

Welcome to the Advisory Board on Surgical Assisting

The Virginia Board of Medicine will hold an electronic meeting of the Advisory Board on Surgical Assisting on **June 1, 2021 at 10:00 A.M.** This meeting will be supported by Cisco WebEx Meetings application.

For the best WebEx experience, you may wish to download the Cisco WebEx Meeting application on your mobile device, tablet or laptop in advance of the meeting. Please note that WebEx will make an audio recording of the meeting for posting

This electronic meeting is deemed warranted under Amendment 28 to HB29 based on that requiring in-person attendance by the Advisory Board members is impracticable or unsafe to assemble in a single location.

Comments will be received from those persons who have submitted an email to william.harp@dhp.virginia.gov no later than 8:00 a.m. on May 31, 2021 indicating that they wish to offer comment. Comment may be offered by these individuals when their names are announced by the chairman.

Whether you are a member of the Advisory Board or a member of the public, you can join the meeting in the following ways.

- **JOIN by WEBEX**

<https://covaconf.webex.com/covaconf/j.php?MTID=m69af73ce28fe047e4380544ef2d2b8dd>

Meeting number (access code): 161 738 7509
Meeting password: tcCgpPpn529

- **JOIN BY PHONE**

+1-517-466-2023, , 1617387509## US Toll
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Meeting number (access code): 161 738 7509

TECHNICAL DIFFICULTIES: Should you experience technical difficulties, you may call the following number: (804) 339-0627 for assistance. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

The Board of Medicine and the Freedom of Information Act Council are interested in your evaluation of the electronic experience of this meeting. You can provide comment via the following form **HERE**.

Advisory Board on Surgical Assisting

Virginia Board of Medicine

June 1, 2021

10:00 a.m.

Advisory Board on Surgical Assisting

Board of Medicine

Tuesday, June 1, 2020 @ 10:00 a.m.

9960 Mayland Drive, Suite 201, Henrico, VA

Electronic Meeting

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Call to Order – Deborah Redmond, LSA, Chair	
Emergency Egress Procedures – William Harp, MD	i
Roll Call – Delores Cousins	
Approval of Minutes of February 2, 2021	1 - 3
Adoption of the Agenda	
Public Comment on Agenda Items (15 minutes)	
New Business	
1. Summary of Legislation from 2021 General Assembly Elaine Yeatts	4 – 10
2. Chart of Regulatory/Policy Actions for Board of Medicine Elaine Yeatts	11– 13
3. Proposed Amendments to Conform Regulations to Certification of Surgical Technologists..... Elaine Yeatts	14 - 17
4. Proposed Regulations Pursuant to Notice of Intended Regulatory Action (NOIRA) Elaine Yeatts	18 – 28
Announcements	
Adjournment	
Next Scheduled Meeting: October 12, 2021 @ 10:00 a.m.	

<<<DRAFT UNAPPROVED>>>
ADVISORY BOARD ON SURGICAL ASSISTING
Minutes
February 2, 2021
Electronic Meeting

The Advisory Board on Surgical Assisting held a virtual meeting on Tuesday, February 2, 2021 hosted at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Henrico, Virginia.

MEMBERS PRESENT: Deborah Redmond, LSA, Chair
Thomas Gochenour, LSA
Nicole Meredith, RN
Srikanth Mahavadi, MD
Jessica Wilhelm, LSA

MEMBERS ABSENT: None

STAFF PRESENT: William L. Harp, M.D., Executive Director
Michael Sobowale, LLM, Deputy Director, Licensure
Elaine Yeatts, DHP Senior Policy Analyst
Delores Cousins, Licensing Specialist

GUESTS PRESENT: David Jennette, CSA, NSAA
Ben Traynham, JD, MSV

Call to Order

Deborah Redmond, Chair, called the meeting to order at 10:00 am.

Emergency Egress Procedures

Deborah Redmond called on Dr. Harp to announce the emergency egress procedures for those who may be attending the virtual meeting in the Perimeter Center.

Roll Call

The roll was called, and a quorum was declared.

Approval of Minutes

Nicole Meredith moved to approve the minutes of the October 16, 2020 meeting. Jessica Wilhelm seconded. By roll call vote, the minutes were approved as presented.

Adoption of Agenda

Thomas Gochenour moved to adopt the agenda. Nicole Meredith seconded. By roll call vote, the agenda was adopted as presented.

Public Comment on Agenda Items

None

OLD BUSINESS

Michael Sobowale discussed the surgical assistant license application which is currently in use for new license applicants. There was discussion to amend question number 11 on the Surgical Assistant Licensure Application to ask about “past or pending disciplinary actions...”. The suggested change will be incorporated into the license application.

NEW BUSINESS

1. Report of the 2021 General Assembly

Elaine Yeatts provided a report from the 2021 General Assembly and highlighted bills that were of interest to the Advisory Board.

2. Notice of Intended Regulatory Action (NOIRA)

Elaine Yeatts provided an update on the pending Notice of Intended Regulatory Action to the Advisory Board. She estimated that it would likely take another eighteen 18 months for the regulations to become effective.

3. Standard Operating Procedures

Deborah Redmond wanted to discuss standard operating procedures as suggested on the National Surgical Assistant Association (NSAA) website. Ms. Redmond proposed to bring this item for discussion at the June meeting.

ANNOUNCEMENT

Delores Cousins provided the licensing report. The Board of Medicine has a total of 306 actively licensed surgical assistants with 37 out-of-state. There are 220 registered surgical technologists with 7 located out-of-state.

Next Scheduled Meeting:

Next scheduled meeting date: May 25, 2021.

Adjournment

With no other business to conduct, Deborah Redmond adjourned the meeting at 10:42 am.

Deborah Redmond, LSA, Chair

William L. Harp, MD, Executive Director

Delores Cousins, License Specialist

New Business Agenda

Item #1. Summary of 2021 General Assembly

Item #2. Chart of Post-2021 General Assembly Regulatory/Policy Actions

Item #3. Exempt Regulatory Action for Certification of Surgical Technologists

Item #4. Proposed Regulations Pursuant to NOIRA

**Legislation from the 2021 General Assembly
Board of Medicine**

HB 1737 Nurse practitioners; practice without a practice agreement.

Chief patron: Adams, D.M.

Summary as passed House:

Nurse practitioners; practice without a practice agreement. Reduces from five to two the number of years of full-time clinical experience a nurse practitioner must have to be eligible to practice without a written or electronic practice agreement. The bill has an expiration date of July 1, 2022.

HB 1747 Clinical nurse specialist; licensure of nurse practitioners as specialists, etc.

Chief patron: Adams, D.M.

Summary as passed House:

Clinical nurse specialist; licensure; practice. Changes for clinical nurse specialists the requirement to register with the Board of Nursing as a clinical nurse specialist to licensure by the Boards of Medicine and Nursing to practice as a nurse practitioner in the category of clinical nurse specialist and provides that a nurse practitioner licensed as a clinical nurse specialist shall practice pursuant to a practice agreement between the clinical nurse specialist and a licensed physician and in a manner consistent with the standards of care for the profession and applicable law and regulations. For the transition of registration to licensure, the bill requires the Boards of Medicine and Nursing to jointly issue a license to practice as a nurse practitioner in the category of a clinical nurse specialist to an applicant who is an advance practice registered nurse who has completed an advanced graduate-level education program in the specialty category of clinical nurse specialist and who is registered by the Board of Nursing as a clinical nurse specialist on July 1, 2021.

HB 1817 Certified nurse midwives; practice.

Chief patron: Adams, D.M.

Summary as passed:

Practice of certified nurse midwives. Expands the categories of practitioners with whom a certified nurse midwife may enter into a practice agreement to include other certified nurse midwives who have

practiced for at least two years and allows a certified nurse midwife who has practiced at least 1,000 hours to practice without a practice agreement. The bill also provides that certified nurse midwives shall practice in accordance with regulations of the Boards of Medicine and Nursing and consistent with the Standards for the Practice of Midwifery set by the American College of Nurse-Midwives and shall consult and collaborate with and refer patients to such other health care providers as may be appropriate for the care of the patient.

HB 1913 Career fatigue and wellness in certain health care providers; programs to address, civil immunity.

Chief patron: Hope

Summary as introduced:

Programs to address career fatigue and wellness in certain health care providers; civil immunity; emergency. Expands civil immunity for health care professionals serving as members of or consultants to entities that function primarily to review, evaluate, or make recommendations related to health care services to include health care professionals serving as members of or consultants to entities that function primarily to address issues related to career fatigue and wellness in health care professionals licensed, registered, or certified by the Boards of Medicine, Nursing, or Pharmacy, or in students enrolled in a school of medicine, osteopathic medicine, nursing, or pharmacy located in the Commonwealth. The bill contains an emergency clause and is identical to SB 1205.

EMERGENCY

HB 1953 Licensed certified midwives; clarifies definition, licensure, etc.

Chief patron: Gooditis

Summary as passed:

Licensed certified midwives; licensure; practice. Defines "practice of licensed certified midwifery," directs the Boards of Medicine and Nursing to establish criteria for the licensure and renewal of a license as a certified midwife, and requires licensed certified midwives to practice in consultation with a licensed physician in accordance with a practice agreement. The bill also directs the Department of Health Professions to convene a work group to study the licensure and regulation of certified nurse midwives, certified midwives, and certified professional midwives to determine the appropriate licensing entity for such professionals. The bill requires the Department to report its findings and

conclusions to the Governor and the General Assembly by November 1, 2021. This bill is identical to SB 1320.

HB 1987 Telemedicine; coverage of telehealth services by an insurer, etc.

Chief patron: Adams, D.M.

Summary as passed:

Telemedicine. Requires the Board of Medical Assistance Services to amend the state plan for medical assistance to provide for payment of medical assistance for remote patient monitoring services provided via telemedicine for certain high-risk patients, makes clear that nothing shall preclude health insurance carriers from providing coverage for services delivered through real-time audio-only telephone that are not telemedicine, and clarifies rules around the prescribing of Schedule II through VI drugs via telemedicine, including establishing a practitioner-patient relationship via telemedicine. This bill is identical to SB 1338.

HB 1988 Cannabis oil; processing and dispensing by pharmaceutical processors.

Chief patron: Adams, D.M.

Summary as passed:

Board of Pharmacy; pharmaceutical processors; processing and dispensing cannabis oil. Effects numerous changes to the processing and dispensing of cannabis oil by pharmaceutical processors in the Commonwealth. The bill defines the term "designated caregiver facility" and allows any staff member or employee of a designated caregiver facility to assist with the possession, acquisition, delivery, transfer, transportation, and administration of cannabis oil for any patients residing in the designated caregiver facility. The bill allows written certifications for use of cannabis oil to include an authentic electronic practitioner signature. The bill also eliminates the requirement that a pharmacist have oversight of the cultivation and processing areas of a pharmaceutical processor, instead requiring pharmaceutical processors to designate a person to oversee cultivation and production areas; removes the requirement that a cannabis dispensing facility undergo quarterly inspections, instead requiring that inspections occur no more than once annually; and allows pharmaceutical processors to remediate cannabis oil that fails any quality testing standard. The bill requires pharmaceutical processors to maintain evidence of criminal background checks for all employees and delivery agents of the pharmaceutical processor. The bill directs the Board of Pharmacy to promulgate regulations implementing the provisions of the bill and

regulations creating reasonable restrictions on advertising and promotion by pharmaceutical processors by September 1, 2021.

HB 2039 Physician assistant; eliminates certain requirement for practice.

Chief patron: Rasoul

Summary as passed House:

Practice as a physician assistant. Allows a physician assistant to enter into a practice agreement with more than one patient care team physician or patient care team podiatrist and provides that a patient care team physician or patient care team podiatrist shall not be liable for the actions or inactions of a physician assistant for whom the patient care team physician or patient care team podiatrist provides collaboration and consultation. The bill also makes clear that a student physician assistant shall not be required to be licensed in order to engage in acts that otherwise constitute practice as a physician assistant, provided that the student physician assistant is enrolled in an accredited physician assistant education program.

HB 2061 VIIS; any health care provider in the Commonwealth that administers immunizations to participate.

Chief patron: Willett

Summary as introduced:

Virginia Immunization Information System; health care entities; required participation. Requires any health care provider in the Commonwealth that administers immunizations to participate in the Virginia Immunization Information System (VIIS) and report patient immunization history and information to VIIS. Under current law, participation in VIIS is optional for authorized health care entities. The bill has a delayed effective date of January 1, 2022.

HB 2079 Pharmacists; initiation of treatment with and dispensing and administering of drugs and devices.

Chief patron: Rasoul

Summary as passed House:

Pharmacists; initiation of treatment; certain drugs and devices. Expands provisions governing the initiation of treatment with and dispensing and administering of drugs and devices by pharmacists to

allow the initiation of treatment with and dispensing and administering of drugs, devices, and controlled paraphernalia to persons 18 years of age or older, in accordance with protocols developed by the Board of Pharmacy in collaboration with the Board of Medicine and the Department of Health, and of (i) vaccines included on the Immunization Schedule published by the Centers for Disease Control and Prevention; (ii) tuberculin purified protein derivative for tuberculosis testing; (iii) controlled substances for the prevention of human immunodeficiency virus, including controlled substances prescribed for pre-exposure and post-exposure prophylaxis pursuant to guidelines and recommendations of the Centers for Disease Control and Prevention; and (iv) drugs, devices, controlled paraphernalia, and other supplies and equipment available over-the-counter, covered by the patient's health carrier when the patient's out-of-pocket cost is lower than the out-of-pocket cost to purchase an over-the-counter equivalent of the same drug, device, controlled paraphernalia, or other supplies or equipment. The bill requires any pharmacist who administers a vaccination pursuant to clause (i) to report such administration to the Virginia Immunization Information System. The bill also (a) requires the Board of Pharmacy, in collaboration with the Board of Medicine and the Department of Health, to establish protocols for the initiation of treatment with and dispensing and administering of drugs, devices, and controlled paraphernalia by pharmacists in accordance with the provisions of the bill by November 1, 2021; (b) requires the Board of Pharmacy, in collaboration with the Board of Medicine, to adopt regulations within 280 days of the bill's enactment to implement the provisions of the bill; and (c) requires the Board of Pharmacy to convene a work group composed of an equal number of representatives of the Boards of Pharmacy and Medicine and other stakeholders to provide recommendations regarding the developing of protocols for the initiation of treatment with and dispensing and administering of certain drugs and devices by pharmacists to persons 18 years of age or older.

HB 2220 Surgical technologist; certification, use of title.

Chief patron: Hayes

Summary as introduced:

Surgical technologist; certification; use of title. Provides that no person shall hold himself out to be a surgical technologist or use or assume the title of "surgical technologist" or "certified surgical technologist" unless such person is certified by the Board of Medicine; currently, a person must be registered with the Board of Medicine to use the title "registered surgical technologist." The bill also (i) adds a requirement that an applicant whose certification is based on his holding a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting also demonstrate that he has successfully completed an accredited surgical technologist training program

and (ii) provides that the Board of Medicine may certify a person who has practiced as a surgical technologist at any time in the six months prior to July 1, 2021, provided that he registers with the Board of Medicine by December 31, 2021.

SB 1178 Genetic counseling; repeals conscience clause.

Chief patron: Ebbin

Summary as introduced:

Genetic counseling; conscience clause. Repeals the conscience clause for genetic counselors who forgo participating in counseling that conflicts with their deeply held moral or religious beliefs, provided that they inform the patient and offer to direct the patient to the online directory of licensed genetic counselors maintained by the Board of Medicine. The law being repealed also prohibits the licensing of any genetic counselor from being contingent upon participating in such counseling.

SB 1187 Physical therapy; extends time allowed for a therapist to evaluate and treat patients.

Chief patron: Hashmi

Summary as introduced:

Department of Health Professions; practice of physical therapy. Extends from 30 days to 60 days the time allowed for a physical therapist who has completed a doctor of physical therapy program approved by the Commission on Accreditation of Physical Therapy Education or who has obtained a certificate of authorization to evaluate and treat patients after an initial evaluation without a referral under certain circumstances. The bill also provides that after discharging a patient a physical therapist shall not perform an initial evaluation of a patient without a referral if the physical therapist has performed an initial evaluation of the patient for the same condition within the immediately preceding 60 days.

SB 1189 Occupational therapists; licensure.

Chief patron: Hashmi

Summary as passed Senate:

Licensure of occupational therapists; Occupational Therapy Interjurisdictional Licensure Compact. Authorizes Virginia to become a signatory to the Occupational Therapy Interjurisdictional Licensure Compact. The Compact permits eligible licensed occupational therapists and occupational therapy assistants to practice in Compact member states, provided that they are licensed in at least one member

state. The bill has a delayed effective date of January 1, 2022, and directs the Board of Medicine to adopt emergency regulations to implement the provisions of the bill. The Compact takes effect when it is enacted by a tenth member state.

SB 1406 Marijuana; legalization of simple possession, etc.

Chief patron: Ebbin, Lucas

Summary as enacted with Governor's Recommendations:

Marijuana; legalization; retail sales; penalties. Eliminates criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older, modifies several other criminal penalties related to marijuana, and imposes limits on dissemination of criminal history record information related to certain marijuana offenses. The bill creates the Virginia Cannabis Control Authority (the Authority), the Cannabis Oversight Commission, the Cannabis Public Health Advisory Council, the Cannabis Equity Reinvestment Board and Fund, and the Virginia Cannabis Equity Business Loan Program and Fund and establishes a regulatory and licensing structure for the cultivation, manufacture, wholesale, and retail sale of retail marijuana and retail marijuana products, to be administered by the Authority. The bill contains social equity provisions that, among other things, provide support and resources to persons and communities that have been historically and disproportionately affected by drug enforcement. The bill has staggered effective dates, and numerous provisions of the bill are subject to reenactment by the 2022 Session of the General Assembly. This bill incorporates SB 1243 and is identical to HB 2312. See S. B. 1406 Chapter PDF text:

**Department of Health Professions
Regulatory/Policy Actions – 2021 General Assembly
Board on Medicine**

EMERGENCY REGULATIONS:

Legislative source	Mandate	Promulgating agency	Board adoption date	Effective date Within 280 days of enactment
SB1189	Occupational therapy compact	Medicine	8/6/21	By 12/23/21

EXEMPT REGULATORY ACTIONS

Legislative source	Mandate	Promulgating agency	Adoption date	Effective date
HB1737	Revise autonomous practice reg consistent with 2 years	Nursing & Medicine	N – 7/20/21 M – 8/6/21	
HB1747	Licensure of CNS as nurse practitioners – Amend Chapters 30 and 40 Delete sections of Chapter 20 with reference to registration of CNS	Nursing & Medicine	N – 7/20/21 M – 8/6/21	
HB1817	Autonomous practice for CNMs with 1,000 hours	Nursing & Medicine	N – 7/20/21 M – 8/6/21	
HB1988	Changes to pharmaceutical processors	Pharmacy	7/6/21	By Sept. 1st
HB2218/SB1333	Sale of cannabis botanical products	Pharmacy	7/6/21	By Sept. 1st
HB2039	Conform PA regs to Code	Medicine	10/14/21	
HB2220	Change registration of surgical technologists to certification	Medicine	10/14/21	
SB1178	Delete reference to conscience clause in regs for genetic counselors	Medicine	10/14/21	

APA REGULATORY ACTIONS

Legislative source	Mandate	Promulgating agency	Adoption date	Effective date
HB1953	Licensure of certified midwives	Nursing & Medicine	NOIRA Nursing – 7/20/21 Medicine – 8/6/21	Unknown

NON-REGULATORY ACTIONS

Legislative source	Affected agency	Action needed	Due date
HB1747	Nursing	Notification to registered certified nurse specialists that they must have a practice agreement with a physician before licensure as a nurse practitioner as of July 1, 2021	After March 31, 2021
HB793 (2018)	Medicine & Nursing	To report data on the number of nurse practitioners who have been authorized to practice without a practice agreement, the	November 1, 2021

		geographic and specialty areas in which nurse practitioners are practicing without a practice agreement, and any complaints or disciplinary actions taken against such nurse practitioners, along with any recommended modifications to the requirements of this act including any modifications to the clinical experience requirements for practicing without a <u>practice agreement</u> .	
SB431	Behavioral health/medicine/legal	Continuance of study of mental health services to minors and access to records <i>Requested an extension of 2020 study</i>	November 1, 2021
Budget bill	Department	To study and make recommendations regarding the oversight and regulation of advanced practice registered nurses (APRNs). The department shall review recommendations of the National Council of State Boards of Nursing, analyze the oversight and regulations governing the practice of APRNs in other states, and review research on the impact of statutes and regulations on practice and patient outcomes.	November 1, 2021
HB1953	Department	To convene a work group to study and report on the licensure and regulation of certified nurse midwives, certified midwives, and certified professional midwives to determine the appropriate licensing entity for such professionals.	November 1, 2021
HB1987	Boards with prescriptive authority	Revise guidance documents with references to 54.1-3303	As boards meet after July 1
HB2079	Pharmacy (with Medicine & VDH)	To establish protocols for the initiation of treatment with and dispensing and administering of drugs, devices, controlled paraphernalia, and supplies and equipment available over-the-counter by pharmacists in accordance with § 54.1-3303.1. Such protocols shall address training and continuing education for pharmacists regarding the initiation of treatment with and dispensing and administering of drugs, devices, controlled paraphernalia, and supplies and equipment.	Concurrent with emergency regulations
HB2079	Pharmacy	To convene a work group to provide recommendations regarding the development of protocols for the initiation of treatment with and dispensing and administering of drugs, devices, controlled paraphernalia, and supplies and equipment by pharmacists to persons 18 years of age or older, including (i) controlled substances, devices, controlled paraphernalia, and supplies and equipment for the treatment of diseases or conditions for which clinical decision-making can be guided by a clinical	November 1, 2021

		test that is classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988, including influenza virus, urinary tract infection, and group A Streptococcus bacteria, and (ii) drugs approved by the U.S. Food and Drug Administration for tobacco cessation therapy, including nicotine replacement therapy. The work group shall focus its work on developing protocols that can improve access to these treatments while maintaining patient safety.	
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Future Policy Actions:

HB2559 (2019) - requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by **November 1, 2022**.

Agenda Item: Exempt Regulatory Action – Certification of surgical technologists

Included in your agenda package are:

Copy of the legislation passed in 2020 General Assembly (HB2220)

Copy of the regulation to be adopted by the Board as an exempt action to conform regulation to changes in the statute.

Staff Note:

The Advisory Board should pass a motion to recommend adoption of these changes to regulation as presented in the agenda package.

CHAPTER 230

An Act to amend and reenact § 54.1-2956.12 of the Code of Virginia, relating to surgical technologist; certification; use of title.

[H 2220]
Approved March 18, 2021

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2956.12 of the Code of Virginia is amended and reenacted as follows:

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

A. No person shall *hold himself out to be a surgical technologist* or use or assume the title "~~registered surgical technologist~~" of "*surgical technologist*" or "*certified surgical technologist*," or use the designation "C.S.T." or "S.T." or any variation thereof, unless such person ~~is registered with~~ *is certified* by the Board.

B. The Board shall ~~register~~ *certify* as a ~~registered~~ surgical technologist any applicant who presents satisfactory evidence that he (i) *has successfully completed an accredited surgical technologist training program* and 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 *training program for surgical technologist training program technology* 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~~ 2021, provided he registers with the Board by December 31, ~~2016~~ 2021.

Project 6800 - Final

Board Of Medicine

Change from registration to certification for surgical techs

Chapter 160

Regulations Governing the Licensure of Surgical Assistants and ~~Registration~~ Certification of
Surgical Technologists

18VAC85-160-30. Current name and address.

Each licensee or ~~registrant~~ certificate holder shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee or ~~registrant~~ certificate holder shall be validly given when sent to the latest address of record provided or served to the licensee or ~~registrant~~ certificate holder. Any change of name or address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-160-40. Fees.

A. The following fees have been established by the board:

1. The fee for licensure as a surgical assistant or ~~registration~~ certification as a surgical technologist shall be \$75.
2. The fee for renewal of licensure or ~~registration~~ certification shall be \$70. Renewals shall be due in the birth month of the licensee or ~~registrant~~ certificate holder in each even-numbered year. For 2020, the renewal fee shall be \$54.
3. The additional fee for processing a late renewal application within one renewal cycle shall be \$25.

4. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.

B. Unless otherwise provided, fees established by the board are not refundable.

18VAC85-160-51. Requirements for ~~registration~~ certification as a surgical technologist.

A. An applicant for ~~registration~~ certification as a surgical technologist shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for ~~registration~~ certification as a surgical technologist shall provide satisfactory evidence of:

1. Successful completion of an accredited surgical technologist training program and A a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor; or
2. Successful completion of a ~~surgical-technologist~~ training program for surgical technology during the applicant's service as a member of any branch of the armed forces of the United States.

Agenda Item: Regulatory Action – Proposed regulations

Included in your agenda package are:

A copy of the Notice of Intended Regulatory Action posted on Townhall
(There was no comment on the NOIRA)

A copy of the proposed regulation

A copy of Code requirements for licensure and renewal for surgical assistants

Staff Note:

The summary of the NOIRA says:

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.

Advisory Board action:

To recommend to the Board of Medicine at its June meeting adoption of proposed regulations relating to licensure of surgical assistants and certification of surgical technologists

Agency

Department of Health Professions

Board




Board of Medicine

Chapter


Regulations Governing the Licensure of Surgical Assistants and Registration of Surgical Technologists
[18 VAC 85 160]

Notice of Intended Regulatory Action (NOIRA) 

Documents

Preliminary Draft Text	None submitted	Sync Text with RIS
 Agency Background Document	10/27/2020 (modified 10/28/2020)	Upload / Replace
 Governor's Review Memo	2/5/2021	
 Registrar Transmittal	2/5/2021	

Status

Public Hearing	Will be held at the proposed stage
Exempt from APA	No, this stage/action is subject to Article 2 of the <i>Administrative Process Act</i>
DPB Review	Submitted on 10/27/2020 Policy Analyst: Jerry Gentile Review Completed: 11/3/2020
Secretary Review	Secretary of Health and Human Resources Review Completed: 1/5/2021
Governor's Review	Review Completed: 2/5/2021 Result: Approved
Virginia Registrar	Submitted on 2/5/2021 The Virginia Register of Regulations Publication Date: 3/1/2021  Volume: 37 Issue: 14
Comment Period	Ended 3/31/2021 0 comments

Contact Information

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Project 6696 - NOIRA

Board Of Medicine

Amendments for surgical assistants consistent with a licensed profession

Chapter 160

Regulations Governing the Licensure of Surgical Assistants and Registration of Surgical
Technologists

Part I

General provisions

18VAC85-160-40. Fees.

A. The following fees have been established by the board:

1. The fee for licensure as a surgical assistant shall be \$130 or registration certification as a surgical technologist shall be \$75.
2. The fee for renewal of licensure ~~or registration~~ as a surgical assistant shall be \$70 \$135, and certification as a surgical technologist \$70. Renewals shall be due in the birth month of the licensee or ~~registrant~~ certificate holder in each even-numbered year. ~~For 2020, the renewal fee shall be \$54.~~
3. The additional fee for processing a late renewal application within one renewal cycle shall be ~~\$25~~ \$50 for a surgical assistant and \$25 for a surgical technologist.
4. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.
5. The fees for inactive license renewal shall be \$70 for surgical assistant and \$35 for inactive certification renewal for a surgical technologist.

6. The fee for reinstatement of a surgical assistant license that has been lapsed for two years or more shall be \$180; for a surgical technologist certification, it shall be \$90.

7. The fee for a letter of good standing or verification to another jurisdiction for a license shall be \$10.

8. The fee for reinstatement of licensure as a surgical assistant pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

B. Unless otherwise provided, fees established by the board are not refundable.

Part II

Requirements for licensure or certification

18VAC85-160-60. Renewal of licensure for a surgical assistant or certification for a surgical technologist.

A. 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.

B. A surgical technologist who was certified based on certification as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor shall attest that the credential is current at the time of renewal.

18VAC85-160-70. Reinstatement or reactivation of surgical assistant licensure.

A. A licensed surgical assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of

active practice or meet the continued competency requirements of 18VAC85-160-60 and shall not be entitled to perform any act requiring a license to practice surgical assisting in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

1. An application as required by the board;
2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure; and
3. Documentation of completed continued competency hours as required by 18VAC85-160-60.

C. A surgical assistant who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and shall pay the fee for reinstatement of licensure as prescribed in 18VAC85-160-60.

D. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

E. A surgical assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of his license as prescribed in 18VAC85-160-60 pursuant to §54.1-2408.2 of the Code of Virginia.

Part III

Standards of conduct

18VAC85-160-80. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-160-90. Patient records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner and in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible and complete patient records.

D. Practitioners who are employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

F. When a practitioner is closing, selling or relocating his practice, he shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

18VAC85-160-100. Communication with patients; termination of relationship.

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the practitioner/patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-160-110. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or their area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner/patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

18VAC85-160-120. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or
2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the patient-practitioner relationship is terminated.
2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have

an adverse effect on patient care. For purposes of this section, key third party of a patient means spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC85-160-130. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

§ 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.