

TEXAS MEDICAL BOARD RULES
Texas Administrative Code, Title 22, Part 9
Proposed Changes

Chapter 184
Surgical Assistants

Draft – July 22, 2011
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§184.1. Purpose

These rules are promulgated under the authority Medical Practice Act Title 3, Subtitle B, Tex. Occ. Code and the Surgical Assistants Act, Tex. Occ. Code Ann. Ch. 206. The purpose of these rules is to establish requirements for the education, training, and professional behavior for persons who identify themselves as licensed surgical assistants without a financial burden to the people of Texas. Furthermore, the purpose of these rules and regulations is to also encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to licensed surgical assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in a surgical setting and who are not rendering services as a surgical assistant or identifying themselves as a licensed surgical assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. In addition, nothing in these rules and regulations shall be construed to require licensure as a surgical assistant for those individuals who are exempted, including registered nurses and physician assistants, under §206.002 of the Act.

§184.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--Title 3, Subtitle C, Tex. Occ. Code Ann. Ch. 206.
- (2) Address of record--The mailing address of each licensee or applicant as provided to the agency pursuant to the Act.
- (3) Advisory committee--An informal advisory committee to the board whose purpose is to advise the board regarding rules relating to the licensure, enforcement, and discipline of surgical assistants.
- (4) APA--Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.
- (5) Applicant--A person seeking a surgical assistant license from the board.
- (6) Board--The Texas Medical Board.
- (7) Delegating physician--A physician licensed by the board who delegates, to a licensed surgical assistant, surgical assisting and oversees and accepts responsibility for that surgical assisting.
- (8) Direct supervision--supervision by a delegating physician who is physically present and personally directs delegated acts, and remains immediately available in the operating room to respond to any emergency until the patient is released from the operating room or care and has been transferred to another physician.
- (9) Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

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(10) Surgical assistant--A person licensed as a surgical assistant by the Texas Medical Board.

(11) Surgical or first assisting--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.

§184.3. Meetings.

(a) The advisory committee shall meet as requested by the board to carry out the mandates of the Act.

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

(c) Special meetings may be called by the president of the board, by resolution of the board, or upon written request to the presiding officer of the board signed by at least three members of the board.

(d) Advisory committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the board adopts a different procedure.

(e) All issues requiring a vote of the committee shall be decided by a simple majority of the members present.

§184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a surgical assistant;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good moral character;

(8) not have been convicted of a felony or a crime involving moral turpitude;

(9) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(10) not have engaged in fraud or deceit in applying for a license;

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(11) pass an independently evaluated surgical or first assistant examination approved by the board;

(12) have been awarded at least an associate's degree at a two or four year institution of higher education;

(13) have successfully completed an educational program as set forth in subparagraphs (A) and (B) of this paragraph;

(A) A surgical assistant program accredited by Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

(B) a substantially equivalent program that is one of the following:

(i) a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;

(ii) a registered nurse first assistant program that is approved by the Texas Board of Nursing for purposes of licensure as a registered nurse by; and

(iii) an accredited surgical physician assistant program that is approved by the Texas Physician Assistant Board for purposes of physician assistant licensure.

(C) The curriculum of an educational program listed in subparagraphs (A) and (B) of this paragraph must include at a minimum, either as a part of that curriculum or as a required prerequisite, successful completion of college level instruction in the following courses:

- (i) anatomy;
- (ii) physiology;
- (iii) basic pharmacology;
- (iv) aseptic techniques;
- (v) operative procedures;
- (vi) chemistry;
- (vii) microbiology; and
- (viii) pathophysiology.

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

(15) be currently certified by a national certifying board approved by the board; and

(16) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:

(1) American Board of Surgical Assistants;

(2) National Board of Surgical Technology and Surgical Assisting (NBSTSA) formerly known as Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) the National Surgical Assistant Association provided that the exam was administered on or after March 29, 2003.

(c) Alternative License Procedure for Military Spouse.

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(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(i) holds an active unrestricted surgical assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas surgical assistant license; or

(ii) within the five years preceding the application date held a surgical assistant license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(3) Applications for licensure from applicants qualifying under §184.4 shall be expedited by the board's licensure division.

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under §184.4, notwithstanding:

(i) the one year expiration in §184.5(a)(2), are allowed an additional 6 months to complete the application prior to it becoming inactive; and

(ii) the 20 day deadline in §184.5(a)(6), may be considered for permanent licensure up to 5 days prior to the board meeting; and

(iii) the requirement to produce a copy of a valid and current certificate from a board approved national certifying organization in §184.6(b)(4), may substitute certification from a board approved national certifying organization if it is made on a valid examination transcript.

§184.5. Procedural Rules for Licensure Applicants.

(a) An applicant for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

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(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

~~[-(2) whose application has been on file with the board in excess of one year from the date of receipt, shall be considered inactive. Any fees previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee;]~~

(3) who in any way falsifies the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are received by the board;

(6) must have the application for licensure complete in every detail at least 20 days prior to the board meeting at which the applicant is considered for licensure. An applicant may qualify for a temporary license prior to being considered by the board for licensure, as required by §184.7 of this title (relating to Temporary Licensure); and

(7) must complete an oath swearing that the applicant has submitted an accurate and complete application.

(b) The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by the board's licensure committee within 20 days of receipt of such notice, and the executive director may refer any application to the licensure committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons, shall be submitted to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A surgical assistant whose application for licensure is

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denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Tex. Gov't Code, Ch. 552. The board may disclose such reports to appropriate licensing authorities in other states.

§184.6. Licensure Documentation.

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination verification. Each applicant for licensure must have the appropriate testing service that administered the surgical assistant examination submit directly to the board verification of the applicant's passage of the examination.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted directly from the program, unless the applicant qualifies for the special eligibility provision regarding education under §184.4(a)(13)(B) [↔] of this title (relating to Qualifications for Licensure).

(5) Transcripts. Each applicant must have his or her educational program(s) submit a transcript of courses taken and grades obtained to demonstrate compliance with curriculum requirements under §184.4(a)(13)(C).

(6) [↔] Evaluations.

(A) All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §184.4(a)(13) of this chapter (relating to Qualifications for Licensure), whichever is the shorter period.

(B) The evaluations must come from at least three physicians who have each supervised the applicant for more than 100 hours or a majority of the applicant's work experience.

(C) An exception to subparagraph (B) of this paragraph may be made for those applicants who provide adequate documentation that they have not been supervised by at

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least three physicians for the three years preceding the board's receipt of application or since graduation, whichever is the shorter period.

(7) ~~[(6)]~~ Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(8) ~~[(7)]~~ License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20____." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance disorder or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

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(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance disorder must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for medical licensure.

(d) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

§184.7. Temporary Licensure.

(a) The executive director of the board may issue a temporary license to an applicant:

(1) whose completed application has been filed, processed, and found to be in order; and

(2) who has met all other requirements for licensure under the Act but is waiting for the next scheduled meeting of the board for the license to be issued.

(b) A temporary license is valid for 100 days from the date issued and may be extended for not more than an additional 30 days after the expiration date of the initial temporary license.

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§184.8. License Renewal.

(a) Surgical assistants licensed by the board shall register biennially and pay a fee. A surgical assistant may, on notification from the board, renew an unexpired license by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, residence, the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board may prorate the length of the initial surgical assistant registration and registration fees, so that registrations expire on a single date, regardless of the board meeting at which the surgical assistant is licensed.

(c) The board shall provide written notice to each practitioner at the practitioner's address of record at least 30 days prior to the expiration date of the license.

(d) Within 30 days of a surgical assistant's change of mailing, residence or office address from the address on file with the board, a surgical assistant shall notify the board in writing of such change.

(e) A licensee shall furnish a written explanation of his or her affirmative answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(f) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

(g) Expired Annual Registration Permits.

(1) If a surgical assistant's registration permit has been expired for 90 days or less, the surgical assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, and the penalty fee, as defined in §175.3(2) of this title (relating to Penalties).

(2) If a surgical assistant's registration permit has been expired for longer than 90 days but less than one year, the surgical assistant may obtain a new permit by submitting a completed permit application, the registration fee, and a penalty fee as defined in §175.3(2) of this title.

(3) If a surgical assistant's registration permit has been expired for one year or longer, the surgical assistant's license is automatically canceled, unless an investigation is pending, and the surgical assistant may not obtain a new permit.

(4) A surgical assistant may not hold himself out as a licensed surgical assistant if he holds an expired permit.

§184.9. Relicensure.

If a surgical assistant's license has been expired for one year or longer, the license is considered to have been canceled, unless an investigation is pending, and the person may not renew the

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license. The surgical assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

§184.12. Surgical Assistant Scope of Practice.

The practice of surgical assisting is limited to surgical assisting performed under the direct supervision of a physician who delegates the acts. A surgical assistant may practice in any place authorized by a delegating licensed physician, including, but not limited to a clinic, hospital, ambulatory surgical center, or other institutional setting.

§184.13. Physician Supervision.

(a) Supervision shall be continuous, and shall require that the delegating physician be physically present and immediately available in the operating room to personally respond to any emergency until the patient is released from the operating room and care has been transferred to another physician. Telecommunication is insufficient for supervision purposes.

(b) It is the obligation of each team of physician(s) and surgical assistant(s) to ensure that:

- (1) the surgical assistant's scope of practice is identified;
- (2) delegation of medical tasks is appropriate to the surgical assistant's level of competence;
- (3) the relationship between the members of the team is defined;
- (4) that the relationship of, and access to, the supervising physician is defined;
- (5) a process for evaluation of the surgical assistant's performance is established;

and

(6) the physician and surgical assistant comply with the provisions of Chapter 193 of this title (relating to Standing Delegation Orders) when applicable.

§184.14. Supervising Physician.

To be authorized to supervise a surgical assistant, a physician must be currently licensed as a physician in this state by the medical board. The license must be unrestricted and active.

§184.15. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing as provided for in the APA, take disciplinary action against any surgical assistant that:

- (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) violates the Act, or any rules relating to the practice of surgical assisting;
- (5) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;

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(6) habitually uses drugs or alcohol to the extent that, in the opinion of the board, the person cannot safely perform as a surgical assistant;

(7) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(8) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;

(9) has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure any member of the public;

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

(11) has committed any act that is in violation of the laws of this state if the act is connected with practice as a surgical assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. 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 board under this section;

(12) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a surgical assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) unlawfully advertises in a false, misleading, or deceptive manner as defined by §101.201 of the Tex. Occ. Code;

(14) alters, with fraudulent intent, any surgical assistant license, certificate, or diploma;

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

(16) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society is local, regional, state, or national in scope, 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 board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(17) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(18) sexually abuses or exploits another person during the licensee's practice as a surgical assistant.

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§184.16. Discipline of Surgical Assistants.

(a) The board, upon finding a surgical assistant has committed any of the acts set forth in (184.15 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), shall enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice as a surgical assistant;

(2) administer a public reprimand;

(3) order revocation, suspension, limitation, or restriction of a surgical assistant's license, or other authorization to practice as a surgical assistant, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a surgical assistant or stipulating periodic board review;

(4) require a surgical assistant to submit to care, counseling, or treatment by a health care practitioner designated by the board;

(5) order the surgical assistant to perform public service;

(6) require the surgical assistant to complete additional training;

(7) require the surgical assistant to participate in continuing education programs;

or

(8) assess an administrative penalty against the surgical assistant.

(b) The board may stay enforcement of any order and place the surgical assistant on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or to impose any other remedial measures or sanctions authorized by subsection (a) of this section in addition to or instead of enforcing the original order.

(c) A private nondisciplinary rehabilitation order may impose one or more of the above board actions or such other actions as agreed to by the board and the person subject to the order.

(d) The time period of an order shall be extended for any period of time in which the person subject to an order subsequently resides or practices outside this state or for any period during which the person's license is subsequently cancelled for nonpayment of licensure fees.

§184.17. Disciplinary Guidelines.

(a) Chapter 190 of this title (relating to Disciplinary Guidelines) shall apply to surgical assistants regulated under this chapter to be used as guidelines for the following areas as they relate to the denial of licensure or disciplinary action of a licensee:

(1) practice inconsistent with public health and welfare;

(2) unprofessional and dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) repeated and recurring meritorious health care liability claims; and

(5) aggravating and mitigating factors.

(b) If the provisions of Chapter 190 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

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§184.18. Administrative Penalties.

(a) Pursuant to §206.351 of the Act, the board by order may impose an administrative penalty, in accordance with and subject to §§187.75 - 187.82 of this title (relating to the Imposition of Administrative Penalty), against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act.

(b) The penalty for a violation 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 amount of the penalty shall be based on the factors set forth under the Act, §206.351(c) and Chapter 190 of this title (relating to Disciplinary Guidelines).

(d) Consistent with the Act, §206.351(e), if the board by order determines that a violation has occurred and imposes an administrative penalty on a person licensed or regulated under the Act, the board shall give notice to the person of the board's order which shall include a statement of the right of the person to seek judicial review of the order.

(e) An administrative penalty may be imposed under this section for the following:

(1) failure to timely comply with a board subpoena issued by the board pursuant to §206.308 of the Act and board rules shall be grounds for the imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(2) failure to timely comply with the terms, conditions, or requirements of a board order shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(3) failure to timely report a change of address to the board shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(4) failure to timely respond to a patient's communications shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(5) failure to comply with the complaint procedure notification requirements as set forth in §184.19 of this title (relating to Complaint Procedure Notification) shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation;

(6) failure to provide show compliance proceeding information in the prescribed time shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation; and

(7) for any other violation other than quality of care that the board deems appropriate shall be grounds for imposition of an administrative penalty of no less than \$100 and no more than \$5,000 for each separate violation.

(f) In the case of untimely compliance with a board order, the board staff shall not be authorized to impose an administrative penalty without an informal show compliance proceeding if the person licensed or regulated under the Act has not first been brought into compliance with the terms, conditions, and requirements of the order other than the time factors involved.

(g) Any order proposed under this section shall be subject to final approval by the board.

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(h) Failure to pay an administrative penalty imposed through an order shall be grounds for disciplinary action by the board pursuant to the Act, §206.302(a)(4), regarding unprofessional or dishonorable conduct likely to deceive or defraud, or injure the public, and shall also be grounds for the executive director to refer the matter to the attorney general for collection of the amount of the penalty.

(i) A person who becomes financially unable to pay an administrative penalty after entry of an order imposing such a penalty, upon a showing of good cause by a writing executed by the person under oath and at the discretion of the Disciplinary Process Review Committee of the board, may be granted an extension of time or deferral of no more than one year from the date the administrative penalty is due. Upon the conclusion of any such extension of time or deferral, if payment has not been made in the manner and in the amount required, action authorized by the terms of the order or subsection (h) of this section and the Act, §206.301(a)(4) may be pursued.

§184.19. Complaint Procedure Notification.

Pursuant to §206.153 of the Act, §178.3 of this title (relating to Complaint Procedure Notification) shall govern surgical assistants with regard to methods of notification for filing complaints with the agency. If the provisions of §178.3 of this title conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.20. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline.

(b) Permitted disclosure of investigative information. Investigative information in the possession of the board or its employees or agents that relates to discipline of a licensee and information contained in such files may not be disclosed except in the following circumstances:

(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia or a territory or country where the surgical assistant is licensed, registered, or certified or has applied for a license or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed and the board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of licensees by providing information relevant to the criminal investigation to the investigating agency and any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation;

(3) to a health-care entity upon receipt of written request. Disclosures by the board to a health-care entity shall include only information about a complaint filed against a

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surgical assistant that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis 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; and

(4) to other persons if required during the investigation.

(c) Reports to the Board.

(1) Relevant information required to be reported to the board pursuant to §206.159 of the Act, indicating that a surgical assistant's practice poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that a surgical assistant's practice constitutes a continuing threat to the public's welfare shall be made as soon as possible after the peer review committee, quality assurance committee, surgical assistant, surgical assistant student, physician or any person usually present in the operating room, including a nurse or surgical technologist involved reaches that conclusion and is able to assemble the relevant information.

§184.21. Impaired Surgical Assistants.

(a) Mental or physical examination requirement. The board may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the board, medical board, or the State Office of Administrative Hearings that a certain licensee is impaired;

(2) a sworn statement from an official representative of the Texas Society of Surgical Assistants stating that the representative is willing to testify before the board that a certain licensee is impaired;

(3) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(4) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(5) evidence of repeated arrests of a licensee for intoxication;

(6) evidence of recurring temporary commitments of a licensee to a mental institution; or

(7) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice.

(b) Rehabilitation Order. The board through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee, or as a prerequisite for licensure, on any licensure applicant. Chapter 180 of this title (relating to Rehabilitation Orders) shall govern procedures relating to surgical assistants who are found eligible for a rehabilitation order. If the provisions of Chapter 180 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

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§184.22. Procedure.

Chapter 187 of this title (relating to Procedural Rules) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 187 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.23. Compliance.

Chapter 189 of this title (relating to Compliance) shall be applied to surgical assistants who are under board orders. If the provisions of Chapter 189 conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

§184.24. Construction.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Act and the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Acts, the provisions of the Acts shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Acts shall remain in effect.

§184.25. Continuing Education.

(a) As a prerequisite to the registration of a surgical assistant's license, 18 hours of continuing education (CE) in surgical assisting or in courses that enhance the practice of surgical assisting are required to be completed every 12 months in the following categories:

(1) at least 9 of the annual hours are to be from formal courses that are:

(A) designated for AMA/PRA Category I credit by a CE sponsor accredited by the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the Association of Surgical Technologists/ Association of Surgical Assistants, the American Board of Surgical Assistants, or the National Surgical Assistants Association;

(C) approved by the Texas Medical Association based on standards established by the AMA; or

(D) designated for AOA Category 1-A credit approved by the American Osteopathic Association.

(2) At least one of the annual formal hours of CE which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CE involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 9 hours each year may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CE, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

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(b) A licensed surgical assistant must report on the license renewal application if he or she has completed the required continuing education since the licensee last registered with the board. A licensee who timely registers, may apply CE credit hours retroactively to the preceding year's annual requirement, however, those hours may be counted only toward one registration permit. A licensee may carry forward CE credit hours earned prior to a registration report which are in excess of the 18-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 36 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CE credit hours of any type may not be carried forward or applied to an annual report of CE more than two years beyond the date of the annual registration following the period during which the hours were earned.

(c) A licensed surgical assistant may request in writing an exemption for the following reasons:

- (1) catastrophic illness;
- (2) military service of longer than one year's duration outside the state;
- (3) residence of longer than one year's duration outside the United States; or
- (4) good cause shown submitted in writing by the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing education.

(d) Exemptions are subject to the approval of the executive director of the board and must be requested in writing at least 30 days prior to the expiration date of the license.

(e) An exception under subsection (c) of this section may not exceed one year but may be requested annually, subject to the approval of the executive director of the board.

(f) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of continuing education or of specific course subjects.

(g) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(h) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the 18 hours of CE as required annually and provided for in this section shall result in the denial of licensure renewal until such time as the licensee obtains and reports the required CE hours; however, the executive director of the board may issue to such a surgical assistant a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the surgical assistant who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) CE hours that are obtained to comply with the CE requirements for the preceding year as a prerequisite for obtaining licensure renewal, shall first be credited to meet the CE requirements for the previous year. Once the previous year's CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current year.

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(j) A false report or statement to the board by a licensee regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §§206.302-.304 of the Act and §§164.051-.053 of the Medical Practice Act, Tex. Occ. Code Ann. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the surgical assistant's license, but in no event shall such action be less than an administrative penalty of \$500.

(k) Administrative penalties for failure to timely obtain and report required CE hours may be determined by the Disciplinary Process Review Committee of the board as provided for in §184.19 of this chapter (relating to Administrative Penalties).

(l) Unless otherwise exempted under the terms of this section, failure to obtain and timely report CE hours for the renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in Chapter 175 of this title (relating to Fees, Penalties, and Applications). Any temporary CE licensure fee and any administrative penalty imposed for failure to obtain and timely report the 18 hours of CE required annually for renewal of a license shall be in addition to the applicable penalties for late registration or as set forth in Chapter 175 of this title (relating to Fees, Penalties and Applications).

§184.26. Voluntary Relinquishment or Surrender of a License.

Chapter 196 of this title (relating to Voluntary Relinquishment or Surrender of a Medical License) shall govern procedures relating to surgical assistants where applicable. If the provisions of Chapter 196 of this title conflict with the Surgical Assistant Act or rules under this chapter, the Surgical Assistant Act and provisions of this chapter shall control.