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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Legislative Budget  
Office

H.B. 196  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsors:** Reps. Kelly and Carruthers

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### SUMMARY

- Prohibits an individual from knowingly practicing as a surgical assistant without holding a State Medical Board-issued license and establishes criminal penalties for violators.
- Delays for one year after the bill's effective date the bill's prohibition on knowingly practicing without a license.
- Authorizes the holder of a surgical assistant license to assist a physician in the performance of surgical procedures by engaging in certain activities delegated by, and performed under the supervision and in the physical presence of, the physician.
- Coordinates the Medical Board's licensing and regulatory procedures for surgical assistants with those for physicians and other health professionals also regulated by the Board.
- Establishes fees for initial licensure as well as license renewal, reinstatement, and restoration.
- Requires a license holder, as a condition of renewal, to certify to the Board completion of 38 hours of continuing education over the two-year licensure period.

### DETAILED ANALYSIS

#### Practice of surgical assistants

H.B. 196 prohibits an individual, with certain exceptions, from knowingly practicing as a surgical assistant without holding a license to do so issued by the State Medical Board.<sup>1</sup> The bill specifies that a violation is a first degree misdemeanor on a first offense (punishable by a fine of

<sup>1</sup> R.C. 4785.03.

not more than \$1,000 and a jail term of not more than 180 days) and a fifth degree felony on each subsequent offense (punishable by a fine of not more than \$2,500 and a prison term of not more than six to 12 months).<sup>2</sup>

### **Exceptions to the licensure requirement**

The bill exempts the following individuals from its licensure requirements – physicians, podiatrists, physician assistants, licensed practical nurses, registered nurses, and advanced practice registered nurses.<sup>3</sup>

### **Authorized activities**

Under a license, a surgical assistant may assist a physician in the performance of surgical procedures by engaging in any of the following activities delegated by the physician:

- Providing exposure;
- Maintaining hemostasis;
- Making incisions;
- Closing or suturing surgical sites;
- Manipulating or removing tissue;
- Implanting surgical devices or drains;
- Suctioning surgical sites;
- Placing catheters;
- Clamping or cauterizing vessels or tissues;
- Applying dressings to surgical sites;
- Any other tasks as directed by the physician.<sup>4</sup>

### **Physician supervision**

Note that a surgical assistant may engage in the foregoing activities only under the supervision of a physician. And when supervising a surgical assistant, the physician must in the physical presence of the assistant, which the bill describes as being in the same room in which the surgical assistant practices and observing directly the activities in which the surgical assistant engages.

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<sup>2</sup> R.C. 4785.99.

<sup>3</sup> R.C. 4785.03.

<sup>4</sup> R.C. 4785.08.

## Eligibility for licensure

To be eligible for a license to practice as a surgical assistant, an applicant must demonstrate to the Medical Board that the applicant is at least 18 years of age and has attained a high school degree or equivalent.<sup>5</sup> In addition, an applicant must satisfy one of the following:

- Be credentialed as a surgical assistant by the National Board of Surgical Technology and Surgical Assistants (NBSTSA) or National Commission for Certification of Surgical Assistants (NCCSA);
- Have practiced as a surgical assistant at a hospital or ambulatory surgical facility located in Ohio during any part of the 18 months preceding the bill's effective date; or
- Have successfully completed a surgical assistant training program operated by a branch of the U.S. armed forces.<sup>6</sup>

The applicant also must complete a criminal records check.<sup>7</sup>

## License application and renewal procedures

An applicant seeking to practice as a surgical assistant must file an application with the Medical Board in a manner prescribed by the Board and must submit a fee of \$200.<sup>8</sup> No part of the fee is to be returned to the applicant or transferred for purposes of another application. After reviewing the application, if the Board determines that the applicant meets the bill's eligibility requirements, the Secretary of the Board must issue a license to the applicant.<sup>9</sup>

A license is valid for two years, unless revoked or suspended, expires on the date that is two years after the issuance date, and may be renewed for additional two-year periods.<sup>10</sup> The Board is required under the bill to provide renewal notice to license holders at least one month prior to the expiration date.

### Renewals

To renew a license, a license holder must apply to the Medical Board in a manner prescribed by the Board and submit a \$200 renewal fee.<sup>11</sup> In addition, the applicant for renewal must report any criminal offense to which the applicant has pleaded guilty, of which the applicant has been found guilty, or for which the applicant has been found eligible for intervention in lieu of conviction, since last signing an application for a license to practice.

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<sup>5</sup> R.C. 4785.04.

<sup>6</sup> R.C. 4785.04.

<sup>7</sup> R.C. 4785.05. See also R.C. 4776.01 to 4776.04.

<sup>8</sup> R.C. 4785.04 and 4785.14.

<sup>9</sup> R.C. 4785.04 and 4785.06.

<sup>10</sup> R.C. 4785.06.

<sup>11</sup> R.C. 4785.07.

An applicant seeking renewal who obtained an initial license by demonstrating an NBSTSA or NCCSA credential must certify to the Board that the applicant has maintained this credential. Each renewal applicant also must certify the completion of 38 hours of continuing education approved by the NBSTSA or NCCSA.<sup>12</sup> If the applicant submits a renewal application that the Board considers complete, the Board must issue a renewed license to practice as a surgical assistant.

### **Credentialing status and continuing education samples**

The bill authorizes the Medical Board to require a random sample of surgical assistants to submit materials documenting that their credentialing status has been maintained and that the number of hours of continuing education has been completed. If the Board, through the random sample, finds that an individual who certified completion of the continuing education required to renew, reinstate, or restore a license to practice did not complete the requisite continuing education, the Board may do either of the following:

- Take disciplinary action against the individual, impose a civil penalty, or both;
- Permit the individual to agree in writing to complete the continuing education and pay a civil penalty.<sup>13</sup>

Note that the bill does not provide for these penalties if it finds that an applicant did not maintain his or her credentialing status.

The bill also specifies that the Board's finding in any disciplinary action related to the completion of continuing education must be made pursuant to an adjudication and by an affirmative vote of at least six of its members. It also limits the civil penalty to an amount not more than \$5,000.

### **Automatic suspension and license restoration and reinstatement**

A license to practice as a surgical assistant that is not renewed on or before its expiration date is automatically suspended on that date.<sup>14</sup> The bill specifies that continued practice after the automatic suspension is unlawful and subject to the same criminal penalties as described above.

### **Reinstatement**

In the case of a license that has been suspended for two years or less, the Board may reinstate the license if the applicant submits a complete renewal application and pays the \$225 reinstatement fee.

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<sup>12</sup> R.C. 4785.04(B).

<sup>13</sup> R.C. 4785.07.

<sup>14</sup> R.C. 4785.15.

## Restoration

And if a license has been suspended for more than two years, the Board may restore the license if the applicant submits a complete restoration application and pays the \$250 restoration fee. The applicant also must complete a criminal records check. The Board may not restore the license unless it decides, in its discretion, that the results of the criminal records check do not make the applicant ineligible for licensure.

### Other terms and conditions

In the case of an applicant seeking either of the following (1) restoration of a license that has been suspended or inactive for any cause for more than two years or (2) issuance of a license after having not been engaged in practice as a surgical assistant for more than two years, the Board may impose terms and conditions on the applicant before issuing or restoring the license.<sup>15</sup> These include any of the following:

- Requiring the applicant to pass an oral or written examination, or both, to determine the applicant's present fitness to resume practice;
- Requiring the applicant to obtain additional training and to pass an examination upon completion of such training;
- Requiring an assessment of the applicant's physical skills for purposes of determining whether the applicant's coordination, fine motor skills, and dexterity are sufficient for performing evaluations and procedures in a manner that meets the minimal standards of care;
- Requiring an assessment of the applicant's skills in recognizing and understanding diseases and conditions;
- Requiring the applicant to undergo a comprehensive physical examination, which may include an assessment of physical abilities, evaluation of sensory capabilities, or screening for the presence of neurological disorders;
- Restricting or limiting the extent, scope, or type of practice of the applicant.

The Board must consider the applicant's moral background and activities during the period of suspension or inactivity.

### Licensure fees

In addition to the \$200 initial application fee, \$200 renewal fee, \$225 reinstatement fee, and \$250 restoration fee the bill specifies, it also establishes a \$35 fee for a duplicate license and a \$50 fee for license verification.<sup>16</sup>

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<sup>15</sup> R.C. 4785.16.

<sup>16</sup> R.C. 4785.14 and 4785.15.

## Medical Board regulation

The bill coordinates the Medical Board's licensing and regulatory procedures for surgical assistants with those for physicians and other health professionals also regulated by the Board. In doing so, the bill addresses all of the following topics: Board investigations; reporting misconduct; child support default; treatment of impaired practitioners; notice of criminal prosecution; injunctive relief for practicing without a license; and compliance with human trafficking sanctions.<sup>17</sup>

### Board discipline

Similar to the other health professions regulated by the Medical Board, the bill requires the Board to limit, revoke, or suspend a license to practice as a surgical assistant, refuse to issue a license, refuse to renew or reinstate a license, or reprimand or place on probation a license holder for one of several grounds, including the following:

- Failure to comply with the bill's requirements;
- A departure from, or failure to conform to, minimal standards of care of similar practitioners;
- Impairment of ability to practice because of habitual or excessive drug, alcohol, or other substance use;
- Commission of a felony;
- A guilty plea;
- Failure to maintain one's status as a credentialed surgical assistant or to notify the Board that the credential has not been maintained;
- Failure to comply with the profession's code of ethics.<sup>18</sup>

As with the other Medical Board-regulated professionals, an affirmative vote of six Board members is required before discipline may be imposed on a surgical assistant. The bill also establishes for surgical assistants the same standards and procedures for discipline used when imposing discipline on other professionals, including the holding of hearings.

### Civil penalties

The bill authorizes the Medical Board to impose a civil penalty in the event of a violation and requires the Board to adopt guidelines regarding the amounts of civil penalties to be imposed, with no civil penalty amount to exceed \$20,000.<sup>19</sup> This authority is the same as the Board's authority to impose civil penalties on other health professionals.

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<sup>17</sup> R.C. 4785.02, 4785.10, 4785.13, 4785.17, 4731.224, 4785.12, 4785.10, 4785.20, 4785.19, and 4785.18.

<sup>18</sup> R.C. 4785.10(B).

<sup>19</sup> R.C. 4785.11.

## Rulemaking

The bill requires the Medical Board to adopt rules establishing standards and procedures for the regulation of surgical assistants, including rules that do the following:

- Establish application procedures for the licensure of surgical assistants;
- Establish license renewal procedures, including procedures for reporting the completion of continuing education;
- Establish procedures for reporting to the Board license holder misconduct.

The bill also authorizes the Medical Board to adopt any other rules it considers necessary to implement and administer the bill's provisions.

When adopting rules required by the bill, the Medical Board must do so in accordance with the Administrative Procedure Act.<sup>20</sup>

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## HISTORY

Action	Date
Introduced	03-09-21
Reported, H. Health	05-25-22
Passed House (69-12)	12-01-22

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<sup>20</sup> R.C. 4785.09.