

**REPORT OF RECOMMENDATIONS AND FINDINGS
ON THE PROPOSAL TO LICENSE SURGICAL TECHNOLOGISTS**

By the Nebraska
State Board of Health

To the Director of the Division of Public Health of the Department of Health
and Human Services, and the Members of the Health and Human
Services Committee of the Legislature

March 14, 2016

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent written reports on the same credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

The Members of the Nebraska State Board of Health

Kevin Borchert, PharmD, RP

Jim Trebbien (public member)

Shane Fleming, BSN, MSN, RN

Russell Hopp, DO

Diane Jackson, APRN

Kevin Low, DDS

Dale Michels, MD

Anthony Moravec, DVM

Debra Parsow (public member)

Teresa Konda, PE

Paul Salansky, OD (Vice Chair)

Wayne Stuberger, PhD, PT (Chair)

Travis Teeter, MD

Joshua Vest, DPM

Douglas Vander Broek, DC

Jeromy Warner, PsyD, LP

Meetings Held

The Meeting of the Credentialing Review Committee of the Board, January 14, 2016

The Meeting of the Full Board of Health, January 25, 2016

Part Two: Summary of Recommendations on the Surgical Technologists' Proposal

Summary of the Technical Committee Recommendations

The members of the technical review committee recommended in favor of the proposal.

Summary of the Recommendations of the Nebraska State Board of Health

The Credentialing Review Committee of the Board recommended against approval of the proposal.

The full Board of Health recommended against approval of the proposal.

Part Three: Summary of the Surgical Technologists' Proposal

This proposal seeks to license surgical technologists. The surgical technologist profession has its own specific certification and educational standards. Under this proposal, the State of Nebraska would adopt the examination from the National Board of Surgical Technology and Surgical Assisting (NBSTSA) as the official exam for licensing the members of the ST profession in Nebraska. Only those surgical technologists who have passed this national surgical technologist certifying exam are eligible for licensure. According to the American College of Surgeons, "surgical technologists are individuals with specialized education who function as members of the surgical team in the role of scrub person." This statement summarizes the proposed surgical technologist scope of practice. The surgical technologist works under the supervision of the licensed independent practitioner (surgeon) and the nurse, as an integral member of the operating room team. The proposed scope of practice for a surgical technologist would include:

1. Maintains highest standard of sterile technique
2. Obtains and opens supplies, instruments, and equipment needed for surgical procedure,
3. Scrubs, gowns and gloves,
4. Sets up sterile table with instruments, supplies, equipment, and medications/solutions needed for procedure,
5. Transfers but does not administer medications according to applicable law,
6. Irrigates with fluid within the sterile field according to applicable law,
7. Performs appropriate counts with circulating nurse,
8. Gowns and gloves surgeon and assistants,
9. Prepares and drapes the patient for the operative procedure,
10. Passes instruments, supplies and equipment to surgeon and assistants during procedure while anticipating the needs of the surgical team,
11. Prepares and cuts suture material,
12. Provides visualization of the operative site through holding retractors, manipulating endoscopes, sponging and suctioning,
13. Applies electrocautery to clamps placed by a licensed independent practitioner on bleeders,
14. Applies skin staples and skin adhesive under the direction of a licensed health care professional who approximates wound edges,
15. Prepares and applies sterile dressings,
16. Connects drains to evacuator/reservoir,
17. Cleans and prepares instruments for terminal sterilization,
18. Assists other members of team with terminal cleaning of room,
19. Assists in prepping room for the next procedure,
20. Positions and transfers the surgical patient,
21. Utilizes appropriate technique in the care of specimens,
22. Assists anesthesia personnel as needed,
23. Applies electrosurgical grounding pads, tourniquets, and monitoring devices before procedure begins,
24. Performs urinary catheterization when necessary,
25. Prepares patient's skin by applying appropriate skin preparation solution and shaving as needed

During the review process on their proposal the applicants provided the committee members with a more condensed version of this scope of practice, as follows:

Surgical technologist means a person who performs certain duties, including:

- Preparing the operating suite for the planned surgical procedure including gathering and opening all equipment, supplies, and instrumentation.
- Creating and maintaining the sterile field through organization and preparation of instruments and supplies including the performance of all necessary surgical counts.
- Passing instruments, supplies and equipment to the surgeon and assistance during the procedure while anticipating the needs of the surgical team.
- Assisting the surgeon as directed in accordance with applicable law.
- Assisting the circulator as directed in the care of the surgical patient.
- Cleaning the operating suite including decontamination of instruments, supplies and equipment utilized during the surgical procedure.

The Nebraska Board of Medicine and Surgery would establish, by regulation, continuing competency requirements for surgical technologists to renew licensure. There are two CAAHEP-accredited surgical technology programs in the state of Nebraska. One is located in Omaha at Nebraska Methodist College and the other is located at Southeast Community College in Lincoln which also offers their program online to serve the western part of the state. Both programs are associate degree and include several months of clinical education. Once a person successfully completes an accredited program, he or she is eligible to take the national surgical technologist certifying exam administered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA). If passed, the person earns the Certified Surgical Technologist (CST) credential. Maintenance of the credential requires 60 hours of continuing education every four years. If certification is allowed to lapse, the practitioner is required to sit for the national surgical technologist certification exam again.

The State of Nebraska would adopt renewal criteria based upon the standards that the National Board of Surgical Technology and Surgical Assisting have established for surgical technologists. The surgical technologist must complete the continuing education credits required during the renewal cycle and pay the renewal fee; or demonstrate competency through reexamination. It is recommended that along with the continued competency information, each applicant for renewal be required to report any conviction for a misdemeanor or felony since the last renewal. Applicants should be required to report any discipline against any health care professional licensed in this state or any health care professional licensed in any other state since the last renewal period.

The full text of this proposal can also be found under the Surgical Technology topic area of the credentialing review program link at

http://dhhs.ne.gov/Pages/reg_admcr.aspx

Part Four: Discussion on the Issues by the Credentialing Review Committee of the Board

Comments by Douglas Vander Broek, D.C., Chairperson of the Surgical Technologists' Technical Review Committee

Dr. Vander Broek stated that his committee did an excellent job of identifying the key issues of the review. Discussions brought in a wide variety of insights and ideas. Interaction between the committee members and the wide variety of interested parties in attendance was always free-flowing and constructive.

Ms Parsow asked about the proposed grandfather clause and how that would work if passed. She also wanted to know how discipline would work under the terms of the proposal and whether or not self-reporting would occur as it does in other licensed professions. She also commented on the absence of solid data to support applicant contentions about the need for the proposal. Ms. Parsow also commented on the absence of data supporting opponent contentions regarding the high cost of the proposal.

Comments by Interested Parties

Comments by supporters of the proposal:

Comments by Casey Glassburner, CST, on behalf of the Academy of Nebraska Surgical Technologists

Ms. Glassburner began her remarks by stating the field of surgical technology has become very complex and demands a well-educated and well trained work force to provide the services in question safely and effectively. Ms. Glassburner went on to state that only licensure can provide the assurance that all surgical technology workers are adequately educated and trained. She went on to state that there is no reason to believe that salaries for surgical technologists would increase as a result of licensure. She stated that studies have shown that infection rates have declined in surgical facilities wherein formal education and training has been required for surgical technologists. She commented that concerns about a shortfall in the pool of available graduates will soon be addressed by the soon to be opening of a third school of surgical technology at Western Community College.

Ms. Glassburner then commented on applicant group concerns about the Howard Paul case and how it could be used against surgical technologists just as it was recently used against surgical first assistants, the concern being that like surgical first assistants surgical technologists are unlicensed and according to this ruling cannot work under physician delegation. She went on to state that only licensure for her profession can provide the assurance that this ruling cannot be used against surgical technologists.

Ms. Glassburner commented that the consumer has no way of knowing what the qualifications of surgical technology workers are under the current practice situation. She went on to state that mandatory certification and examination is an option used in some other states but not here in Nebraska, and that is because of Howard Paul. Only licensure can address this concern.

Dr. Moravec asked Ms. Glassburner to elaborate on her claim that surgical technology has become very complex in recent years. Ms. Glassburner responded that the advent of robotics in the surgical suite has significantly raised the bar when it comes to necessary technical know-how on the part of surgical workers. Dr. Moravec responded that for most of the items listed on the applicants' scope of practice in their proposal 'OJT' provided in a hospital setting should suffice. He then asked her if her group would be going through credentialing review if not for Howard Paul. Ms. Glassburner responded in the affirmative because education and training standards would still be an issue even without Howard Paul. She added that technical complexities in the modern surgical suite necessitate the end of the 'OJT'-trained surgical technology category. Dr. Teetor then asked her why her proposal included a grandfathering provision for all current surgical technologists including those with only 'OJT' training if the latter are so much of a safety concern. Ms. Glassburner replied by stating that most of those grandfathered have some formal education and training and that the 'OJT' group is a small subset of these workers.

Comments by Dr. Todd Orchard, M.D.

Dr. Orchard began his remarks by stating that public safety is a more important concern as regards these issues than are concerns about the cost of a credentialing process. We need to consider what the costs would be if people died as a result of bad care stemming from failure to maintain a sterile field in the surgical suite. He went on to state that there is no factual basis for the argument that wages for surgical technologists would rise if the proposal were to pass.

Dr. Teetor asked Dr. Orchard about the possible increased costs associated with the proposed new education and training requirements. Dr. Orchard responded by stating that there are on line courses that are very affordable. These courses already exist and their costs are largely covered by the educational institution that offers them.

Dr. Teetor then commented that it isn't practical to license every person involved in the maintenance of the sterile field in a surgical suite, and that we should focus on credentialing only those who are in direct contact with patients. Dr. Orchard responded that if that were the case we wouldn't even credential radiologists or anesthesiologists because as a matter of fact they do not come into direct contact with the patient.

Dr. Orchard went on to state that when I'm in the surgical suite I need well-trained people around me, and that there is no way I can keep an eye on every action of every surgical worker around me during surgery. I need to be able to trust each and every

person I work with therein because, according to the 'Captain-of-the-ship' ruling, I am legally liable for each and every one of them. He went on to state that the risk of errors or harm is much greater for 'OJT' trained surgical technologists than it is for those who are formally trained.

Mr. Fleming then asked Dr. Orchard how our educational system for surgical technologists is going to keep up with the demand for well educated and trained workers if the proposal were to pass. Mr. Fleming added that 'OJT'- trained surgical workers help to maintain a balance between supply and demand. Casey Glassburner responded that a new school of surgical technology will open very soon and will greatly assist in this regard.

Casey Glassburner then provided information on the costs of achieving a degree in surgical technology. She stated that the cost is about 9700 dollars at Southeast Community College for a degree program completed in about two years. She commented that this is a very affordable education. She went on to state that in the near future satellite programs will be opening up around the state.

Comments by opponents of the proposal:

Jay Slagle on behalf of the Midwest Eye Surgery Center and the Nebraska Association of Independent Ambulatory Centers

Mr. Slagle began his remarks by stating that the organizations he represents are opposed to the proposal to license surgical technologists. Mr. Slagle went on to state that the applicants have not provided evidence to indicate that un-credentialed surgical technologists are a source of harm to the public or that they increase risk of harm to patients. The data that they cited from a report by the Institute of Medicine on preventable deaths in hospitals fails to establish a link between surgical technologists, on the one hand, and data pertinent to common preventable deaths, on the other. Additionally, the applicants provided anecdotal stories about rogue surgical technologists who have harmed patients. Such stories do not provide the basis for an effective argument in support of licensing all surgical technologists.

Mr. Slagle continued his remarks by stating that the proposal would significantly diminish the supply of qualified practitioners because it would create a huge barrier to entry into the profession, particularly for low income persons. The costs of a formal educational and training program range from 9700 to 11,200 dollars at Southeast Community College for fees and tuition and 35,000 dollars for the same costs in Nebraska Methodist programs, for example. These costs do not include economic losses associated with having to attend school instead of working to support ones family. Licensure would reduce the labor supply and increase wages. This would impact rural hospitals and small surgical centers the most.

Mr. Slagle went on to state that the applicants have demonstrated no need for their proposal. Not one incident was presented for consideration. The proposal raises questions about where regulators should draw the line when it comes to licensing surgical suite workers. Should we license hospital janitors, hospital handymen, and hospital supply personnel? These workers also play a role in maintaining a sterile field, for example.

Mr. Slagle went on to state that there are better ways of addressing the concerns raised in the proposal, one of which is the idea of a registry of surgical technologists in Nebraska.

Ms. Parsow asked Mr. Slagle to elaborate on the additional costs that the proposal would supposedly create. Mr. Slagle responded that the proposal would result in fewer people seeking employment as surgical technologists, and that this reduced pool of available people to fill vacant positions would in turn result in ever greater competition for those still willing to work as surgical technologists with the larger, urban facilities winning out over smaller rural facilities.

When asked about the potential of the Howard Paul case to adversely impact surgical technologists Mr. Slagle responded that the only reason Howard Paul is an issue at all is that some surgical suite employees were doing things vis-à-vis suturing that they should not have been doing. The only way Howard Paul could impact surgical technologists would be if they were engaged in doing suturing or some other kind of tissue manipulation which is beyond their role or training.

Dr. Moravec asked Mr. Slagle how 'OJT' training occurs in the facilities he represents. Mr. Slagle responded that there is an extensive checklist of performance-based items for which a candidate for employment as a surgical technologist would have to learn and demonstrate competency.

Elisabeth Hurst, JD, on behalf of the Nebraska Hospital Association

Ms. Hurst stated that the applicants provided no evidence or data to support their contention that the current practice situation of surgical technologists is a source of harm or danger to the public health or welfare.

Ms. Hurst added that the proposal would create significant economic hardship for surgical facilities in Nebraska as well as limit the pool of available employees for surgical technology jobs in such facilities. She went on to state that it would be the smaller surgical centers and those in rural areas that would be impacted the most.

Ms. Hurst stated that the public has every reason to trust Nebraska surgical facilities to provide assurance that those who work to maintain a sterile field in the surgical suite are capable of doing their jobs safely and effectively.

Ms. Hurst stated that one option that would work to address concerns about current surgical technology practice would be some type of registry perhaps along the lines of the current medication aide registry, for example.

Dr. Moravec asked Ms. Hurst to elaborate on the high costs that would supposedly stem from the proposal. Ms. Hurst commented that nineteen rural hospitals are currently already 'in the red', and if the proposal were to pass their financial situation would be significantly worsened.

Melissa Florell, RN, on behalf of the Nebraska Nurses Association

This testifier stated that her organization opposes licensure for surgical technologists but would be willing to support the idea of a registry for these professionals. A registry could be used to define a competency standard for them. She added that licensure is not appropriate for them because their work consists of a range of functions rather than elements of a true scope of practice.

Gina Ragland on behalf of the Nebraska Medical Association

This testifier stated that NMA would support the idea of a registry for surgical technology but not licensure.

Karen Rustermier, RN, on behalf of Perioperative Nurses

This testifier stated that it is difficult to fill surgical technology job vacancies now without the proposal. If the proposal were to pass this situation can only get worse. She went on to state that many surgical technologists are very mobile and that if formal education and training requirements are passed in Nebraska many of these workers will leave our state for states that do not have such requirements.

Part Five: Discussion on the Issues by the Full Board of Health

Board member Hopp asked why the members of the Board's Credentialing Review Committee recommended against the applicant's proposal. Board member Parsow replied by stating that the committee members were concerned that the requirements for licensure in the proposal could result in a decline in access to services especially in rural areas of our state. Board member Parsow went on to state that the applicants provided no evidence to support their contentions regarding the potential for harm to the public from unregulated practice. Board member Vander Broek commented that no other state licenses this profession, and added that the committee members were concerned about the possibility of an adverse impact on the employment situation for surgical technologists.

Board member Fleming commented that the proposal would not allow enough time for surgical facilities to adjust to the impact of the proposal on the availability of surgical technology employees, and perhaps even on the ability of some surgical services to continue providing services.

Don Wesely spoke on behalf of the Nebraska Nurses Association and independent ambulatory surgical centers, stating that licensure is not the appropriate regulatory mechanism for surgical technologists. Registration would be much more appropriate for this group.

Casey Glassburner spoke on behalf of the applicant group. Ms. Glassburner stated that there is a need to establish minimum education and training standards for all surgical technologists in order to ensure public safety, and that licensure is the best way to accomplish this. She stated that licensure is also the best way of addressing concerns about physician delegation raised by the Howard Paul case. Ms. Glassburner went on to state that her group is willing to accept registration as a means of accomplishing its goals, however, and asked the Board members to advance this idea if they were to recommend against licensure.

Part Six: Recommendations of the Full Board of Health on the Proposal

Actions Taken by the Board Members:

The members of the full Board of Health took the following action on the applicants' proposal.

Voting to accept the recommendations of the Board's Credentialing Review Committee were Borchert, Fleming, Jackson, Konda, Michels, Moravec, Parsow, Salansky, Stuberger, Teetor, Trebbien, and Vander Broek. Voting not to accept these recommendations were Hopp and Low. By this action the Board members recommended against the applicants' proposal.

Additional Discussion by the Board Members:

Board member Salansky moved and Board member Parsow seconded that the Board of Health recommend in favor of the idea of registration as the best way of addressing concerns raised about the current unregulated practice of surgical technologists in Nebraska. Board member Vander Broek commented that the Board is already on record recommending registration for surgical technologists in the body of its surgical first assistant report of 2015, and that it serves no purpose for the Board to restate this recommendation. Board member Michels commented that LB 1061 submitted to the legislature earlier this month proposes a version of registration for this profession that has already become controversial, and that approving Board member Salansky's motion could be misconstrued as constituting support for LB 1061. Board member Teetor commented that the Board could recommend in favor of the original registration proposal included in the SFA proposal but it would not be a good idea to pass the motion currently under consideration. Board member Fleming suggested that the Board add a comment to its forthcoming letter to the HHS Committee stating support for the original idea for a registry for surgical technologists described in the SFA proposal in 2015.

Board member Salansky then amended his motion to incorporate Board member Fleming's suggestion. Board member Parsow accepted this amendment to the original motion. Voting aye were Borchert, Fleming, Jackson, Konda, Moravec, Parsow, Salansky, Stuberger, Teetor, Trebbien, Vander Broek, Hopp, and Low. Voting against this motion was Michels. The motion passed.