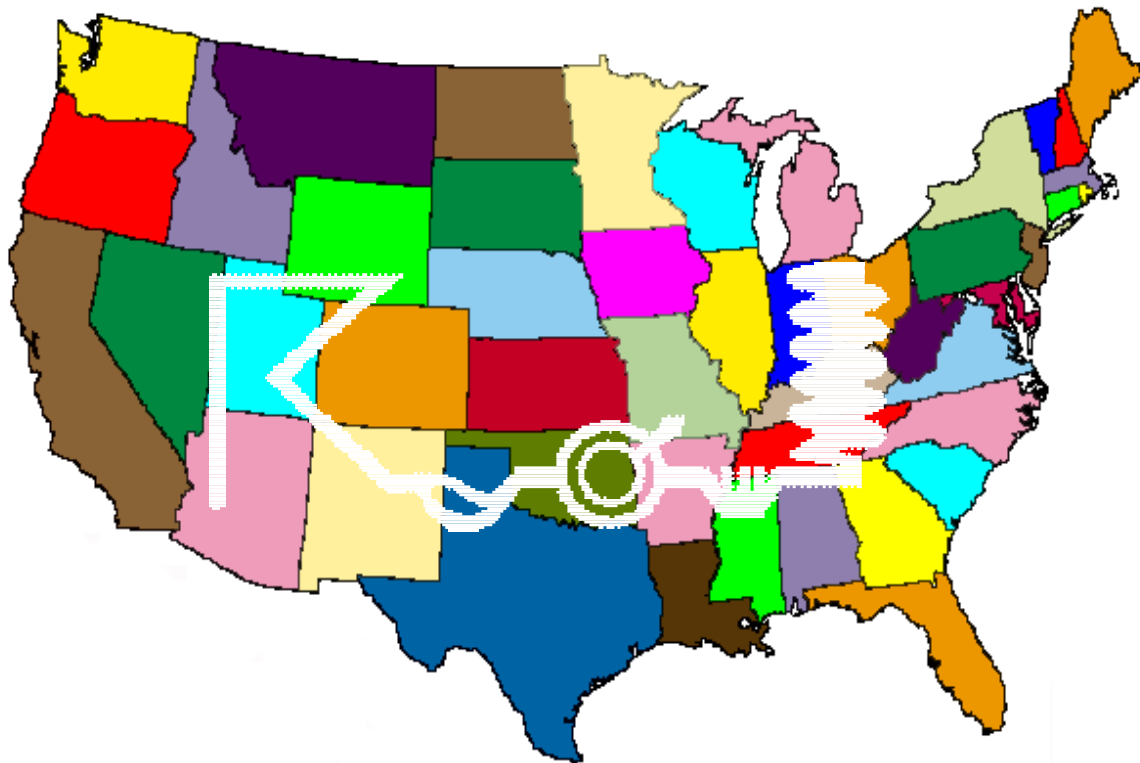


Guide To State Licensure



Legislation for Perfusionists



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PURPOSE AND USE OF THIS GUIDE

This Guide is intended to educate and assist perfusionists in the process of developing professional licensing legislation in their respective states. The Guide includes model legislative provisions to establish a separate free-standing perfusion licensing board, or to establish a separate licensing entity under an existing state health professions licensing board or similar state agency.

To differentiate the model bill and legislative language for establishing a free-standing Perfusion Licensing Board, this model has the designation of **MODEL LANGUAGE FOR A SEPARATE LICENSING BOARD (A)**. The model legislative language for a Perfusion Board or Committee proposed to be established under an existing state licensing board or similar state agency has the designation of **MODEL LANGUAGE FOR LICENSURE BOARD UNDER EXISTING STATE LICENSING BOARD (B)**. The Index for this section of the Guide starts on page 38.

The model language includes the American Society of Extra-Corporeal Technology (AmSECT) “Scope of Practice”, which should not be altered unless it is absolutely necessary, regardless of the professional licensing vehicle selected (either a free standing board or a board under an existing state licensing agency). The Guide is composed of specific legislative language provisions, and has introductory narrative for separate sections. It includes a brief discussion of the forms of legal credentialing, the state legislative process for pursuing professional licensing, the political and public policy considerations and arguments for licensing of perfusionists, the professional practice issues which will need to be considered when perfusionists in a state decide to pursue legal credentialing of the profession, two sample survey instruments, supporting documents from the American Board of Cardiovascular Perfusion (ABCP) and the American Society of Extra-Corporeal Technology (AmSECT), a directory of perfusion training programs, related perfusion services data, and state sources for licensing information.

The substantive provisions and language used are to be considered as the archetype, or model language, for a

perfusion licensing bill. There may be language included in the model legislative provisions which is not needed in a particular state. Conversely, there may be state specific language on certain issues which does not appear in the model legislative provisions. There are many technical drafting questions involved in writing a piece of legislation. Not all of those are dealt with in either of these two legislative drafting models. In almost all cases, a State’s Legislative Counsel Office will draft the final version of a bill, so it is not necessary to have all of the particular legal citations for either of these two regulatory structures for a state licensing process for perfusion.

In the section on model legislative provisions and language for a licensing board or committee under an existing health professions licensing board or similar state agency, there are many sections which have been included but which may not be needed because a perfusion board or committee would report to a governing board or agency which may already have statutory stipulations governing a board, an advisory board, or committee, which are already in effect. These are being provided in the event that this is not the actual case in a state, and to provide legislative language if there is an opportunity to establish more authority for the licensing board or committee over the affairs and licensing process for perfusionists in a state.

Within the model language sections, [*brackets*] are used to indicate where specific language will need to be inserted; i.e. the name of a state agency, existing state medical examiners or licensing board, a state official, state statutory citation, etc. One source for this information is other professional licensing laws in a state, which are available from public libraries, or the legislative law library affiliated with the State capital. Another source would be the state professional organizations for perfusion related medical professions, i.e. nurses, respiratory care practitioners, or clinical laboratory scientists. Alternatively, information may be available through state legislative and agency Home Pages, which are constantly being created. In this regard, there is a Directory of State Legislative and Regulatory Information at: <http://www.rain.org/~scotty/stateleg.html> on the World Wide

Web. Another Web site is: <http://www.state.va.us/dlas/othstate.html> Home Page. Finally, contacting a Board of Medical Examiners in a state is another way to collect information.

As the initial step in the process of composing draft licensing legislation, it is more important for those perfusionists involved in the process to focus on the stated intent of the language and how its interpretation, and ultimate enactment, will affect the perfusion profession in a state.

It is important to consider each idea presented and how it could affect the practice of the profession. If a state requires different language than that contained in this model guide, it is important to assess how that language change meets with the original intent of the model guide language, and/or with the intent of the modified model guide language before the needed change.

INTRODUCTION TO LEGAL CREDENTIALING

Professional licensing is one form of professional legal credentialing, which the American Society of Extra-Corporeal Technology recommends for the perfusion profession. Legal credentialing covers four state regulatory designations for medical professionals. The lowest level of professional credentialing is **Registration**. Registration may require meeting some general minimum criteria (education and/or examination) within a specific medical profession, and registering with a designated state governmental agency. Medical scope of practice designation is not included with this type of professional recognition. There generally are no restrictions on who can perform the medical scope of practice activities and procedures of a registered professional group. There is no ongoing state regulatory oversight done to ensure that registered providers are competent in the delivery of services. The complexity of the medical services involved with perfusion services and the nature of the medical field makes this form of professional recognition and regulation of limited benefit to the perfusion profession; however, it is an available legal credential.

The next level of professional credentialing is **Titling**. Titling usually requires a minimum level of academic and examination criteria. This may include graduating from a CAHEA or CAAHEP accredited school and achieving certification by the American Board of Cardiovascular Perfusion (ABCP). Continuing education requirements may also be a mandated requirement. Titling includes the use of scope of practice requirements to determine what services a titled medical professional

is authorized by law to perform. With titling, no person may use the protected title (e.g. Perfusionist) unless he or she has met the criteria required by the law. An important benefit of titling is the legal authority granted to perform the scope of medical practice activities contained in the scope of practice for the titled practitioner. Use of the title without meeting the criteria is usually subject to legal prosecution, but persons who do not use the title (e.g. calling themselves a Perfusionist) are not restricted from performing the specified scope of medical practice activities. “Grandfathering” is an important component of this type of credentialing when the authorizing legislation is done. “Grandfathering” allows those who have been clinically practicing for a specified number of years, and who do not meet the minimum academic and/or examination criteria, to be recognized as being qualified and to use the professional title. Restrictions on using the title generally apply only to persons entering the field after a certain date. Titling usually does not require applying or paying a fee to any state agency for a credential. Usually, the hospital is responsible for ensuring that its staff who are using the protected title meet the legislatively mandated criteria.

The third level of professional credentialing is **Certification**. This is different from ABCP certification, and usually requires that a state agency grant professional status to persons meeting specific minimum criteria. Once again, this may include, for example, being a graduate of an accredited school of perfusion, passing the ABCP examinations, and meeting specified continuing

education requirements. Persons are certified by the state through filing an application and paying a certification fee. Certified persons can use the professional title, e.g. Perfusionist. Non-certified persons are not restricted from performing the certified medical services, but without the fulfillment of the criteria they can not “hold themselves out” as being certified. As with Titling, “grandfathering” is an important component of this type of credentialing when the authorizing legislation is done.

“Grandfathering” allows those who have been practicing the professional services for a specified number of years, and who do not meet the minimum academic and/or examination criteria, to be recognized as being qualified to obtain professional certification, to be titled in a state, or to be eligible for a state license. Because certification requires that the state verify the qualifications of those applying for a credential, a practice board is usually designated with the responsibility of regulating the profession. Certification allows for increased enforcement of the law and professional practice protection when compared with Titling.

Licensure is the highest level of legal credentialing. Academic, examination, and continuing education stan-

dards are mandated by law. The key difference with licensure is that a person can not perform the scope of services written into the law unless they possess a valid professional license. Without a license to perform the scope of services, it is illegal to perform any of the scope of practice services designated in state statute, except when other credentialed professionals have an overlapping scope of practice and are specifically exempted. With licensing, it is illegal to perform the designated services or to claim that you are qualified to do those services. It is illegal to use the protected title which is created by the authorizing state licensing law. Again, if the designated medical professional service provider is clinically practicing, they are usually “grandfathered” and automatically designated as being licensed to perform the service, regardless of their previous educational training background or whether they were professionally certified by a certifying board. “Grandfathering” allows those persons who are currently practicing in a medical specialty field a pathway to obtain a license to practice if they do not have the mandated academic and/or the professional examination standards fulfilled. The mandated academic and/or the examination standards apply to new persons entering the profession after a specified date.

ANSWERS TO QUESTIONS ABOUT LICENSING OF PERFUSIONISTS

(Q) Perfusionists have been unlicensed for twenty years, so why be licensed now?

(A) The profession has evolved over the years to keep abreast of medical and technological changes designed to enhance patient outcomes and medical care during cardiovascular–surgical procedures. The recent developments in the perfusion field, the growth of managed care insurance and its emphasis on “credentialing” of medical providers as a bench mark for clinical competency, its attention on high cost medical procedures, and on ways to reduce personnel costs and bottom line financial and medical outcomes are examples of the dramatic changes taking place outside of the operating room. These changes are affecting the perfusion profession as well as other health professionals

and institutional providers. None of these systematic influences are going to disappear in the future. Professional licensing defines the responsibilities and procedures that a perfusion licensee can perform, the perfusion scope of practice, and makes it illegal for unlicensed persons who do not meet minimum standards of education, training, and clinical practice experience to do perfusion services, to offer to do perfusion services, or to say that they are qualified to do perfusion services. Professional licensing would allow the perfusion profession to set standards for professional qualifications through a state regulatory mechanism to ensure professional competency and good patient care. Only other licensed medical professionals, with proper education and training, could do perfusion. In the developing health care system, unlicensed professional status for perfusion may mean giving the means to control the future of the profession to hospital or managed care administrators, or to other health professionals, in the form of “cross-training”. No group other than perfusionists should be able to decide what perfusionists can and can not do professionally. Professional licensing would give perfusionists the means to help control the impact on and the evolution of the profession in the current and future health care system.

(Q) Professional licensing has been raised as a means to protect a perfusionist’s medical “Scope of Practice”. What does this mean ? How would licensing accomplish this ?

(A) The American Society of Extra-Corporeal Technology (AmSECT) developed a Perfusion Scope of Practice (see Appendix B). This defines the specific medical duties and responsibilities necessary to support or replace and manage cardiopulmonary and circulatory functions, upon prescription by a physician and in accordance with hospital protocols. With professional licensing there are academic, examination, and continuing education standards and requirements mandated in the law. A person can not perform the services defined in the law, the medical “scope of practice”, unless they possess a license. Without a license it is illegal, except when other licensed professionals have an overlapping scope of practice and are specifically trained, to perform any of the medical duties, responsibilities, or services designated in the law. With licensing it is illegal to perform the designated services, claim that you are qualified to do those services, or use the title of being “Licensed” unless you really are. Professional licensing would codify in state law the medical duties and responsibilities developed by AmSECT, the perfusion scope of practice, and would prevent any unlicensed individual from performing perfusion services in the state.

(Q) Would professional licensing of perfusionists enhance the quality of patient care in the state ?

(A) Professional licensing gives the public and the perfusion profession a means of protection against incompetent clinical practice. It does not guarantee that patient care will be enhanced, but the licensing process and peer professional review is viewed as a means to enhance the quality of patient care. The licensing process establishes a perfusion professional peer review board with the authority to decide whether a perfusionist has performed services in a manner which meets accepted professional standards of care. This would be done by allowing the filing of public complaints. The perfusionist who was alleged to have given incompetent care is allowed to participate in the review of the case by the licensing authority, a perfusion board or committee. A majority of the members of the licensing authority would be clinically practicing perfusionists.

(Q) What benefits does licensing have compared to professional titling or certification ?

(A) Licensure includes the use of scope of practice requirements to determine what services a medical professional is authorized by law to perform. The key benefit when compared with Titling and Certification is that with professional licensing a person can not perform the scope of services written into the law unless they meet the academic, examination, and continuing education standards and requirements that are mandated by the licensing law to possess a license to practice.

Without a license, it is illegal to perform any of the scope of practice services designated in state law, except when other licensed professionals have an overlapping scope of practice and are specifically trained. With licensing it would be illegal to perform or offer to perform the designated services, or claim you were qualified to do those services, unless you applied and were granted a state license.

When compared with Titling and Certification, professional licensing allows for the maximum in patient care protection. Certification and Titling both include the use of scope of practice requirements to determine what services a Certified or Titled medical professional is authorized by law to perform. However, non-Titled or non-Certified persons are restricted merely from claiming to be a Titled or a Certified professional, not from performing the medical services. Claiming to be Certified without meeting the minimum criteria is subject to minor legal sanctions, like a monetary fine. With Titling, no person could use the protected title (e.g. Perfusionist) unless he or she had met the minimum level of academic, examination, and continuing education criteria required by the law. Like Certification, persons not using the title (e.g. calling or claiming themselves to be a Perfusionist) would not be restricted from performing perfusion services. Practicing without a Title usually carries no or minor legal sanctions.

(Q) If perfusionists were licensed, would there be greater exposure to being sued for malpractice ?

(A) A perfusionist could still be sued for medical malpractice if they were licensed, but there would be a lesser exposure when compared to not having any form of legal credentialing. The use of professionally recognized educational and training standards and requirements, and continuing education requirements, to be granted and to maintain a license establishes a professional competency level that is recognized and mandated by the state. The licensing process establishes a perfusion professional peer review board or committee (the licensing authority) with the authority to decide whether a perfusionist has performed services in a manner which meets accepted professional standards of care on a case-by-case basis. As the licensing authority makes decisions on whether specific actions by perfusionists in cases were done in accordance with accepted standards of professional conduct, there would be case law principles that would be developed that could be useful for a perfusionist or the public in malpractice cases. In general, professional licensing would mean less exposure to medical malpractice when compared to not being licensed, but licensing would not protect a perfusionist from being sued for incompetent perfusion practice.

(Q) If perfusionists were licensed, would they have to answer to a state licensing Board ?

(A) Yes. But only if a patient filed a complaint with the licensing authority (a perfusion Board or committee). The perfusion board or committee would have a majority of the members who are clinically practicing perfusionists.

(Q) How would professional licensing affect ABCP Certification and “Re-certification,” and a perfusionist’s ability to practice?

(A) Perfusionists in a state having licensing for the profession would, in most instances, be able to practice even if they were not “re-certified” by the ABCP. After successfully completing the initial ABCP certification process and receiving ABCP certification, perfusionists in a state having licensing for the profession would, in most instances, apply for and receive a state license. A perfusionist would not be required to maintain the ABCP “re-certification” requirement for clinical cases pumped. Perfusionists would be able to practice perfusion as “Licensed Perfusionists” in a state having licensing for the profession as long as they maintained the continuing education requirements necessary for the maintenance of the professional license. This is different from being “re-certified” by the ABCP, which includes the requirement for having a certain number of clinical cases pumped and continuing education to keep certification.

(Q) If perfusionists were licensed, would they have to sit for a “licensing examination” in addition to the ABCP certification examination ?

(A) There is not a definite yes or no answer to this question. It would depend on the decision made by the licensing authority to accept or not to accept the ABCP certification examination as the recognized examination for professional competency. The vast majority of states do not want to be in the business of administering professional examinations. The majority of states have accepted the voluntary professional certification examination as proof that a person making application for a license has proven that they have met the professional requirements for their respective medical field.

(Q) If perfusionists were licensed, would they have to meet continuing education requirements to maintain their license ?

(A) Yes. The specific number of hours would depend on the decision made by the licensing authority. The AmSECT “Guide for State Licensure Legislation For Perfusionists” contains provisions which would set the licensing continuing education requirement to be as least as stringent as the didactic requirements set by the American Board of Cardiovascular Perfusion.

(Q) Would perfusionists in the state be able to practice if they are not ABCP certified perfusionists, or if they are not eligible to be certified by the ABCP ?

(A) The answer to this involves a Yes and a No because of “grandfathering”. “Grandfathering” is a federal and state legal principle that prevents a new law from denying individuals their right to continue to work in their chosen professional field because new professional requirements were not written into law when they entered the field. Perfusionists who are not ABCP certified or not eligible to be certified would be given a specified time during which they could be licensed through the “grandfathering” provision. Since only a certain length of time is allowed for “grandfathering”, after a certain date any perfusionist wanting to practice in a state which has licensing would have to be ABCP certified to be eligible to receive a license to practice perfusion. After this date, a non-ABCP certified or non-eligible ABCP certified perfusionist would not be able to practice, because they would not have the minimum examination requirement to be eligible to apply for and receive a license.

(Q) How much would it cost me to have a professional license ?

(A) There is no one universal fee amount for a professional license. And, once established, a licensing fee can be increased or decreased. There are a number of factors involved in determining the professional licensing fee, either the first time application and license or to renew a license each year. A licensing fee amount is determined based on the following factors: 1) the fee amounts paid by licensed professionals which have similar numbers of professionals compared to perfusionists in a state; 2) the actual number of perfusionists in a state; 3) the type of licensing structure established, i.e. either a separate free-standing perfusion licensing Board, or a separate perfusion licensing Committee established under the jurisdiction of an existing licensing Board, for example, a perfusion licensing Board/Committee established under the jurisdiction of the State Board of Medical Examiners or the State Board of Physician Assistants, or State Board of Nursing; and 4) the extent that a state uses licensing fees to fund other components in a state's budget. A separate free-standing Board costs the state more money to operate and therefore would most likely mean a higher licensing fee than that associated with a perfusion licensing Committee/Board established under an existing professional Board. The only way to get a good approximation of what it would cost for a professional license is to seek an opinion from the state agency that controls professional licensing.

(Q) How much would it cost to renew a license each year ?

(A) The answer to this question is the same as the answer to the previous question, except that annual license renewal fees are generally less than newly issued licenses. If a license is lost, a replacement license must be purchased at a nominal cost. Professional licenses must be posted or retained for public inspection.

(Q) How much would it cost to engage in the legislative process to get licensed ?

(A) There is no set cost applied to a licensing effort. There are several factors which will determine the cost: 1) the type of lobbying firm or lobbyist hired; 2) the level of professional lobbying services contracted for; 3) the amount of volunteer time and effort contributed by perfusionists; and, 4) the political and legislative atmosphere and strength of individual legislator support. There are three basic forms in which lobbying services can be retained. The most expensive is in the form of a law firm which also specializes in lobbying. There are public relations firms which also have lobbyists which may be less expensive than law firms. The least expensive form is the small independent contractor lobbyist. An independent contractor lobbyist may have a background in working for a state legislator or a governor.

The level of professional lobbying services contracted for and the type of retainer for professional services will influence the cost. Retainers can be hourly or on a monthly basis, and can vary depending upon the level of contracted services. There are three basic packages of lobbying services, which can be classified as follows: 1) a written lobbying strategy; 2) a written lobbying strategy and limited professional services; and 3) the comprehensive package of lobbying services. In general, package (1) is the least expensive and the comprehensive package the most expensive.

The amount of volunteer time and effort contributed by perfusionists on the licensing effort should influence the level of contracted professional lobbying services. The political and legislative atmosphere and strength of individual legislator support are influences which also must be taken into consideration. These types of assessment are best left to a professional lobbyist, although perfusionists may have personal relationships with legislators which could be valuable in getting a licensing effort going.

The best method for trying to determine the cost of a state lobbying campaign on licensing is to seek cost estimates for the three types of lobbying service packages from one or two of the forms in which lobbying services can be retained. These cost estimates should be considered in conjunction with the amount of volunteer time and effort which will be committed by perfusionists.

(Q) How long can it take to get professional licensing legislation enacted ?

(A) Realistically, there is no length of time which should be counted on to achieve professional licensing. It could take only one legislative session or more than one. The chances for success are dependent upon many legislative and political factors, but are substantially improved when there is a concerted educational effort targeted at key legislative players before licensing legislation is even introduced.

(Q) Do all of the perfusionists in a state need to be supportive of licensing for the profession in order to be successful in efforts to enact legislation ?

(A) No, but a majority of the perfusionists do need to be supportive. Ideally, all perfusionists would be supportive because all would see professional licensing as a means to enhance the professionalism of perfusion and as a means to enhance the quality of patient care.

(Q) Does the introduction or enactment of perfusion licensing Acts in other states benefit efforts to get professional licensing legislation enacted in other states ?

(A) Yes. Perfusionists are already licensed in Texas and Oklahoma, and are Titled in California. Perfusion licensing legislation has been introduced in California, Oregon and Wisconsin in previous years. It is likely that perfusion licensing legislation will be introduced in many more states in the coming few years.

(Q) What support can AmSECT provide if perfusionists pursue professional licensing ?

(A) The American Society of Extra-Corporeal Technology (AmSECT) supports the state legal credentialing of perfusionists, including professional licensing. AmSECT can help with professional licensing, but the main responsibility for a licensing effort rests with perfusionists in a state. They have the most at stake in the success or failure of enactment of licensing legislation and must shoulder the main responsibility for seeing that their professional interests are best served in their respective state. AmSECT has Proactive Grant Awards that would be available to assist perfusionists if they wish to pursue professional licensing. AmSECT has developed a “Guide for State Licensure Legislation for Perfusionists” which perfusionists can use to draft legislation.

OVERVIEW OF THE LEGISLATIVE PROCESS

With the exception of Nebraska, every state has a lower chamber (the House) and an upper chamber (the Senate). All legislatures have committees which have jurisdiction for establishing laws in specified areas of society and commercial commerce. The regulation and licensing of medical professionals will come under the jurisdiction of two types of committees; licensing of health professions will either come under the authority of a health committee or a business professions committee. In most cases, the committees responsible for public health, or health insurance, or health or professional matters would have jurisdiction over the licensing of perfusionists. Any one or more of these three types of committees could be involved with professional licensing legislation. Licensure involves the state exercising control over a profession, i.e. monitoring, adjudicating public complaints, and reviewing and issuing licenses. There is a cost to the state for these and related activities. As such, the appropriations committees in either the House or the Senate will also have jurisdiction over licensing legislation. The other key player in the legislative process is the Governor. In some states, legislation can become law without the governor's signature, and the governor also has the option of a signed veto or a "pocket veto", depending upon the individual state.

Pursuing professional legal credentialing will require some legislative process research, with the goal of identifying which legislative committees will have jurisdiction over licensing legislation, other than the appropriations committees in either legislative chamber. If there is more than one committee involved in either chamber, research will need to be done to determine which committee would be the most favorable for the licensing of perfusionists. Information in answer to the following questions will be needed to give perfusionists an idea of what will be involved in pursuing licensure in their state:

- ♥ Do the perfusionists in the state have a registered professional society? If there is, this will enhance the prospects for passage. If not, a professional society should be formed before pursuing legal credentialing of perfusionists in the state.
 - ♥ Which legislative committees have jurisdiction over licensing of medical professionals?
 - ♥ Who are the Chairmen and members of these authorizing committees?
 - ♥ Has a member of these committees previously sponsored medical professional licensing legislation? This is important to know from the standpoint of individual experience with medical provider organizations and receptivity to protecting public health safety.
 - ♥ If a member of a committee with jurisdiction over licensing legislation has sponsored a bill, which medical professional group(s) were licensed? This is important to know because the member may have a strong individual relationship with medical provider organizations which may not be supportive, or may be supportive of licensing for perfusionists.
 - ♥ Is the Chairman or a key member of a committee with jurisdiction over licensing legislation willing to sponsor perfusionist licensing legislation?
 - ♥ Which medical provider organizations in the state will support licensing of perfusionists? The most logical support should come from thoracic and/or cardiovascular surgeon state associations, and perhaps the State Medical Society of the American Medical Association.
 - ♥ Which medical provider organizations in the state will oppose licensing of perfusionists? Historically, the state chapters of the American Hospital and Nurses Associations have not been supportive of licensure. This may or may not be the case in a particular state, and there may be other allied health professional state organizations in opposition.
- Answers to these and other questions will be needed to assess the legislative and political prospects for enactment of perfusion licensing legislation. More specifically, the information should be used not only to identify prospective legislators, but to draft a legislative lobbying plan to enlist supporters and to implement a proactive lobbying campaign.
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An essential component of an effective campaign for why perfusionists should be licensed are the public policy arguments presented to legislators and their staffs. Related to this are the prevailing political agendas of legislators and their respective parties. Perfusionists will have no direct control over the latter influence. Perfusionists

do have control over the first. If persuasive arguments can be made for why and how the general public will benefit from the licensing of perfusionists to the legislators of both political parties, who are in a position to carry out a change in state law, the prospects for passage of legislation will be enhanced.

THE DO'S AND DON'TS WHEN GETTING INVOLVED IN THE LEGISLATIVE PROCESS

There are some basic ground rules which should be followed in the legislative influencing arena. These have applicability to any legislative influencing campaign and the personal involvement of a perfusionist in meeting with legislators or their staff members.

In a short form, these ground rules could also be referred to as the CCP for perfusionists - Credibility, Communications, and being Proactive. In addition, there is a list of the ten "Don'ts" regarding personal lobbying interactions with legislators or their staff members.

Credibility

- ♥ Before meeting with a legislator or their staff member, do your homework on the issue. Know the facts.
- ♥ Know your legislator's political views and general philosophy. A legislator's voting record and legislation they have introduced are important indicators of their receptiveness to your position on legislation.
- ♥ Become acquainted with the legislator's staff. They are an extremely important component in the legislative and political processes.
- ♥ Know who the opposition is on legislation. There might be points of view upon which you and they have agreement. There may be more in common than might be expected.
- ♥ Be prepared to be able to respond to opponent's opposing arguments and points of view. Having data to support your position, or data which calls into question the strength of the opponent's arguments is very important.

- ♥ Be prepared and be willing to be a credible and constructive participant in the policy making process. Be willing to express the desire to work with the other parties or groups, either in support or opposition to legislation, in addressing public policy concerns.
- ♥ When participating in the process, only get involved with public policy issues on which you have professional expertise.

Communications

- ♥ Establish regular and ongoing communications with legislative staff, and when possible, legislators.
 - ♥ In meetings, be brief and limit your comments to one issue at a time. Know what is important to communicate with regard to the overall message you want to deliver.
 - ♥ In meetings, do not be afraid to answer a question from a legislator or their staff by saying "I don't know the answer to that question, but I will try to get an answer and will get back to you". Not knowing all of the answers, even if you do really know, provides the opportunity to continue the ongoing relationship, and helps build credibility.
 - ♥ To have a more meaningful conversation, have some understanding of the legislative process, and the key legislative players. Do not attempt to "bluff" your way through because the legislator or their staff will, almost always, have a better understanding of the legislative and political processes involved.
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- ♥ Maintain communications on issues with which perfusionists and the profession agree as well as disagree.
 - ♥ Establish communications with other allied health professions, local public interest and consumer groups with a link to public health and welfare.
 - ♥ Develop a relationship with the local media in the hope that your views and interests on legislation or proposed state regulations will be presented, and will be presented fairly to the public at large.
 - ♥ It is important to demonstrate a willingness to participate in the legislative process. It is not just a matter of being for or against a piece of legislation.
 - ♥ Be timely. Political and legislative options become restricted as the legislative process proceeds.
 - ♥ Be prepared to have a solution to a problem or a proposal to put on the table when necessary.
 - ♥ Make the patient and quality of care the top priorities in discussing the issues which have an impact on the clinical practice of perfusion. This is certainly the case with regard to the professional licensing of perfusionists, but can also be the case on other professional practice issues as well.
 - ♥ Educate the legislator or their staff on the impact that proposed legislation will have on their constituents. These constituents are also candidates to be patients, and are also voters. Perfusionists and the perfusion community, i.e. cardiovascular surgeons and other health care providers, are also voters. With regard to professional licensing of perfusionists, educate the legislator on the scope of perfusion services and the numbers of persons who receive these services in your state, and who depend on a perfusionist for the safe delivery of these services.
 - ♥ Be prepared to be reasonable. Reasonableness often means having to compromise and negotiate a solution. Making laws is not the end of the process but is more often the beginning of a longer process to establish what is the best, most workable, solution to a problem that currently exists, or to a problem which develops after a law is put into effect.
 - ♥ Be persistent. There are times in the legislative process when it pays to be persistent. It is important to keep in mind that there is a fine line between persistence and being a pest.
 - ♥ Be a participant in, and not a victim of, the political and legislative processes.
- Ten “Don’ts of the Legislative Process**
- ♥ Don’t talk to your legislator or their staff person for the first time when you want something from them. Develop a rapport beforehand.
 - ♥ Don’t be afraid to defend or to debate an issue. But, do your homework beforehand.
 - ♥ Don’t take a self-serving position on legislation. Legislators are looking for political solutions to public policy issues.
 - ♥ Don’t deliver ultimatums or be threatening or argumentative. These types of responses do not build credibility.
 - ♥ Don’t be too quick to call attention to newly introduced legislation that is bad for the profession. But, do your homework and monitor developments. Be prepared to respond with good public policy arguments against the legislation.
 - ♥ Don’t limit your legislative options by politicizing an issue.
 - ♥ Don’t try to amend or compromise on poor legislation. Oppose legislation with which you and the profession disagree.
 - ♥ Don’t be too quick in compromising on legislation and be firm about principles and convictions.
 - ♥ Don’t tell legislators or their staffs something they already know. Tell them something they don’t know and something that they can use to solve the problem.
 - ♥ Don’t feel that something always has to be done, and done immediately. Sometimes the best approach in the legislative process is to remain neutral or to do nothing. But, do your homework.
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PUBLIC POLICY ARGUMENTS FOR LICENSURE OF PERFUSIONISTS

When engaging in a dialogue with a state legislator or his/her staff, it is important to start from the point of view that they know very little, if anything, about cardiovascular surgery and the role of the perfusionist. It is also important that in communicating, a presentation be made in words and concepts that are easily understood by a non-medical oriented person. In other words, “surgical or perfusion speak” must be avoided.

In describing what a perfusionist does and what perfusion is, the description of a person who operates the heart-lung machine during extracorporeal circulation is one way to summarize the profession and those who practice it. However, what a perfusionist does when performing perfusion is more complicated and can be more clearly described as follows. These statements should be included in dialogues with state legislators and their staffs.

- ♥ Perfusion involves a high level of cognitive medical skill.
- ♥ Perfusionists make split second decisions when operating the heart-lung machine which directly affect the cardiovascular and respiratory condition and surgical outcome for a person.
- ♥ Perfusionists work under the supervision of the surgeon. During surgical procedures requiring extracorporeal circulation, a perfusionist is responsible for the administration of drugs. Usually, drugs can only be administered by a licensed medical professional working under the supervision of a physician, or who carries out a written physician order.
- ♥ Unlike other licensed or unlicensed medical profes-

sionals, perfusion has a more direct and immediate impact on patient outcome and mortality. Almost every form of major thoracic or cardiovascular surgery involves the participation of a perfusionist.

- ♥ The insurance liability rating for perfusionists is one of the highest for medical professionals. Medical malpractice insurance underwriters have rated perfusionist’s professional liability as being equivalent to Emergency Room physicians.
- ♥ The heart-lung-blood machine used by perfusionists is classified by the Food and Drug Administration (FDA) as a Level V Medical Device. This is the highest category of consumer risk for medical device products assigned by the FDA.

Some states have a requirement that a “Sunrise Survey” be completed to accompany legal credentialing legislation (see Appendix A). States may call these surveys by different names. These are lengthy surveys which can involve broad and detailed answers to questions. Even if a state does not have a Sunrise requirement, these questions and the answers can be used to respond to questions posed by legislators and their staffs. To assist perfusionists in states which have a Sunrise requirement for licensing legislation, Appendix A contains an example of a Sunrise Survey, complete with questions and suggested answers.

There will be numerous general public policy and political questions which legislators or their staff may ask concerning the need for a licensing bill for perfusion. The following presents and answers some of the questions most likely to be asked. (Q) means Question and (A) means a proposed Answer for that question.

(Q) Why should Perfusionists be licensed in our State ?

(A) Establishing minimum standards of education, training, and competency for persons engaged in the practice of perfusion and in the performance of perfusion services is needed because the citizens of our state are entitled to the protection of their health and safety, which licensing will do, from unqualified perfusion practitioners, or from the unprofessional practice of perfusion. The growth

of managed care organizations and their plan administrators, who make decisions on who is professionally qualified to provide medical services, should not replace the role of the state in controlling and protecting the health and safety of medical services delivered to the citizens of the state. Licensing establishes an independent mechanism to investigate and adjudicate claims of unprofessional conduct, and establishes a process to ensure that unqualified persons are not performing perfusion services.

(Q) Other medical professionals are not licensed. Why should perfusion be any different ?

(A) Do any of these other medical professionals administer drugs, blood and blood products, gaseous anesthetics, and IV fluids to people ?

A perfusionist works under the supervision of a surgeon but is responsible for administering drugs, blood and blood products, gaseous anesthetics, and IV fluids to maintain the person's medical stasis through extracorporeal circulation while they are on bypass and with regard to other cardiovascular and surgical procedures.

What perfusionists do is uniquely different from other allied health professionals who are licensed in the state. Perfusion requires a higher level of cognitive medical skill. Unlike other licensed or unlicensed allied health professionals, the conduct of a perfusionist has a more direct impact on patient outcome and mortality. If a person is unqualified or unprofessional in performing extracorporeal circulation in a case, the patient can die on the operating room table.

The high degree of medical risk to the consumers of perfusion services, as compared to other medical professionals is evidenced by the fact that the insurance liability rating for perfusionists is one of the highest for medical professionals. Medical malpractice insurance underwriters have rated perfusionist's professional liability as being equivalent to Emergency Room physicians who have a liability rating level of #5. In addition, the heart-lung-blood machine used by perfusionists is classified by the Food and Drug Administration (FDA) as a Level III Medical Device. This is the highest category of consumer risk for medical device products assigned by the FDA.

(Q) Are there enough perfusionists in the state to really be concerned about ?

(A) There are now **[number of practicing perfusionists]** unlicensed perfusionists in the state. They all are involved in at least **[approximate number of cases pumped in a state]** open heart and **[approximate number]** other cardiovascular cases each year on small children, adolescents, and adults.

Perfusion services impact approximately **[number]** citizens in our state each year, and the number will be increasing each year as the population demographics of the state change.

Almost every form of major thoracic or cardiovascular surgery involves the participation of a perfusionist. There may not be a large number of perfusionists, compared to other medical professional groups, but what perfusionists do is uniquely different. Perfusion requires a higher level of cognitive medical skill. Unlike other licensed or unlicensed medical professional, perfusion services and professional conduct have a more direct impact on patient outcome and mortality.

Note: See Appendix E and F for perfusion practice characteristics for individual states and na

tionally. Appendix J contains a perfusion cardiovascular/surgical survey instrument to collect data to accurately develop a response.

(Q) Don't perfusionists want to be a licensed profession so that they can earn higher salaries ?

(A) Compared to other licensed and unlicensed medical professionals, perfusionists are already highly paid for what they do. According to the AMA, perfusionists are the highest paid of the 28 recognized allied health professionals, with an average entry-level annual salary of \$52,000, according to a 1992 survey.

The reason the perfusionists in our state want to become a licensed profession is because they believe that the citizens of our state are entitled to the protection of their health, safety, and welfare from the unqualified or unprofessional practice of perfusion.

Licensing establishes an independent mechanism to investigate and adjudicate claims of unprofessional conduct, and establishes a process to ensure that unqualified persons are not performing perfusion services.

The growth of managed care organizations and their plan administrators, who make decisions on who is professionally qualified to provide medical services, should not replace the role of the state in controlling and protecting the health and safety of medical services delivered to the citizens of the state.

(Q) Are there medical groups that support licensing of perfusionists ?

Note: Answering this political question will require contacting the government relations representative for the State Medical Society of the American Medical Association (AMA), the state chapter for the American College of Surgeons (ACS), or for cardiovascular surgeons in the state, the state hospital association, etc., and the representative for other allied health professional groups in the state, i.e. Respiratory Care Practitioners, Clinical Laboratory Scientists, the state Nurses Association, and other groups. The following is a general answer to this question, but specific organizational endorsements will be required.

(A) In general, thoracic and cardiovascular surgeons have been supportive of the licensing of perfusionists.

(Q) Are there medical groups that oppose the licensing of perfusionists ?

Note: A specific answer for this will come from the homework on where medical groups in the state stand on licensing of perfusionists. The following is a general answer to this question.

(A) Historically, the state hospital association and the state nursing association have been opposed to the licensure of medical professionals or other medical professions. With regard to perfusion, the hospital association would take the position that licensing will increase hospital costs by decreasing the supply of perfusionists. This is a deceptive argument since there is an oversupply of perfusionists in the country.

The nursing association has opposed licensing of other medical professionals because they believe that only physicians and nurses should be licensed, so that nurses will have control over all “unlicensed nursing assistive personnel”. In other words, a specific licensed scope of practice for a perfusionist would override their broader scope of practice. This is a deceptive argument since most licensing laws allow other licensed practitioners to perform the scope of medical responsibilities of other licensed professionals as long as the person is adequately trained in the medical responsibilities and procedures covered by the other profession’s scope of practice.

BACKGROUND FOR PERFUSION LICENSING LEGISLATION

Perfusion is one of the 28 allied health professions recognized as a distinct discipline by the American Medical Association (AMA). A perfusionist is a highly-skilled allied health professional, trained and educated specifically as a member of an open-heart surgical team responsible for the selection, set-up and operation of the heart-lung machine.

To maintain life during open heart surgery, when the patient's heart must be stopped, the patient's blood is diverted outside the body, circulated through the heart-lung machine and returned to the patient. In effect, the machine assumes the function of both the heart and lungs. Perfusion technology has progressed dramatically since the first successful open heart surgeries were performed in the 1950's, making it possible to perform operations only dreamed of a few years ago - including the repair of congenital heart defects in infants, the transplantation of hearts, heart-lungs, and livers, and long-term assist devices for those awaiting organ transplants.

In the early days of open heart surgery, perfusionists were trained on the job. Today's perfusionist is college educated and a graduate of a perfusion education program, accredited by the AMA's Committee on Allied Health Education Accreditation (CAHEA), and its successor Commission on Accreditation of Allied Health Education Programs (CAAHEP). Only CAAHEP graduates are eligible to sit for the private professional certification examination administered by the American Board of Cardiovascular Perfusion (ABCP).

To maintain ABCP certification, a perfusionist must complete a minimum of forty (40) clinical perfusions per year, for a maximum of twenty (20) points per year (1/2 point per case), or sixty (60) points in a three-year period. Clinical perfusion is defined as intra-operative cardiopulmonary bypass and cardiopulmonary support procedures. Of the 40 cases required each year, a maximum of fifteen (15) cases may be performed as either first assistant perfusionist for cardiopulmonary bypass cases, primary perfusionist for Extracorporeal Membrane Oxy-

genation (ECMO) cases, or primary perfusionist for Ventricular Assists, VENO-VENO Bypass for liver transplantation procedures, or isolated limb perfusion. All qualify for 1/4 point per case. Two recertification points are equivalent to one contact hour. This is the unit of measure used for meetings approved by the American Board of Cardiovascular Perfusion. The maximum number of recertification points for any single national or regional perfusion meeting is thirty (30) points. During a three year period, a minimum of ninety (90) recertification points must be obtained through continuing education credits.

There are approximately [*enter number*] perfusionists practicing in [*enter state*] today, performing an average of [*enter number*] cases per year, meaning that approximately [*enter number*] people in the state annually place their lives in the hands of a surgical team that includes a perfusionist. Many perfusionists have practiced previously in other health care fields, such as nursing or respiratory therapy. Perfusionists practice as employees of hospitals, as employees of surgical groups, as independent contractors, or are employed by large perfusion service corporations. According to the AMA, perfusionists are the highest paid of the 28 recognized allied health professionals, with an average entry-level annual salary of \$52,000 according to a 1992 survey. Given the inherent risks of their practice, medical malpractice insurance costs an average of \$6,000 per year.

Note: See Appendix E and F for perfusion practice characteristics for individual states and nationally. Appendix J, the Perfusion Cardiovascular/Surgical Survey Instrument, should also be used to develop data.