

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE C. OTHER PROFESSIONS PERFORMING MEDICAL PROCEDURES

CHAPTER 206. SURGICAL ASSISTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 206.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the advisory committee created under this chapter.

(2) "Delegating physician" means a physician who is licensed by the medical board either as a doctor of medicine or doctor of osteopathic medicine and who delegates, to a licensed surgical assistant, surgical assisting and oversees and accepts responsibility for that surgical assisting.

(3) "Direct supervision" means supervision by a delegating physician who is physically present and who personally directs delegated acts and remains immediately available to personally respond to any emergency until the patient is released from the operating room or care and has been transferred, as determined by medical board rule, to another physician.

(4) "Executive director" means the executive director of the medical board.

(5) "Medical board" means the Texas Medical Board.

(6) "Surgical assisting" means providing aid under direct supervision in exposure, hemostasis, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient, including the delegated authority to provide local infiltration or the topical application of a local anesthetic at the operation site. This term is synonymous with "first assisting."

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.01, eff. September 1, 2005.

Sec. 206.002. APPLICABILITY. (a) A person is not required

to hold a license under this chapter if the person is:

(1) a student enrolled in a surgical assistant education program approved by the medical board who is assisting in a surgical operation that is an integral part of the program of study;

(2) a surgical assistant employed in the service of the federal government while performing duties related to that employment;

(3) a person acting under the delegated authority of a licensed physician;

(4) a licensed health care worker acting within the scope of the person's license;

(5) a registered nurse; or

(6) a licensed physician assistant.

(b) This chapter does not affect the authority of a licensed physician to delegate acts under Subtitle B.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. ADVISORY COMMITTEE

Sec. 206.051. ADVISORY COMMITTEE. (a) The advisory committee is an informal advisory committee to the medical board and is not subject to Chapter 2110, Government Code.

(b) The advisory committee has no independent rulemaking authority.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.052. APPOINTMENT OF ADVISORY COMMITTEE. (a) The advisory committee consists of six members appointed by the president of the medical board. One member must be a registered perioperative nurse with at least five years of clinical experience as a registered perioperative nurse. Each of the remaining members must be:

(1) a practicing surgical assistant who has at least five years of clinical experience as a surgical assistant; or

(2) a physician licensed in this state who supervises a surgical assistant.

(b) Appointments to the advisory committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the advisory committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of surgical assisting; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of surgical assisting.

(c) A person may not be a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the field of surgical assisting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.054. TERMS; VACANCY. (a) Members of the advisory committee are appointed for two-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the president of the medical board shall appoint a new member to fill the unexpired term.

(c) An advisory committee member may not serve more than two consecutive full terms.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.055. GROUNDS FOR REMOVAL. (a) It is a ground for

removal from the advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 206.052;

(2) does not maintain during service on the advisory committee the qualifications required by Section 206.052;

(3) is ineligible for membership under Section 206.053; or

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

(b) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.056. OFFICERS. The president of the medical board shall designate biennially a committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the president.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.057. PER DIEM. An advisory committee member is not entitled to reimbursement for travel expenses or compensation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.058. MEETINGS. (a) The advisory committee shall meet as requested by the medical board.

(b) A meeting may be held by telephone conference call.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. POWERS AND DUTIES OF MEDICAL BOARD

Sec. 206.101. GENERAL POWERS AND DUTIES. The medical board shall:

(1) establish qualifications for a surgical assistant to practice in this state;

(2) establish requirements for an examination for a

license to practice as a surgical assistant;

(3) establish minimum education and training requirements necessary for a license to practice as a surgical assistant;

(4) prescribe the application form for a license to practice as a surgical assistant; and

(5) develop an approved program of mandatory continuing education and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.103. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the medical board or money appropriated to the medical board, the medical board may receive and accept under this chapter a gift, grant, donation, or other item of value from any source, including the United States or a private source.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION; COMPLAINT AND
INVESTIGATIVE INFORMATION

Sec. 206.151. PUBLIC PARTICIPATION. (a) The medical board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the medical board and speak on any issue relating to surgical assistants.

(b) The executive director of the medical board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the medical board's programs and services under this chapter.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.152. PUBLIC INTEREST INFORMATION. (a) The medical board shall prepare information of public interest describing the functions of the medical board and the procedures by which complaints are filed and resolved under this chapter.

(b) The medical board shall make the information available

to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.153. COMPLAINTS. (a) The medical board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the medical board for the purpose of directing complaints about licensed surgical assistants to the medical board.

(b) The medical board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.154. RECORDS OF COMPLAINTS. (a) The medical board shall maintain a file on each written complaint filed with the medical board under this chapter. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the medical board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the medical board closed the file without taking action other than to investigate the complaint.

(b) The medical board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the medical board's policies and procedures relating to complaint investigation and resolution. A person who reports a complaint by phone shall be given information on how to file a written complaint.

(c) The medical board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the

status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.155. LICENSE HOLDER ACCESS TO COMPLAINT INFORMATION. (a) The medical board shall provide a license holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the medical board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The medical board shall provide the information not later than the 30th day after receipt of a written request from the license holder or the license holder's counsel, unless good cause is shown for delay.

(b) Notwithstanding Subsection (a), the medical board is not required to provide:

- (1) medical board investigative reports;
- (2) investigative memoranda;
- (3) the identity of a nontestifying complainant;
- (4) attorney-client communications;
- (5) attorney work product; or
- (6) other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the medical board shall provide to the entity:

(1) information about a complaint filed against a license holder that was resolved after investigation by:

- (A) a disciplinary order of the medical board;
- or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.157. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, or other report, the identity of and reports made by a physician or surgical assistant performing or supervising compliance monitoring for the medical board, or other investigative information in the possession of or received or gathered by the medical board, medical board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the medical board or medical board employee or agent involved in license holder discipline.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board shall complete a preliminary investigation of a complaint not later than the 30th day after the date of receiving the complaint. The medical board shall first determine whether the surgical assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the medical board shall determine whether to officially proceed on the complaint. If the medical board fails to complete the preliminary investigation in the time required by this section, the medical board's official investigation is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.02, eff. September 1, 2005.

Sec. 206.158. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of the medical board, medical board employee, or agent that relates to the discipline of a license holder may be disclosed to:

(1) a licensing authority in another state or a territory or country in which the license holder is licensed or has applied for a license; or

(2) a peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the license holder with respect to retaining privileges.

(b) If the investigative information in the possession of the medical board or a medical board employee or agent indicates a crime may have been committed, the medical board shall report the information to the proper law enforcement agency. The medical board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of a license holder by providing information relevant to the investigation. Confidential information disclosed by the medical board to a law enforcement agency remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.159. IMMUNITY AND REPORTING REQUIREMENTS. (a) A medical peer review committee in this state, a quality assurance committee in this state, a surgical assistant, a surgical assistant student, a physician practicing medicine in this state, or any person usually present in an operating room, including a nurse or surgical technologist, shall report relevant information to the advisory committee related to the acts of a surgical assistant in this state if, in that person's opinion, a surgical assistant poses a continuing threat to the public welfare through the person's practice as a surgical assistant. The duty to report under this section may not be nullified through contract.

(b) A person who, without malice, furnishes records, information, or assistance to the advisory committee under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a surgical assistant who is reported under this section.

(c) Sections 160.002, 160.003, 160.006, 160.007, 160.009,

160.013, and 160.014 apply to medical peer review regarding a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. LICENSE REQUIREMENTS

Sec. 206.201. LICENSE REQUIRED. (a) Except as provided by Section 206.002, a person may not practice as a surgical assistant unless the person is licensed under this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

- (1) the title "Licensed Surgical Assistant"; or
- (2) any other designation that would imply that the person is a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.202. LICENSE APPLICATION. An applicant for a license must:

- (1) file a written application with the medical board on a form prescribed by the medical board; and
- (2) pay the application fee set by the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.203. LICENSE ELIGIBILITY. (a) Except as provided by Section 206.206, to be eligible for a license, a person must:

- (1) be of good moral character;
- (2) have not been convicted of a felony or a crime involving moral turpitude;
- (3) not use drugs or alcohol to an extent that affects the applicant's professional competency;
- (4) not have had a license or certification revoked by a licensing agency or by a certifying professional organization; and
- (5) not have engaged in fraud or deceit in applying for a license under this chapter.

(b) In addition to meeting the requirements of Subsection (a), a person must:

(1) pass the examination required by Section 206.204;

(2) hold at least an associate's degree based on completion of an educational program that is substantially equivalent to the education required for a registered nurse or physician assistant who specializes in surgical assisting;

(3) demonstrate to the satisfaction of the medical board the completion of full-time work experience performed in this country under the direct supervision of a physician licensed in this country and consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of application; and

(4) possess a current certification by a national certifying body approved by the medical board.

(c) A degree program described by Subsection (b)(2) must contain a clinical component and must include courses in anatomy, physiology, basic pharmacology, aseptic techniques, operative procedures, chemistry, microbiology, and pathophysiology.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.204. EXAMINATION. An applicant for a surgical assistant license must pass a surgical assistant examination approved by the medical board. Any written portion of the examination must be validated by an independent testing professional.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.205. SPECIAL ELIGIBILITY FOR LICENSE. (a) A person who is otherwise eligible for a license under Section 206.203 is not required to take the examination required by Section 206.203(b)(1) if the person:

(1) passed a surgical assistant examination required for certification under Section 206.203(b)(4) that the medical board determines is substantially equivalent to the examination required by the medical board under this chapter; and

(2) applies for a license under this section before September 1, 2002.

(b) A person who is otherwise eligible for a license under

Section 206.203 is not required to meet the educational requirements under Section 206.203(b)(2) if the person applies for a license under this section before September 1, 2002, and:

(1) will complete before the third anniversary of the date the license is issued under this subsection the following academic courses approved by the medical board:

- (A) anatomy;
- (B) physiology;
- (C) basic pharmacology;
- (D) aseptic techniques;
- (E) operative procedures;
- (F) chemistry; and
- (G) microbiology; or

(2) has been continuously certified since September 30, 1995, as a surgical assistant by a national certifying body approved by the medical board and has practiced full-time as a surgical assistant under the direct supervision of a physician licensed in this country.

(c) A license issued under Subsection (b)(1) may not be renewed after the third anniversary of the date of issuance unless the license holder completes the academic courses described by Subsection (b)(1).

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.206. TEMPORARY LICENSE. (a) The medical board may, through the executive director, issue a temporary license to an applicant who:

(1) submits an application on a form prescribed by the medical board;

(2) has passed an examination required by the medical board relating to the practice of surgical assisting;

(3) pays the appropriate fee set by the medical board;

(4) if licensed in another state, is licensed in good standing; and

(5) meets all the qualifications for a license under this chapter and is waiting for the next scheduled meeting of the medical board for the license to be issued.

(b) A temporary license is valid until the 100th day after the date issued and may be extended until the 130th day after the date issued.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.207. ASSISTANCE BY MEDICAL BOARD. The medical board shall provide administrative and clerical employees as necessary to administer this subchapter.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.208. FEES. (a) The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter without the use of any other funds generated by the medical board.

(b) Fees collected by the medical board under this chapter shall be deposited by the medical board in the state treasury to the credit of an account in the general revenue fund and may be spent to cover the costs of administering and enforcing this chapter. At the end of each fiscal biennium, the comptroller shall transfer any surplus money remaining in the account to the general revenue fund.

(c) All money paid to the medical board under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The medical board shall issue a surgical assistant license in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The medical board may delegate authority to board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the medical board. A license issued under this subsection does not require formal medical board approval.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.03, eff. September 1, 2005.

Sec. 206.210. LICENSE RENEWAL. (a) A surgical assistant license expires on the second anniversary of the date of issuance. The medical board by rule shall provide for the renewal of a surgical assistant license.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 886, Sec. 1, eff. Sept. 1, 2003.

Sec. 206.211. NOTICE OF LICENSE RENEWAL. At least 30 days before the expiration of a person's license, the medical board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.212. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board one and one-half times the required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by

paying to the medical board two times the required renewal fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.213. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) If the person was licensed as a surgical assistant in this state, moved to another state, and is currently licensed as a surgical assistant and has been in practice as a surgical assistant in the other state for the two years preceding application, the person may renew an expired surgical assistant license without reexamination.

(b) The person must pay to the medical board a fee that is equal to two times the required renewal fee for the license.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.214. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the medical board:

- (1) the license holder's mailing address;
- (2) the address of the license holder's residence;
- (3) the mailing address of each of the license holder's offices; and
- (4) the address for the location of each of the license holder's offices if that address is different from the office's mailing address.

(b) A license holder shall:

- (1) notify the medical board of a change of the license holder's residence or business address; and
- (2) provide the medical board with the license holder's new address not later than the 30th day after the date the address change occurs.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. SCOPE OF PRACTICE

Sec. 206.251. SCOPE OF PRACTICE. (a) The practice of a surgical assistant is limited to surgical assisting performed under the direct supervision of a physician who delegated the acts.

(b) The practice of a surgical assistant may be performed in any place authorized by a delegating licensed physician, including a clinic, hospital, ambulatory surgical center, or other institutional setting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.252. SERVICE CONTRACTS. This chapter does not:

(1) limit the employment arrangement of a surgical assistant licensed under this chapter;

(2) require a surgeon or hospital to contract with a surgical assistant;

(3) authorize a health maintenance organization, preferred provider organization, or health benefit plan to require a surgeon to contract with a surgical assistant; or

(4) require a hospital to use a licensed surgical assistant for surgical assisting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.2525. REIMBURSEMENT FOR SERVICES. (a) This chapter does not limit the way in which a surgical assistant licensed under this chapter may be reimbursed for services.

(b) A surgical assistant licensed under this chapter may directly bill a patient or third-party payor for services provided by the surgical assistant.

Added by Acts 2003, 78th Leg., ch. 886, Sec. 2, eff. Sept. 1, 2003.

Sec. 206.253. CERTAIN PROHIBITED PRACTICES. (a) This chapter does not authorize a person who holds a license issued under this chapter to engage in the practice of:

(1) medicine, as defined by Subtitle B; or

(2) nursing, as defined by Chapter 301.

(b) A health maintenance organization, preferred provider organization, or health benefit plan may not require a registered nurse or physician assistant to be licensed as a surgical assistant

as a condition for reimbursement.

(c) A clinic, hospital, ambulatory surgical center, or other facility may not require a registered nurse or physician assistant to be licensed as a surgical assistant as a condition for assisting at surgery at the facility.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.016, eff. Feb. 1, 2004.

Sec. 206.254. ESTABLISHMENT OF CERTAIN FUNCTIONS AND STANDARDS. A surgical assistant and the surgical assistant's delegating physician shall ensure that:

(1) the surgical assistant's scope of function is identified;

(2) the delegation of medical tasks is appropriate to the surgical assistant's level of competence;

(3) the relationship between the surgical assistant and the delegating physician and the access of the surgical assistant to the delegating physician are defined; and

(4) a process is established for evaluating the surgical assistant's performance.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. DISCIPLINARY PROCEEDINGS

Sec. 206.301. DISCIPLINARY ACTIONS BY THE MEDICAL BOARD.

(a) Except as provided by Section 206.305, on a determination that an applicant or license holder committed an act described by Section 206.302, 206.303, or 206.304, the medical board by order shall take any of the following actions:

(1) deny the person's license application or revoke the person's license;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the medical board;

(3) stay enforcement of an order and place the person on probation;

(4) require the person to complete additional training;

(5) suspend, limit, or restrict the person's license, including:

(A) limiting the practice of the person to, or excluding from the person's practice, one or more specified activities of surgical assisting; or

(B) stipulating periodic medical board review;

(6) assess an administrative penalty against the person as provided by Section 206.351;

(7) order the person to perform public service; or

(8) administer a public reprimand.

(b) If the medical board stays enforcement of an order and places a person on probation, the medical board retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section.

(c) The medical board may restore or reissue a license or remove any disciplinary or corrective measure that the medical board has imposed.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.302. CONDUCT RELATED TO FRAUD OR MISREPRESENTATION. The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) falsely represents that the person is a physician;

(4) acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public;

(5) fraudulently alters any surgical assistant license, certificate, or diploma;

(6) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(7) directly or indirectly aids or abets the practice

as a surgical assistant by any person not licensed by the medical board to practice as a surgical assistant; or

(8) unlawfully advertises in a false, misleading, or deceptive manner as defined by Section 101.201.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.303. CONDUCT RELATED TO VIOLATION OF LAW. (a) The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) violates this chapter or a rule adopted under this chapter;

(2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program; or

(3) violates state law if the violation is connected with practice as a surgical assistant.

(b) A complaint, indictment, or conviction of a law violation is not necessary for the medical board to act under Subsection (a)(3). Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.304. CONDUCT INDICATING LACK OF FITNESS. (a) The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) habitually uses drugs or intoxicating liquors to the extent that, in the medical board's opinion, the person cannot safely perform as a surgical assistant;

(2) has been adjudicated as mentally incompetent;

(3) has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(4) has committed an act of moral turpitude;

(5) has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;

(6) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted;

(7) has had other disciplinary action taken by another state or by the uniformed services of the United States regarding practice as a surgical assistant;

(8) is removed or suspended or has disciplinary action taken by the person's peers in any professional association or society or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the medical board, was based on unprofessional conduct or professional incompetence that was likely to harm the public;

(9) has repeated or recurring meritorious health care liability claims that, in the medical board's opinion, are evidence of professional incompetence likely to harm the public; or

(10) sexually abuses or exploits another person during the license holder's practice as a surgical assistant.

(b) For the purpose of Subsection (a)(7), a certified copy of the record of the state or uniformed services of the United States taking the action constitutes conclusive evidence of that action.

(c) An action described by Subsection (a)(8) does not constitute state action on the part of the association, society, or hospital medical staff.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.305. REHABILITATION ORDER. (a) The medical board, through an agreed order or after a contested case proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as a surgical assistant, if the person:

(A) reported the use;

(B) has not previously been the subject of a

substance abuse related order of the medical board; and

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as a surgical assistant with reasonable skill and safety because of illness or any other physical or mental condition.

(b) The medical board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The medical board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The medical board may disclose a rehabilitation order to a local or statewide private medical or surgical assistant association only as provided by Section 206.3075.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.04, eff. September 1, 2005.

Sec. 206.306. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 206.305 is a nondisciplinary private order. If entered into by agreement, the order is an agreed disposition or settlement agreement for purposes of civil litigation and is exempt from Chapter 552, Government Code.

(b) The rehabilitation order must contain findings of fact and conclusions of law. The order may impose a license revocation or suspension, a period of probation or restriction, or any other sanction authorized by this chapter or agreed to by the medical board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under this chapter or under the terms of the agreed order.

(d) A violation of a rehabilitation order is grounds for disciplinary action based on:

(1) unprofessional or dishonorable conduct; or

(2) any provision of this chapter that applies to the conduct that resulted in the violation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.307. AUDIT OF REHABILITATION ORDER. (a) The medical board shall maintain a rehabilitation order imposed under Section 206.305 in a confidential file. The file is subject to an independent audit by the state auditor or a private auditor with whom the board contracts to perform the audit to ensure that only qualified license holders are subject to rehabilitation orders.

(b) An audit may be performed at any time at the direction of the medical board. The medical board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are a matter of public record and shall be reported in a manner that maintains the confidentiality of each license holder who is the subject of a rehabilitation order.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

(a) If a rehabilitation order imposed under Section 206.305 requires a license holder to participate in activities or programs provided by a local or statewide private medical or surgical assistant association, the medical board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the surgical assistant's rehabilitation.

(b) The medical board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery,

subpoena, or other means of legal compulsion, and may be disclosed only to the medical board.

Added by Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.05, eff. September 1, 2005.

Sec. 206.308. SUBPOENA. (a) The executive director, the director's designee, or the secretary-treasurer of the board may issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a surgical assistant;

(B) an alleged violation of this chapter or another law related to the practice of a surgical assistant; or

(C) the provision of health care under this chapter;

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a license under this chapter; or

(3) for purposes of determining whether to issue or deny a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the medical board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a license application.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.309. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the medical board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.310. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of practice adopted under this chapter by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.311. REQUIRED SUSPENSION OF INCARCERATED SURGICAL ASSISTANT. Regardless of the offense, the medical board shall suspend the license of a surgical assistant serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.312. TEMPORARY SUSPENSION. (a) The president of the medical board, with medical board approval, shall appoint a three-member disciplinary panel consisting of medical board members to determine whether a surgical assistant's license should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence or information presented to the panel that a person licensed to practice as a surgical assistant would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the medical board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the disciplinary panel at one location is inconvenient for any member of the panel.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board by rule shall adopt procedures under this chapter governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the medical board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the informal meeting after that date;

(2) the medical board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the medical board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the medical board's legal counsel or a representative of the attorney general be present to advise the medical board or the board's staff; and

(6) a member of the medical board's staff be at the meeting to present to the panel the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected surgical assistant is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the surgical assistant reasonably believes the surgical assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the medical board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a

recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the medical board, the board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.06, eff. September 1, 2005.

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A medical board or district review committee member that serves as a panelist at an informal meeting under Section 206.313 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected surgical assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected surgical assistant have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the board

employees' presentation and to present oral and written statements and facts that the surgical assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected surgical assistant, the surgical assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the medical board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected surgical assistant has violated a statute or medical board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected surgical assistant and the surgical assistant's authorized representative. The surgical assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the surgical assistant rejects the proposed settlement or does not act within the required time, the medical board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.06, eff. September 1, 2005.

Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 206.313, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) The medical board may request members of a committee under Chapter 163 to participate in an informal meeting under Section 206.313.

(c) Notwithstanding Subsection (a) and Section 206.313(b)(4), an informal proceeding may be conducted by one

panelist if the affected surgical assistant waives the requirement that at least two panelists conduct the informal proceeding. If the surgical assistant waives that requirement, the panelist may be either a physician or a member who represents the public.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the medical board under Section 206.313 to show compliance with an order of the board. Added by Acts 2005, 79th Leg., Ch. [269](#), Sec. 4.06, eff. September 1, 2005.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 206.351. ADMINISTRATIVE PENALTY. (a) The medical board by order may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The medical board shall base the amount of the penalty on:

- (1) the severity of patient harm;
- (2) the severity of economic harm to any person;
- (3) the severity of any environmental harm;
- (4) the increased potential for harm to the public;
- (5) any attempted concealment of misconduct;
- (6) any premeditated or intentional misconduct;
- (7) the motive for the violation;
- (8) any prior misconduct of a similar or related nature;
- (9) the license holder's disciplinary history;
- (10) any prior written warnings or written admonishments from any government agency or official regarding statutes or rules relating to the misconduct;
- (11) whether the violation is of a board order;
- (12) the person's failure to implement remedial measures to correct or mitigate harm from the misconduct;

(13) the person's lack of rehabilitative potential or likelihood of future misconduct of a similar nature;

(14) any relevant circumstances increasing the seriousness of the misconduct; and

(15) any other matter that justice may require.

(d) The medical board by rule shall prescribe the procedures by which it may impose an administrative penalty. A proceeding under this section is subject to Chapter 2001, Government Code.

(e) If the medical board by order determines that a violation has occurred and imposes an administrative penalty, the medical board shall give notice to the person of the order. The notice must include a statement of the person's right to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.