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Final Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-160
VAC Chapter title(s)	Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists
Action title	Amendments for change from registration to licensure
Date this document prepared	June 16, 2022

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Legislation passed by the 2020 General Assembly changed regulation of surgical assistants from registration to licensure. Amendments that conformed to the statute were enacted in a previous exempt action. Additional amendments are necessary to provide consistency with other allied professions licensed by the Board of Medicine in fee structure, continuing competency, inactive licensure provisions, and required standards of practice. Additionally, the Board is amending regulations for renewal of certification for surgical technologists.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

NSAA: National Surgical Assistant Association
NCCSA: National Commission for the Certification of Surgical Assistants
AST: Association of Surgical Technologists
NBSTSA: National Board of Surgical Technology and Surgical Assisting

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On May 31, 2022, the Advisory Board on Surgical Assisting voted to recommend the adoption of final Regulations Governing the Licensure of Surgical Assistants and the Certification of Surgical Technologists to the Board of Medicine. On June 16, 2022, the Board of Medicine adopted final regulations as recommended by the Advisory Board.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The impetus for this action is the need to incorporate requirements in regulations appropriate for professions that are now licensed or certified, 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.

Regulations of the Board of Medicine are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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. Additionally, there are currently no requirements for maintaining competency or continuing education for surgical assistants licensed under a grandfathering provision nor for surgical technologists. To protect patients who receive services during surgical procedures, it is essential for these practitioners to stay abreast of new techniques and information.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

In 2020, the level of regulation for surgical assistants was elevated by action of the General Assembly from voluntary registration to licensure. Regulatory amendments were adopted by exempt action to conform to changes in the Code. Simultaneously, a NOIRA was published to announce the intent to adopt additional amendments to make the regulations consistent with other licensed professions under the Board of Medicine.

The amendments: 1) add necessary definitions; 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 certification of surgical technologists, including requirements for continuing education. Finally, the Board adopted standards of practice similar to those for other licensed professions under its jurisdiction.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) The primary advantages to the public are the continuing education requirements for all surgical assistants and surgical technologists to ensure competency for continuation of practice and the standards of conduct by which licensees or certificate holders could be held accountable to for unprofessional acts. There are no disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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." The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal regulations.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
5 comments received via Town Hall	All 5 comments were positive and in support of the regulations, including the requirements for continuing education requirements.	The Board appreciates the support and input.
Bill Teutsch, Executive Director of AST	Disagrees with the increase in licensure fees for licensed surgical assistants; is unclear how surgical technologists will attest that their national credential is current at renewal.	While the Board understands issues surrounding inflation, the proposed licensure fees for surgical assistants are consistent with the fees for other licensed professions under the Board of Medicine. The fees cover staffing, processing, and disciplinary costs for licensees. Attestations of national certification at time of renewal of a license or certification is accomplished by checking a box stating that the individual's national certification is current. This is a common practice for several professions regulated by boards within DHP

		that are required to maintain national certification.
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Detail of Changes Made Since the Previous Stage

There have been no changes since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
160-40		Sets out fees charged to surgical assistants and surgical technologists	<p>The fees in subsection A for surgical assistants are: \$130 for initial licensure \$135 for biennial renewal \$50 for late renewal \$70 for an inactive license \$180 for reinstatement of license lapsed for more than two years \$10 for letter of verification \$2,000 for reinstatement after revocation</p> <p>Fees for surgical technologists remain unchanged because they are certified rather than licensed.</p> <p>Prior to 2020, surgical assistants were registered by the Board. As a registered profession, they were not subject to disciplinary action under Virginia Code § 54.1-2915 or regulations adopted by the Board. A large percentage of fees collected by the agency is used to cover the costs of investigations and disciplinary proceedings. Therefore fees for licensed professions under the Board of Medicine are consistent and greater than certified or registered professions.</p>

			<p>For each category in which there is a lower level of the profession, the fees are approximately half of the licensed profession. Occupational therapist fees and occupational therapy assistant fees, as well as radiologic technologist fees and radiologic technologist-limited fees demonstrate this halving of fees. Therefore, fees for surgical technologists are set at half of those for surgical assistants.</p>
160-60		<p>Sets out the requirements for renewal of licensure for a surgical assistant.</p>	<p>Subsection B is added to require a surgical assistant licensed based on completion of a training program in the military or based on a grandfathering provision of practice prior to July 1, 2020 to complete 38 hours of continuing education recognized by the NSAA for biennial renewal.</p> <p>The Code of Virginia requires that a surgical assistant who was licensed based on a national credential to maintain that credential in order to renew licensure. However, a person licensed based on completion of a training program in the military or based on a grandfathering provision has no statutory requirement for maintaining continuing competency. The Advisory Board strongly supports continuing competency requirements for all its licensees. Therefore subsection B is added to specify the same number of hours as is required for maintenance of certification with the national board.</p> <p>The NSAA is recognized by the NCCSA as the responsible authority for the approval of CEU programs, thus all surgical assistants would go through the same approval body for their continuing education. There are numerous options available to licensees through the NSAA.</p> <p>Continuing education units can be earned through the following methods: 1) Health care facility mandatory education; 2) Health care facility sponsored in-services;</p>

			<p>3) Attending professional physician organization programs; 4) Writing for health-related publications; 5) Instruction of health professionals; 6) College credit; 7) Lecture; 8) Clinical demonstration; and 9) Completion of enduring material activities. Enduring material is not live, and includes, but is not limited to, hard copy or electronically delivered continuing education articles that have a post article exam; online health care facility tests; online lectures; or any electronic means that has a post article exam.</p> <p>Over the biennium, a licensee should be able to access continuing education for little or no cost through in-service trainings, online courses, or other types of learning activities.</p>
	160-65	Sets out the renewal requirements for certification of a surgical technologist.	<p>The renewal requirements for continuing education for surgical technologists are similar to those for surgical assistants. Those who were certified based on their national credential will be required to maintain that credential. Those who were certified based on military training or grandfathering will be required to attest to completion of 30 hours of continuing education recognized by the AST. As with the surgical assistants, the AST is the organization recognized by the NBSTSA for maintenance of competency through continuing education credits. For assistants, maintenance of certification requires 38 hours every two years; for technologists, 30 hours is required – so the CE requirement for renewal of licensure is identical and can be met with or without continued certification by the NBSTSA.</p>
	160-70	Sets out the requirements for reinstatement or reactivation of licensure.	<p>Subsection A allows a surgical assistant to obtain an inactive license by payment of an inactive fee. An inactive licensee is not authorized by practice and is not required to maintain continued competency hours.</p> <p>Subsection B sets out the requirements for reactivation of</p>

			<p>licensure, which include payment of the difference between the inactive and active renewal fee and evidence of continued competency hours.</p> <p>Subsection C sets out the requirements for reinstatement of a license that has been lapsed for more than two years (one renewal cycle). Subsection D states the right of the board to deny reactivation or reinstatement upon evidence that a person has violated provisions of law or regulation.</p> <p>Subsection E sets out the requirement for reinstatement of a license that has been revoked.</p>
	160-80	Sets out a standard for confidentiality between practitioner and patient.	The intent of this regulation is to achieve consistency in requirements for all chapters of the Board and all regulated professions. See, e.g., 18VAC85-40-85 (governing respiratory therapists).
	160-90	Sets out the standard for maintenance and disclosure of patient records, consistent with professions in which practitioners may be self-employed or may be employed by a health care entity that owns the records.	The intent of this regulation is to achieve consistency in requirements for all chapters of the Board and all regulated professions. See, e.g., 18VAC85-40-86 (governing respiratory therapists).
	160-100	Sets out the standard for practitioner-patient communication and informed consent and sets the standard for termination of a practitioner-patient relationship.	The intent of this regulation is to achieve consistency in requirements for all chapters of the Board and all regulated professions. See, e.g., 18VAC85-40-87 (governing respiratory therapists).
	160-110	Sets the standard for practitioner responsibility for performance of procedures, delegation to subordinates and exploitation of the relationship for personal gain.	The intent of this regulation is to achieve consistency in requirements for all chapters of the Board and all regulated professions. See, e.g., 18VAC85-40-88 (governing respiratory therapists).
	160-120	Sets the standard for sexual contact with a patient, a former patient or a key third party in the relationship.	The intent of this regulation is to achieve consistency in requirements for all chapters of the Board and all regulated professions. See, e.g., 18VAC85-40-89 (governing respiratory therapists).
	160-130	Sets the standard for refusing to provide information as requested or required by the Board or its representative.	The intent of this regulation is to achieve consistency in requirements for all chapters of the Board and all regulated professions. See, e.g., 18VAC85-40-91 (governing respiratory therapists).

