

AN ACT concerning professional regulation.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act.

Section 5. Legislative purpose. The purpose of this Act is to protect and benefit the public by setting standards of qualifications, education, training, and experience for those who seek to hold the title of registered surgical assistant and registered surgical technologist.

Section 10. Definitions. As used in this Act:

"Department" means the Department of Professional Regulation.

"Direct supervision" means supervision by an operating physician, licensed podiatrist, or licensed dentist who is physically present and who personally directs delegated acts and remains available to personally respond to an emergency until the patient is released from the operating room. A registered professional nurse may also provide direct supervision within the scope of his or her license. A registered surgical assistant or registered surgical technologist shall perform duties as assigned.

"Director" means the Director of Professional Regulation.

"Physician" or "operating physician" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987.

"Registered surgical assistant" means a person who (i) is not licensed to practice medicine in all of its branches, (ii) is certified by the National Surgical Assistant

Association on the Certification of Surgical Assistants, the Liaison Council on Certification for the Surgical Technologist as a certified first assistant, or the American Board of Surgical Assisting, (iii) performs duties under direct supervision, (iv) provides services only in a licensed hospital, ambulatory treatment center, or office of a physician licensed to practice medicine in all its branches, and (v) is registered under this Act.

"Registered surgical technologist" means a person who (i) is not a physician licensed to practice medicine in all of its branches, (ii) is certified by the Liaison Council on Certification for the Surgical Technologist, (iii) performs duties under direct supervision, (iv) provides services only in a licensed hospital, ambulatory treatment center, or office of a physician licensed to practice medicine in all its branches, and (v) is registered under this Act.

Section 15. Powers and duties of the Department.

(a) The Department shall exercise the powers and duties prescribed by the Civil Administrative Code of Illinois and shall exercise any other powers and duties necessary for effectuating the purposes of this Act.

(b) The Department may adopt rules consistent with the provisions of this Act for its administration and enforcement and may prescribe forms that shall be issued in connection with this Act. The rules may include but are not limited to criteria for registration, professional conduct, and discipline.

Section 20. Illinois Administrative Procedure Act; rules.

(a) The Illinois Administrative Procedure Act is expressly adopted and incorporated in this Act as if all of the provisions of the Illinois Administrative Procedure Act

were included in this Act, except that the provision of subsection (d) of Section 10-65 of the Illinois Administrative Procedure Act that provides that at hearings the registrant has the right to show compliance with all lawful requirements for retention, continuation, or renewal of the registration is specifically excluded. For purposes of this Act, the notice required under Section 10-25 of the Illinois Administrative Procedure Act is deemed sufficient when mailed to the last known address of a party.

(b) The Director may promulgate rules for the administration and enforcement of this Act and may prescribe forms to be issued in connection with this Act.

Section 25. Application for registration. An application for an initial registration shall be made to the Department in writing on forms prescribed by the Department and shall be accompanied by the required nonrefundable fee. An application shall require information that, in the judgment of the Department, will enable the Department to evaluate the qualifications of an applicant for registration.

If an applicant fails to obtain a certificate of registration under this Act within 3 years after filing his or her application, the application shall be denied. The applicant may make a new application, which shall be accompanied by the required nonrefundable fee.

Section 30. Social Security Number on registration application. In addition to any other information required to be contained in the application, every application for an original, renewal, or restored certificate of registration under this Act shall include the applicant's Social Security Number.

Section 35. Title protection. No person shall hold

himself or herself out as a registered surgical assistant or registered surgical technologist without being so registered by the Department. This is title protection and not licensure by the Department.

Section 40. Application of Act. This Act shall not be construed to prohibit the following:

(1) A person licensed in this State under any other Act from engaging in the practice for which he or she is licensed, including but not limited to a physician licensed to practice medicine in all its branches, physician assistant, advanced practice registered nurse, or nurse performing surgery-related tasks within the scope of his or her license, nor are these individuals required to be registered under this Act.

(2) A person from engaging in practice as a surgical assistant or surgical technologist in the discharge of his or her official duties as an employee of the United States government.

(3) One or more registered surgical assistants from forming a professional service corporation in accordance with the Professional Service Corporation Act and applying for licensure as a corporation providing surgical assistant services.

(4) A student engaging in practice as a surgical assistant or surgical technologist under the direct supervision of a physician licensed to practice medicine in all of its branches as part of his or her program of study at a school approved by the Department or in preparation to qualify for the examination as prescribed under Sections 45 and 50 of this Act.

(5) A person from assisting in surgery at an operating physician's discretion, including but not limited to medical students and residents, nor are

medical students and residents required to be registered under this Act.

(6) A hospital, health system or network, ambulatory surgical treatment center, physician licensed to practice medicine in all its branches, physician medical group, or other entity that provides surgery-related services from employing individuals that the entity considers competent to assist in surgery. These entities are not required to utilize registered surgical assistants or registered surgical technologists when providing surgery-related services to patients. Nothing in this subsection shall be construed to limit the ability of an employer to utilize the services of any person to assist in surgery within the employment setting consistent with the individual's skill and training.

Section 45. Registration requirements; surgical assistant. A person shall qualify for registration as a surgical assistant if he or she has applied in writing on the prescribed form, has paid the required fees, and meets all of the following requirements:

(1) Is at least 21 years of age.

(2) Has not violated a provision of Section 95 of this Act. In addition the Department may take into consideration any felony conviction of the applicant, but a conviction shall not operate as an absolute bar to registration.

(3) Has completed a medical education program approved by the Department or has graduated from a United States Military Program that emphasized surgical assisting.

(4) Has successfully completed a national certifying examination approved by the Department.

(5) Is currently certified by the National Surgical

Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification for the Surgical Technologist as a certified first assistant, or the American Board of Surgical Assisting.

Section 50. Registration requirements; surgical technologist. A person shall qualify for registration as a surgical technologist if he or she has applied in writing on the prescribed form, has paid the required fees, and meets all of the following requirements:

(1) Is at least 18 years of age.

(2) Has not violated a provision of Section 95 of this Act. In addition the Department may take into consideration any felony conviction of the applicant, but a conviction shall not operate as an absolute bar to registration.

(3) Has completed a surgical technologist program approved by the Department.

(4) Has successfully completed the surgical technologist national certification examination provided by the Liaison Council on Certification for the Surgical Technologist or its successor agency.

(6) Is currently certified by the Liaison Council on Certification for the Surgical Technologist or its successor agency and has met the requirements set forth for certification.

Section 55. Supervision requirement. A person registered under this Act shall practice as a surgical assistant only under direct supervision.

Section 60. Expiration; restoration; renewal. The expiration date and renewal period for each certificate of registration issued under this Act shall be set by the

Department by rule. Renewal shall be conditioned on paying the required fee and meeting other requirements as may be established by rule.

A registrant who has permitted his or her registration to expire or who has had his or her registration on inactive status may have the registration restored by making application to the Department, by filing proof acceptable to the Department of his or her fitness to have the registration restored, and by paying the required fees. Proof of fitness may include sworn evidence certifying to active lawful practice in another jurisdiction.

If the registrant has not maintained an active practice in another jurisdiction satisfactory to the Department, the Department shall determine, by an evaluation program established by rule, his or her fitness for restoration of the registration and shall establish procedures and requirements for restoration. However, a registrant whose registration expired while he or she was (1) in federal service on active duty with the Armed Forces of the United States or the State Militia called into service or training or (2) in training or education under the supervision of the United States before induction into the military service, may have the registration restored without paying any lapsed renewal fees if within 2 years after honorable termination of the service, training, or education he or she furnishes the Department with satisfactory evidence to the effect that he or she has been so engaged and that his or her service, training, or education has been so terminated.

Section 65. Inactive status. A registrant who notified the Department in writing on forms prescribed by the Department may elect to place his or her registration on inactive status and shall, subject to rules of the Department, be excused from payment of renewal fees until he

or she notifies the Department in writing of his or her intention to restore the registration. A registrant requesting restoration from inactive status shall pay the current renewal fee and shall restore his or her registration in accordance with Section 60 of this Act. A registrant whose license is on inactive status shall not hold himself or herself out as a registered surgical assistant or registered surgical technologist. To do so shall be grounds for discipline under Section 75 of this Act.

Section 70. Fees; returned checks.

(a) The Department shall set by rule fees for the administration of this Act, including but not limited to fees for initial and renewal registration and restoration of a certificate of registration.

(b) A person who delivers a check or other payment to the Department that is returned to the Department unpaid by the financial institution upon which it is drawn shall pay to the Department, in addition to the amount already owed to the Department, a fine of \$50. The fines imposed by this Section are in addition to any other discipline provided under this Act. The Department shall notify the person that fees and fines shall be paid to the Department by certified check or money order within 30 calendar days of the notification. If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the Department shall automatically terminate the registration or deny the application without a hearing. If the person seeks a license after termination or denial, he or she shall apply to the Department for restoration or issuance of the license and pay all fees and fines due to the Department. The Department may establish a fee for the processing of an application for restoration of a license to defray the expenses of processing the application. The

Director may waive the fines due under this Section in individual cases if the Director finds that the fines would be unreasonable or unnecessarily burdensome.

(c) All of the fees and fines collected under this Act shall be deposited into the General Professions Dedicated Fund. All moneys in the Fund shall be used by the Department, as appropriated, for the ordinary and contingent expenses of the Department.

Section 75. Grounds for disciplinary action.

(a) The Department may refuse to issue, renew, or restore a registration, may revoke or suspend a registration, or may place on probation, censure, reprimand, or take other disciplinary action with regard to a person registered under this Act, including but not limited to the imposition of fines not to exceed \$5,000 for each violation, for any one or combination of the following causes:

(1) Making a material misstatement in furnishing information to the Department.

(2) Violating a provision of this Act or its rules.

(3) Conviction under the laws of a United States jurisdiction of a crime that is a felony or a misdemeanor, an essential element of which is dishonesty, or of a crime that is directly related to the practice as a surgical assistant or surgical technologist.

(4) Making a misrepresentation for the purpose of obtaining, renewing, or restoring a registration.

(5) Wilfully aiding or assisting another person in violating a provision of this Act or its rules.

(6) Failing to provide information within 60 days in response to a written request made by the Department.

(7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, as defined by rule of the

Department.

(8) Discipline by another United States jurisdiction or foreign nation, if at least one of the grounds for discipline is the same or substantially equivalent to those set forth in this Section.

(9) Directly or indirectly giving to or receiving from a person, firm, corporation, partnership, or association a fee, commission, rebate, or other form of compensation for professional services not actually or personally rendered.

(10) A finding by the Department that the registrant, after having his or her registration placed on probationary status, has violated the terms of probation.

(11) Wilfully making or filing false records or reports in his or her practice, including but not limited to false records or reports filed with State agencies.

(12) Wilfully making or signing a false statement, certificate, or affidavit to induce payment.

(13) Wilfully failing to report an instance of suspected child abuse or neglect as required under the Abused and Neglected Child Reporting Act.

(14) Being named as a perpetrator in an indicated report by the Department of Children and Family Services under the Abused and Neglected Child Reporting Act and upon proof by clear and convincing evidence that the licensee has caused a child to be an abused child or neglected child as defined in the Abused and Neglected Child Reporting Act.

(15) Employment of fraud, deception, or any unlawful means in applying for or securing a license as a surgical assistant.

(16) Failure to report to the Department (A) any adverse final action taken against the registrant by

another registering or licensing jurisdiction, government agency, law enforcement agency, or any court or (B) liability for conduct that would constitute grounds for action as set forth in this Section.

(17) Habitual intoxication or addiction to the use of drugs.

(18) Physical illness, including but not limited to deterioration through the aging process or loss of motor skills, which results in the inability to practice the profession for which he or she is registered with reasonable judgment, skill, or safety.

(19) Gross malpractice resulting in permanent injury or death of a patient.

(20) Immoral conduct in the commission of an act related to the registrant's practice, including but not limited to sexual abuse, sexual misconduct, or sexual exploitation.

(21) Violation of the Health Care Worker Self-Referral Act.

(b) The Department may refuse to issue or may suspend the registration of a person who fails to file a return, to pay the tax, penalty, or interest shown in a filed return, or to pay a final assessment of the tax, penalty, or interest as required by a tax Act administered by the Department of Revenue, until the requirements of the tax Act are satisfied.

(c) The determination by a circuit court that a registrant is subject to involuntary admission or judicial admission as provided in the Mental Health and Developmental Disabilities Code operates as an automatic suspension. The suspension will end only upon (1) a finding by a court that the patient is no longer subject to involuntary admission or judicial admission, (2) issuance of an order so finding and discharging the patient, and (3) the recommendation of the Department to the Director that the registrant be allowed to

resume his or her practice.

Section 80. Cease and desist order.

(a) If a person violates a provision of this Act, the Director, in the name of the People of the State of Illinois through the Attorney General of the State of Illinois, or the State's Attorney of a county in which the violation occurs, may petition for an order enjoining the violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in court, the court may issue a temporary restraining order without notice or bond and may preliminarily and permanently enjoin the violation. If it is established that the registrant has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

(b) If a person holds himself or herself out as a surgical assistant or surgical technologist without being registered under this Act, then any registrant under this Act, interested party, or person injured thereby, in addition to the Director or State's Attorney, may petition for relief as provided in subsection (a) of this Section.

(c) If the Department determines that a person violated a provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against him or her. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued immediately.

Section 85. Investigation; notice; hearing. Certificates

of registration may be refused, revoked, suspended, or otherwise disciplined in the manner provided by this Act and not otherwise. The Department may upon its own motion and shall upon the verified complaint in writing of any person setting forth facts that if proven would constitute grounds for refusal to issue or for suspension or revocation under this Act, investigate the actions of a person applying for, holding, or claiming to hold a certificate of registration. The Department shall, before refusing to issue or renew, suspending, or revoking a certificate of registration or taking other discipline pursuant to Section 75 of this Act, and at least 30 days prior to the date set for the hearing, notify in writing the applicant or licensee of any charges made, shall afford the applicant or registrant an opportunity to be heard in person or by counsel in reference to the charges, and direct the applicant or registrant to file a written answer to the Department under oath within 20 days after the service of the notice and inform the applicant or registrant that failure to file an answer will result in default being taken against the applicant or registrant and that the certificate of registration may be suspended, revoked, placed on probationary status, or other disciplinary action may be taken, including limiting the scope, nature, or extent of practice, as the Director may deem proper. Written notice may be served by personal delivery to the applicant or registrant or by mailing the notice by certified mail to his or her last known place of residence or to the place of business last specified by the applicant or registrant in his or her last notification to the Department. If the person fails to file an answer after receiving notice, his or her certificate of registration may, in the discretion of the Department, be suspended, revoked, or placed on probationary status or the Department may take whatever disciplinary action deemed proper, including limiting the delegated tasks

or the imposition of a fine, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act. At the time and place fixed in the notice, the Department shall proceed to hearing of the charges and both the applicant or registrant and the complainant shall be afforded ample opportunity to present, in person or by counsel, any statements, testimony, evidence, and arguments that may be pertinent to the charges or to their defense. The Department may continue a hearing from time to time. The Department may continue a hearing for a period not to exceed 30 days.

Section 90. Record of proceedings. The Department, at its expense, shall preserve a record of all proceedings at a formal hearing conducted pursuant to Section 85 of this Act. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Department or hearing officer, and orders of the Department shall be the record of the proceeding. The Department shall supply a transcript of the record to a person interested in the hearing on payment of the fee required under Section 2105-115 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

Section 95. Order for production of documents. A circuit court may, upon application of the Department or its designee, or of the applicant or registration against whom proceedings pursuant to Section 85 of this Act are pending, enter an order requiring the attendance of witnesses and their testimony and the production of documents, papers, files, books, and records in connection with a hearing or investigation authorized by this Act. The court may compel obedience to its order through contempt proceedings.

Section 100. Subpoena power. The Department has the power to subpoena and bring before it any person in this State and to take testimony orally or by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State. The Director shall have the authority to administer, at any hearing that the Department is authorized to conduct under this Act, oaths to witnesses and any other oaths authorized to be administered by the Department under this Act.

Section 105. Disciplinary report. At the conclusion of the hearing, the Department shall present to the Director a written report of its findings of fact, conclusions of law, and recommendations. In the report, the Department shall make a finding of whether or not the charged registrant or applicant violated a provision of this Act or its rules and shall specify the nature of the violation. In making its recommendations for discipline, the Department may take into consideration all facts and circumstances bearing upon the reasonableness of the conduct of the respondent and the potential for future harm to the public, including but not limited to previous discipline of that respondent by the Department, intent, degree of harm to the public and likelihood of harm in the future, any restitution made, and whether the incident or incidents complained of appear to be isolated or a pattern of conduct. In making its recommendations for discipline, the Department shall seek to ensure that the severity of the discipline recommended bears some reasonable relationship to the severity of the violation.

Section 110. Motion for rehearing. In a case involving the refusal to issue or renew a registration or the

discipline of a registrant, a copy of the Department's report shall be served upon the respondent by the Department, either personally or as provided under Section 20 of this Act for the service of the notice of hearing. Within 20 days after the service, the respondent may present to the Department a motion in writing for a rehearing, which shall specify the particular grounds for a rehearing. If no motion for rehearing is filed, then upon the expiration of the time specified for filing the motion, or if a motion for rehearing is denied, then upon the denial the Director may enter an order in accordance with recommendations of the Department, except as provided in Section 115 or 120 of this Act. If the respondent orders a transcript of the record from the reporting service and pays for the transcript within the time for filing a motion for rehearing, the 20-day period within which such a motion may be filed shall commence upon the delivery of the transcript to the respondent.

Section 115. Order of Director.

(a) The Director shall issue an order concerning the disposition of the charges (i) following the expiration of the filing period granted under Section 110 of this Act if no motion for rehearing is filed or (ii) following a denial of a timely motion for rehearing.

(b) The Director's order shall be based on the recommendations contained in the Department report unless, after giving due consideration to the Department's report, the Director disagrees in any regard with the report of the Department, in which case he or she may issue an order in contravention of the report. The Director shall provide a written report to the Department on any deviation from the Department's report and shall specify with particularity the reasons for his or her deviation in the final order. The Department's report and Director's order are not admissible

in evidence against the person in a criminal prosecution brought for a violation of this Act, but the hearing, report, and order are not a bar to a criminal prosecution brought for the violation of this Act.

Section 120. Hearing officer. The Director shall have the authority to appoint an attorney licensed to practice law in this State to serve as the hearing officer in a hearing authorized under Section 90 of this Act. The hearing officer shall have full authority to conduct the hearing. The hearing officer shall report his or her findings of fact, conclusions of law, and recommendations to the Department. If the Director disagrees in any regard with the report of the Department, he or she may issue an order in contravention of the report. The Director shall provide a written explanation to the Department on a deviation from the Department's report and shall specify with particularity the reasons for his or her deviation in the final order.

Section 125. Rehearing on order of Director. Whenever the Director is not satisfied that substantial justice has been achieved in the discipline of a registrant, the Director may order a rehearing by the same or another hearing officer.

Section 130. Order; prima facie proof. An order or a certified copy of an order, over the seal of the Department and purporting to be signed by the Director, shall be prima facie proof that:

(1) the signature is the genuine signature of the Director; and

(2) the Director is duly appointed and qualified.

Section 135. Restoration of registration. At any time after the suspension or revocation of a certificate of

registration, the Department may restore it to the registrant unless, after an investigation and a hearing, the Department determines that restoration is not in the public interest. Where circumstances of suspension or revocation so indicate, the Department may require an examination of the registrant before restoring his or her certificate of registration.

Section 140. Surrender of certificate of registration. Upon the revocation or suspension of a certificate of registration, the registrant shall immediately surrender the certificate of registration to the Department. If the registrant fails to do so, the Department shall have the right to seize the certificate of registration.

Section 145. Temporary suspension. The Director may temporarily suspend the registration of a surgical assistant or surgical technologist without a hearing, simultaneously with the institution of proceedings for a hearing provided for in Section 85 of this Act, if the Director finds that evidence in his or her possession indicates that continuation in practice would constitute an imminent danger to the public. If the Director temporarily suspends a license without a hearing, a hearing by the Department shall be held within 30 days after the suspension has occurred and shall be concluded without appreciable delay.

Section 150. Certificate of record. The Department shall not be required to certify any record to a court or file an answer in court or otherwise appear in a court in a judicial review proceeding unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record. Failure on the part of the plaintiff to file a receipt in court shall be grounds for dismissal of the action.

Section 155. Administrative Review Law. All final administrative decisions of the Department are subject to judicial review under the Administrative Review Law and its rules. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure. Proceedings for judicial review shall be commenced in the circuit court of the county in which the party seeking review resides. If the party seeking review is not a resident of this State, venue shall be in Sangamon County.

Section 160. Criminal penalties. A person who is found to have knowingly violated Section 35 of this Act is guilty of a Class A misdemeanor for a first offense and is guilty of a Class 4 felony for a second or subsequent offense.

Section 165. Civil penalties.

(a) In addition to any other penalty provided by law, a person who violates Section 35 of this Act shall pay a civil penalty to the Department in an amount not to exceed \$5,000 for each offense as determined by the Department. The civil penalty shall be assessed by the Department after a hearing is held in accordance with the provisions set forth in this Act regarding a hearing for the discipline of a licensee.

(b) The Department has the authority and power to investigate any and all unregistered activity.

(c) The civil penalty assessed under this Act shall be paid within 60 days after the effective date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and execution had on the judgment in the same manner as a judgment from a court of record.

Section 170. Home rule powers. The regulation of surgical assistants and surgical technologists is an exclusive power and function of the State. A home rule unit

shall not regulate surgical assistants or surgical technologists. This Section is a limitation under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

Section 900. The Regulatory Sunset Act is amended by changing Section 4.24 as follows:

(5 ILCS 80/4.24)

Sec. 4.24. Acts repealed on January 1, 2014. The following Acts are repealed on January 1, 2014:

The Electrologist Licensing Act.

The Illinois Public Accounting Act.

The Registered Surgical Assistant and Registered Surgical Technologist Title Protection Act.

(Source: P.A. 92-457, eff. 8-21-01; 92-750, eff. 1-1-03.)

Section 999. Effective date. This Act takes effect July 1, 2004.