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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC85-160
<b>VAC Chapter title(s)</b>	Regulations Governing the Licensure of Surgical Assistants and Registration of Surgical Technologists
<b>Action title</b>	Amendments for change from registration to licensure
<b>Date this document prepared</b>	10/16/20

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Legislation passed by the 2020 General Assembly changed regulation of surgical assistants from registration to licensure, and amendments that conformed to the statute were enacted. Additional amendments are necessary to provide for consistency with other licensed allied professions regulated by the Board of Medicine in the fee structure, continuing competency, inactive licensure, and standards of practice. Additionally, the Board intends to amend regulations for renewal of registration for surgical technologists.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

N/A

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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Chapter 1222 of the 2020 Acts of the Assembly mandates that surgical assistants be licensed rather than registered by the Board of Medicine. Accordingly, the Board adopted amendments to change from registration of surgical assistants to licensure of surgical assistants by an exempt action that became effective on October 14, 2020.

The impetus for this action is the need to incorporate other requirements in regulations, especially those related to continuing competency and standards of practice, for the protection of the public.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

***§ 54.1-2400 -General powers and duties of health regulatory boards***

*The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*

4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

Regulations on surgical assistants and surgical technologists are promulgated in accordance with:

**§ 54.1-2956.12. Registered surgical technologist; use of title; registration.**

A. No person shall use or assume the title "registered surgical technologist" unless such person is registered with the Board.

B. The Board shall register as a registered surgical technologist any applicant who presents satisfactory evidence that he (i) holds a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor, (ii) has successfully completed a surgical technologist training program during the person's service as a member of any branch of the armed forces of the United States, or (iii) has practiced as a surgical technologist at any time in the six months prior to July 1, 2014, provided he registers with the Board by December 31, 2016.

**§ 54.1-2956.13. Licensure of surgical assistant; practice of surgical assisting; use of title.**

A. No person shall engage in the practice of surgical assisting or use or assume the title "surgical assistant" unless such person holds a license as a surgical assistant issued by the Board. Nothing in this section shall be construed as prohibiting any professional licensed, certified, or registered by a health regulatory board from acting within the scope of his practice.

B. The Board shall establish criteria for licensure as a surgical assistant, which shall include evidence that the applicant:

1. Holds a current credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, or the National Commission for Certification of Surgical Assistants or their successors;

2. Has successfully completed a surgical assistant training program during the person's service as a member of any branch of the armed forces of the United States; or

3. Has practiced as a surgical assistant in the Commonwealth at any time in the six months immediately prior to July 1, 2020.

C. For renewal of a license, a surgical assistant who was licensed based on a credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, or the National Commission for the Certification of Surgical Assistants or their successors shall attest that the credential is current at the time of renewal.

**§ 54.1-2956.14. Advisory Board on Surgical Assisting; appointments; terms; duties.**

*A. The Advisory Board on Surgical Assisting (Advisory Board) shall assist the Board in carrying out the provisions of this chapter regarding the qualifications and regulation of licensed surgical assistants.*

*B. The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members of the Board shall be, at the time of appointment, surgical assistants who have practiced in the Commonwealth for not less than three years; one member shall be a doctor of medicine, osteopathy, or podiatry whose practice shall include surgery; and one member shall be a citizen member appointed from the Commonwealth at large. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.*

*C. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulations (i) standards for continued licensure of surgical assistants, including continuing education requirements, and (ii) standards relating to the professional conduct, termination and reinstatement and renewal of licenses of surgical assistants.*

2020, c. [1222](#).

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

Currently, regulations do not provide standards of practice relating to confidentiality and responsibilities of practitioners to their patients. Amendments are necessary to ensure there are standards for confidentiality, patient records, dual relationships, and informed consent to protect public health and safety.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Amendments will: 1) add definitions as necessary; 2) conform fees for licensure to other professions under the Board; 3) add requirements for continuing competency for surgical assistants licensed under a grandfathering provision; 4) provide for an inactive license and for reactivation or reinstatement of a license; 5) provide for a restricted volunteer license or voluntary practice by out-of-state practitioners; and 6) provide for renewal of registration of surgical technologists. Finally, the Board will adopt standards of practice similar to those for other licensed professions under its jurisdiction and will also consider the code of ethics specific to surgical assistants.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

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The Board can only enforce fees and standards of practice that are set forth in regulation. There is no alternative to regulation.

### **Periodic Review and Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or a small business impact review.

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board of Medicine is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Suite 300, Richmond, VA 23233; phone (804) 367-4688; fax (804) 527-4434; [Elaine.yeatts@dhp.virginia.gov](mailto:Elaine.yeatts@dhp.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.