         | \$175.00 |
| (5) | Copies of rules             | Cost.    |

(2005-267, s. 1.)

**§ 90-690. Renewal of licenses.**

(a) All licenses to practice perfusion shall expire two years after the date they were issued. The Committee shall send a notice of expiration to each licensee at his or her last known address at least 30 days prior to the expiration of his or her license. All applications for renewal of unexpired licenses shall be filed with the Committee and accompanied by proof satisfactory to the Committee

that the applicant has completed the continuing education requirements established by the Committee and the renewal fee as required by G.S. 90-689.

(b) An application for renewal of a license that has been expired for less than three years shall be accompanied by proof satisfactory to the Committee that the applicant has current certification as defined by G.S. 90-682(1), has satisfied the continuing education requirements established by the Committee and has paid the renewal and late fees required by G.S. 90-689. A license that has been expired for more than three years shall not be renewed, but the applicant may apply for a new license by complying with the current requirements for licensure under this Article. (2005-267, s. 1; 2007-525, s. 10.)

**§ 90-690.1. Maintenance of certification to maintain licensure.**

(a) After December 31, 2007, all licensed perfusionists who are licensed under this Article shall maintain certification as defined in G.S. 90-682(1) in order to maintain licensure. If certification shall lapse at any time, the Committee may initiate disciplinary action under G.S. 90-691, or upon a finding consistent with G.S. 150B-3(c), may order the summary suspension of the perfusionist's license.

(b) The provisions of this section shall not apply to perfusionists who were licensed under Section 2 of S. L. 2005-267. (2007-525, s. 11.)

**§ 90-691. Disciplinary authority.**

(a) The Committee may place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, require satisfactory completion of treatment programs or remedial or educational training, deny, refuse to renew, suspend, or revoke an application or license if the applicant or licensee:

- (1) Gives false information or withholds material information from the Committee in procuring or attempting to procure a license.
- (2) Gives false information or withholds material information from the Committee during the course of an investigation conducted by the Committee.
- (3) Has been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to practice perfusion as defined in this Article or that indicates the person has deceived, defrauded, or endangered the public.
- (4) Has a habitual substance abuse or mental impairment that interferes with his or her ability to provide appropriate care as established by this Article or rules adopted by the Committee. The Committee is empowered and authorized to require a licensee to submit to a mental or physical examination by persons designated by the Committee before or after charges may be presented against the licensee, and the results of the examination shall be admissible in evidence in a hearing before the Committee.
- (5) Has demonstrated gross negligence, incompetency, or misconduct in the practice of perfusion as defined in this Article. The Committee may, upon reasonable grounds, require a licensee to submit to inquiries or examinations, written or oral, as the Committee deems necessary to determine the professional qualifications of the licensee.
- (6) Has had an application for licensure or a license to practice perfusion in another jurisdiction denied, suspended, or revoked for reasons that would be grounds for similar action in this State.

(7) Has willfully violated any provision of this Article or rules adopted by the Committee.

(8) Has allowed his or her certification to lapse.

(b) The taking of any action authorized under subsection (a) of this section may be ordered by the Committee after a hearing is held in accordance with Article 3A of Chapter 150B of the General Statutes. The Committee may reinstate a revoked license if it finds that the reasons for revocation no longer exist and that the person can reasonably be expected to perform the services authorized under this Article in a safe manner. (2005-267, s. 1; 2007-525, s. 12.)

**§ 90-692. Enjoining illegal practices.**

The Committee may apply to the superior court for an order enjoining violations of this Article. Upon a showing by the Committee that any person has violated this Article, the court may grant injunctive relief. (2005-267, s. 1.)

**§ 90-693. Civil penalties; disciplinary costs.**

(a) Authority to Assess Civil Penalties. – The Committee may assess a civil penalty not in excess of one thousand dollars (\$1,000) for the violation of any section of this Article or the violation of any rules adopted by the Committee. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Consideration Factors. – Before imposing and assessing a civil penalty, the Committee shall consider the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) Schedule of Civil Penalties. – The Committee shall establish a schedule of civil penalties for violations of this Article and rules adopted by the Committee.

(d) Costs. – The Committee may assess the costs of disciplinary actions against a person found to be in violation of this Article or rules adopted by the Committee. (2005-267, s. 1.)

**§ 90-694. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article. (2005-267, s. 1.)

**§ 90-695. Reserved for future codification purposes.**

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