SUBJECT: Creating a licensing program for surgical assistants

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Gray, Coleman, Capelo, Longoria, Maxey, Uresti

1 present, not voting — Wohlgemuth

0 nays

2 absent — Delisi, Glaze

WITNESSES: (*On original bill:*)
For — Terry Morris, Texas Society of Surgical Assistants and Southwest Surgical Assistants; *Registered but did not testify:* Kenneth Campbell, Bob Kamm, and Bland Chamberlain III, Texas Society of Surgical Assistants; Michele Richards, Association of Surgical Technologists

Against — Wanda Douglas, Texas Nurses Association

On — *Registered but did not testify:* Ivan Hurwitz, Texas State Board of Medical Examiners

BACKGROUND: Surgical assistants are nonphysician health professionals who stand across from the surgeon in an operating room. While a surgical technologist generally is responsible for sterilizing and handling instruments, the surgical assistant is responsible for activities that involve the patient. These could include retracting tissue, controlling bleeding, and applying sutures or wound dressing. Under current Texas law, surgical assistants do not have a licensing program. Two national programs offer certification, which usually is required for a person to serve as a surgical assistant.

DIGEST: CSHB 1183 would require the State Board of Medical Examiners (BME) to establish a licensing program for surgical assistants. The board would have to establish:

- qualifications for a surgical assistant;

- an examination for licensure;
- minimum education and training requirements;
- an application for licensure;
- continuing education requirements;
- any other rules as needed; and
- a three-member disciplinary panel.

Licensure requirements would not apply to:

- students in a surgical assistance program;
- surgical assistants employed by the federal government;
- people acting under the delegated authority of a physician;
- licensed health-care workers within the scope of those licenses;
- registered nurses; and
- licensed physician assistants.

To obtain a license, a person would have to pass an examination approved by the board. The applicant would have to hold an associate's degree in a program similar to the education required for a registered nurse or physician assistant who specialized in surgical assisting; have completed at least 2,000 hours of experience as a surgical assistant; and hold a current certification by a national certifying body. The curriculum for the associate's degree would have to include courses in anatomy, physiology, basic pharmacology, aseptic techniques, operative procedures, microbiology, and pathophysiology.

The examination would be waived for a person who had passed a similar examination in the past. The educational requirements would be waived for a person who had taken a BME-approved academic course in one of the curriculum areas or had been certified after September 30, 1995, as a surgical assistant by a national certifying body and had been in practice as a surgical assistant. Both requirements would be waived for a person who applied for a license before September 1, 2002. Licenses issued by waiving some requirements would expire after three years unless the license holder fulfilled all standard requirements.

The title "licensed surgical assistant" or any other that implied licensure would be reserved for license holders. Fraudulent use of the title, misrepresentation of licensure, or acting as a surgical assistant without a

license would constitute a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to $10,000.

The board could issue a temporary license to an applicant who filed an application, paid the fee, passed the examination, was in good standing if licensed in another state, and met all the requirements of a regular license but had to wait for the next board meeting for the application to be reviewed. The temporary license would be valid for 100 days and could be extended for an additional 30 days.

The board would have to alert a license holder of renewal 30 days before the license expired. Licenses could be renewed by paying a renewal fee. A person who was licensed in Texas, moved to another state and obtained a license there, and had been in practice in that state for the previous two years could renew an expired license in Texas without reexamination at twice the normal renewal fee rate.

A license holder would have to file a current home and work address with the BME and provide change-of-address information within 30 days of a move.

**Advisory committee.** CSHB 1183 would establish an informal advisory committee for the board that would not be subject to formal regulations in the Government Code. This committee would comprise five members who were either surgical assistants with more than five years' experience or physicians who supervised surgical assistants. A member could not be an officer or employee of a trade association or married to one. Nor could a member be a registered lobbyist on behalf of an organization related to surgical assisting. The BME president would appoint the committee members.

Members would serve two-year terms expiring on February 1 of each odd-numbered year and could not serve more than two consecutive full terms. Members could be removed if the qualifications for appointment were not met at any time from appointment to expiration of the term, or if the member was infirm in a way that would prevent discharge of the member's duties. The BME president would choose a presiding officer biennially. Members would not be compensated or reimbursed for expenses. Meetings could be

held by conference call. The advisory committee would have no rulemaking authority.

**Fees.** The BME could set and collect reasonable fees needed to cover the costs of administering the program and enforcing the regulations. The board would have to prepare an annual report on funds received and disbursed through the surgical assistant licensing program.

**Reporting requirements.** Any peer review committee, quality assurance committee, surgical assistant, surgical assistant student, physician, or other person usually present in the operating room, including a nurse or surgical technologist, would have to report any actions of a surgical assistant that posed a continuing threat to the public welfare. This duty could not be nullified by contract. A person reporting such an action would be immune from civil liability. Confidentiality and reporting requirements for peer reviews under the Occupations Code would be extended to surgical assistants.

**Complaints and public participation.** The bill would establish standard requirements related to handling complaints and allowing the public to appear before the board and speak on issues relating to surgical assistants. The BME could issue a subpoena for information relating to an investigation of a complaint. Information collected by the board in the course of an investigation would be considered confidential and not subject to discovery, subpoena, or other legal compulsion to release it. The patient's identity would be confidential unless the patient testified or signed a release.

**Disciplinary actions.** Fraud or deception, violation of a law connected to practice as a surgical assistance, commission of a felony, or conduct relating to lack of fitness to perform surgical assistants' duties could result in disciplinary actions. The BME could suspend, deny, or revoke a person's license or require the person to submit to treatment or care. The board also could assess an administrative penalty that could include a public reprimand, community service, or a fine of up to $5,000 per day per offense. The board's
rehabilitation orders would be subject to reporting requirements and periodic audits. The disciplinary review panel also could suspend a license in some cases.

**Scope of practice.** The practice of a surgical assistant would be limited to surgical assistance under the direct supervision of a physician and could not include the practice of medicine or nursing. Surgical assistance could be performed in any place authorized by a delegating physician, including a hospital, clinic, or office.

The surgical assistant and supervising physician would have to establish the surgical assistant's scope of function based on the assistant's level of competence. Both parties would have to define their relationship and the assistant's access to the physician.

**Service contracts.** Licensing would not limit the employment arrangement of a surgical assistant or require a physician or hospital to use the services of a surgical assistant. A health maintenance organization, other insurer, or health facility could not require a surgeon to contract with a surgical assistant.

**Insurance.** CSHB 1183 would amend the Insurance Code by adding licensed surgical assistants to the list of health professionals an insurance policy can include or exclude for reimbursement recognition by title. It also would add licensed surgical assistants to the list of health professionals a policyholder may select for care.

This bill would take effect September 1, 2001. A surgical assistant would not have to obtain a license until September 1, 2002. The BME would have to adopt the necessary rules by January 1, 2002. The provisions for insurance policies would apply only to policies written or renewed after January 1, 2003.

SUPPORTERS SAY:

CSHB 1183 would ensure professionalism and competency in the operating room. Surgical assistants perform many important technical functions. Although they serve under the direct supervision of a physician, they do not have to meet any standards in education or training. The license required by CSHB 1183 would ensure that surgical assistants had a solid background and had achieved a level of competency appropriate for the operating room.

The license would increase the likelihood that surgical assistants' services would be reimbursed by insurance. Currently, surgical assistants receive reimbursement only about half the time, and then only because they may

have an agreement with a specific insurer.

CSHB 1183 would define a surgical assistant's role in the operating room, while preserving flexibility in the relationship between surgeon and assistant. It would define clearly what a surgical assistant does and would prohibit surgical assistants from practicing medicine or nursing. The definition would be flexible in that it would not interfere with the surgeon's delegation of authority. This would ensure that surgeons, surgical assistants, and other health professionals were in agreement about the surgical assistant's role in the operating room.

OPPONENTS SAY:

CSHB 1183 would create an unnecessary and ineffective licensing program. People who acted under the delegated authority of a physician would be exempt from licensing. This would mean that the license would be totally optional and only serve as a "club" for some assistants. Qualified surgical assistants who wanted a license could apply for a nursing or a physician assistant's license, both of which have similar requirements to the proposed surgical assistant license. The state should not ask the BME to spend time and resources establishing this licensing program.

The bill would not be explicit enough in defining direct supervision. As written, a physician could substantially complete a surgery, then go on to the next, leaving the surgical assistant to finish up. In practice, this sometimes is done when the surgeon goes to talk to the family or complete the notes for the surgery. The definition of direct supervision should be broad enough to include these instances but should prevent the physician from starting another operation or leaving the hospital until the responsibility for the patient was transferred out of the operating room.

This bill contains confusing language that could put some surgical assistants acting within the law in jeopardy of committing a criminal offense. It would make acting as a surgical assistant without a license a third-degree felony, while also exempting people acting under the direction of a physician from licensure requirements.

OTHER OPPONENTS SAY:

CSHB 1183 would define the scope of practice for a surgical assistant as anything that was physician-directed as long as it did not constitute the practice of medicine or nursing. The definition should be sharpened to

include specific procedures and activities. A better definition would ensure that the education, training, and examination requirements for a surgical assistant to obtain a license were appropriate.

NOTES:

The author intends to propose an amendment that would remove the criminal penalty for acting as a surgical assistant without a license.

The committee substitute altered the filed version by creating an advisory committee and moving the assignment of powers and duties from an advisory board to the BME. The substitute modified the requirements for licensure and would provide that a registered nurse or physician assistant would not have to hold a license as a surgical assistant. It also changed the reporting, investigation, and penalty provisions and added the requirement that surgical assistants and physicians define their roles.