

**CHAPTER 126****(SB 206)**

AN ACT relating to relating to health practitioners.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 14 of this Act unless the context requires otherwise:*

- (1) *"Advisory Committee for Surgical Assistants" means the advisory committee created in Section 3 of this Act;*
- (2) *"Board" means the Kentucky Board of Medical Licensure;*
- (3) *"Delegating physician" means a physician who is licensed by the board as either a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine and who assumes responsibility for the services rendered by a surgical assistant;*
- (4) *"Direct supervision" means supervision by a delegating physician who is physically present and who personally directs delegated acts and remains immediately available to personally respond to any emergency until the patient is released from the operating room or care and has been transferred to the care and responsibility of another physician;*
- (5) *"President" means the president of the board; and*
- (6) *"Surgical assisting" means providing aid under direct supervision in exposure, hemostasis, closures, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is not required to hold a certificate under Sections 1 to 14 of this Act if the person is:*
  - (a) *A student enrolled in a surgical assistant education program approved by the board who is assisting in a surgical operation that is an integral part of the program of study;*
  - (b) *A surgical assistant employed in the service of the federal government while performing surgical assisting duties related to that employment;*
  - (c) *A health care worker, licensed or certified within this Commonwealth, acting within the scope of the person's license;*
  - (d) *A registered nurse or licensed practical nurse;*
  - (e) *A certified physician assistant; or*
  - (f) *An individual employed by a hospital who is performing the duties of a surgical assistant under the direct supervision of a registered nurse.*
- (2) *Except as provided in subsection (1) of this section, a person shall not practice as a surgical assistant unless the person is certified under Sections 1 to 14 of this Act and*

*shall not use the title "Kentucky Certified Surgical Assistant" or any other designation that would imply that the person is a certified surgical assistant.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The Advisory Committee for Surgical Assistants shall be a committee of six (6) members appointed by the board and whose duties shall be delegated by the board. Duties shall include those cited in Section 7 of this Act. The members of the committee shall be:*
  - (a) *Three (3) practicing surgical assistants who have at least five (5) years of clinical experience as surgical assistants;*
  - (b) *Two (2) physicians licensed in the Commonwealth who supervise surgical assistants; and*
  - (c) *One (1) registered perioperative nurse with at least five (5) years of clinical experience as a perioperative nurse.*
- (2) *Members of the committee are appointed for two (2) year terms and may not serve more than two (2) consecutive full terms. The board may determine the rotation of the membership.*
- (3) *The president shall designate biennially a committee member to be the presiding officer to serve at the will of the president.*
- (4) *Members shall not be entitled to per diem, travel, or other expenses and shall have no authority to determine policy independent of the board.*
- (5) *Meetings shall be held quarterly and may be held on-line or by telephone conference call.*
- (6) *Vacancies shall be filled with appointees selected by the president.*
- (7) *A person may not be a member of the committee if:*
  - (a) *The person is an officer, employee, or paid consultant of a Kentucky trade association in the field of surgical assisting;*
  - (b) *The person's spouse is an officer, manager, or paid consultant of a Kentucky trade association in the field of surgical assisting;*
  - (c) *The person is a registered lobbyist for compensation on behalf of a profession related to the field of surgical assisting; or*
  - (d) *The person is presently subject to a disciplinary order issued by their licensing or certifying body.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board, with any committee assistance requested by the board, may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement the provisions of Sections 1 to 14 of this Act as follows:*
  - (a) *Establish qualifications for a surgical assistant to practice in this state;*
  - (b) *Establish requirements for an examination and develop an application to certify a surgical assistant to practice;*

- (c) *Establish minimum education and training requirements necessary for a certificate to practice as a surgical assistant;*
  - (d) *Develop an approved program of mandatory continuing education and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded;*
  - (e) *Accept the continuing education rules and guidelines of the Association of Surgical Technologists or other national association of surgical assisting that develops continuing education guidelines;*
  - (f) *Establish reasonable and necessary fees for the application, examination, initial certificate, renewal certificate, and other fees necessary to implement Sections 1 to 14 of this Act; and*
  - (g) *Identify the surgical assistant's scope of practice citing appropriate medical tasks, and define the delegating physician's oversight responsibilities.*
- (2) *The board shall maintain a record for each certificate holder that contains information determined by the board. Any certificate holder who, after notifying the board of his or her official address or addresses, moves his or her practice location to a new address shall immediately notify the board of the change.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*The board shall prepare information of public interest describing the functions of the board that shall include procedures by which grievances are filed and resolved. The board shall make the information available on request to the public and appropriate state agencies.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*All investigations and disciplinary procedures against a surgical assistant shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593, 311.599, and Chapter 13B.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A surgical assistant, a physician practicing medicine in this state, or any person usually present in an operating room, including a nurse or surgical technologist, shall report relevant information to the advisory committee related to the acts of a certified surgical assistant in this state if, in that person's opinion, a surgical assistant has violated one or more provisions of Section 14 of this Act or poses a continuing threat to the public welfare through practice as a surgical assistant.*
- (2) *A person who furnishes records, information, or assistance to the advisory committee under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a surgical assistant who is reported under this section.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An applicant for a certificate shall file a written application with the board on a form prescribed by the board and shall pay the application fee set by the board.*

- (2) *To be eligible for a certificate a person shall:*
- (a) *Hold and maintain certification by one (1) of the following:*
    - 1. *The National Surgical Assistant Association; or*
    - 2. *The Liaison Council on Certification for the Surgical Technologist;*
  - (b) *Document one (1) of the following:*
    - 1. *Graduation from a program approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or*
    - 2. *Graduation from a United States Military program that emphasizes surgical assisting; and*
  - (c) *Demonstrate to the satisfaction of the board the completion of full-time work experience performed in this country under the direct supervision of a physician licensed in this country and consisting of at least eight hundred (800) hours of performance as an assistant in surgical procedures for the three (3) years preceding the date of the application.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*The board may grant a certificate to any person who is licensed, certified, or registered and in good standing in another state that has standards at least as stringent as those required in Section 8 of this Act. Applicants who are not from a state that has standards at least as stringent as those required in Section 8 of this Act may request a waiver under Section 8 of this Act on the grounds that their experience and education meet the criteria equivalent to the requirements of Section 8 of this Act.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*Before July 1, 2005, the board may issue a certificate as a surgical assistant to an applicant who:*

- (1) *Meets the requirements set forth in subsection (2) of Section 8 of this Act; and*
- (2) *Provides documentation that the applicant has passed a surgical or first assistant examination required for certification by one (1) of the following:*
  - (a) *The National Surgical Assistant Association;*
  - (b) *The Liaison Council on Certification for the Surgical Technologist; or*
  - (c) *The American Board of Surgical Assistants.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

*Fees received by the board under the provisions of Sections 1 to 14 of this Act shall be deposited in the State Treasury to the credit of a trust and agency fund and may be appropriated by the General Assembly for the use of the board in defraying the cost of administering the provisions of Sections 1 to 14 of this Act. No part of this fund shall revert to the general fund of this Commonwealth.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall provide for the annual renewal of a surgical assistant certificate.*
- (2) *At least thirty (30) days before the expiration of a person's certificate, the board shall send written notice of the impending certificate expiration to the person at the certificate holder's last known address according to the records of the board.*
- (3) *If the person's certificate has been expired for ninety (90) days or less, the person may renew the certificate by paying the board one and one-half (1-1/2) times the required renewal fee. The person shall not engage in activities that require a certificate until the certificate has been renewed under this section.*
- (4) *If the person's certificate has been expired for longer than ninety (90) days but less than one (1) year, the person may renew the certificate by paying the board two (2) times the required renewal fee. The person shall not engage in activities that require a certificate until the certificate has been renewed under this section.*
- (5) *If the person's certificate has been expired for one (1) year or longer, the person may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures for obtaining an original certificate.*
- (6) *If the person was certified as a surgical assistant in this state, moved to another state, and is currently licensed or certified as a surgical assistant and has been in practice as a surgical assistant in the other state for the two (2) years preceding application, the person may renew an expired surgical assistant certificate without reexamination. The person shall pay the board a fee that is equal to two (2) times the required renewal fee for the license. The person shall not engage in activities that require a certificate until the certificate has been renewed under this section.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 14 of this Act do not authorize a person who holds a certificate under Sections 1 to 14 of this Act to engage in the practice of medicine, as defined in KRS 311.530 to 311.620 or the practice of registered nursing as defined in KRS 314.011 to 314.161.*
- (2) *A health maintenance organization, preferred provider organization, or health benefit plan may not require a registered nurse or certified physician assistant to be certified as a surgical assistant as a condition for reimbursement.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may revoke, suspend, deny, decline to renew, limit, or restrict the certification of a surgical assistant, or may fine, reprimand, or place a surgical assistant on probation for no more than five (5) years upon proof that he or she:*
  - (a) *Has been convicted of a felony;*
  - (b) *Has been convicted of a misdemeanor involving moral turpitude or conduct likely to deceive or defraud the public;*
  - (c) *Has been granted a certificate upon a mistake of a material fact;*
  - (d) *Has violated any provision of Sections 1 to 14 of this Act;*
  - (e) *Has become drug addicted;*

- (f) Has become a chronic or persistent alcoholic;*
  - (g) Has developed such physical or mental disability, or other condition whereby continued practice is dangerous to patients or to the public;*
  - (h) Has violated any order or the terms or the conditions of any order issued by the board;*
  - (i) Has engaged in, or attempted to engage in, practice as a surgical assistant under a false or assumed name;*
  - (j) Has willfully violated a confidential communication;*
  - (k) Has acted in a grossly negligent or willful manner which is inconsistent with practice as a surgical assistant;*
  - (l) Is unfit or incompetent to practice as a surgical assistant by reason of gross negligence or other causes, including but not limited to being unable to practice as a surgical assistant with reasonable skill or safety;*
  - (m) Has had a license or certificate to practice as a surgical assistant denied, limited, suspended, probated, or revoked in another jurisdiction;*
  - (n) Has engaged in conduct likely to deceive or defraud the public;*
  - (o) Has knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other document relating to an application for certification;*
  - (p) Has exceeded the scope of practice of surgical assisting delegated by the delegating physician; or*
  - (q) Has exceeded the scope of practice for which the surgical assistant was credentialed by the governing board of a hospital or licensed health care facility.*
- (2) The board may impose a fine of up to five hundred dollars (\$500) per violation as part of a disciplinary action and may require the surgical assistant to reimburse the board for all costs of the proceedings.**

Section 15. KRS 327.040 is amended to read as follows:

- (1) It shall be the duty of the State Board of Physical Therapy to receive applications from persons desiring to become physical therapists and to determine whether said applicants meet the qualifications and standards required by this chapter of all physical therapists. The board shall also be charged with enforcement of the provisions of this chapter.
- (2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter coming to its notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.
- (3) The board shall meet at least once each quarter at such place in this state as may be selected by the board. Four (4) members of the board shall constitute a quorum for the transaction of business. All meetings shall be held at the call of the chairman or at a call of a quorum of members upon not less than ten (10) days' written notice, unless notice shall be waived. The

presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.

- (4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B, to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.
- (5) The board shall keep a minute book containing a record of all meetings of the board.
- (6) The board shall maintain a register of all persons licensed or certified under this chapter. This register shall show the name of every licensee or certificate holder in this state, his current business and residence address and telephone numbers, and the date and number of his license or certificate. A licensee or certificate holder shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.
- (7) The board's records shall be updated annually.
- (8) The board shall publish annually and make available, a current directory of all licensed physical therapists and certified physical therapists' assistants.
- (9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.
- (10) ***The board may promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal.***
- (11) The board may promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of this chapter pursuant to the provisions of KRS Chapter 13A.
- (12)~~(11)~~ The board shall promulgate by administrative regulation a code of ethical standards and standards of practice.
- (13)~~(12)~~ The board shall have the right to regulate physical therapists' assistants and may promulgate reasonable administrative regulations regarding certification, limitations of activities, supervision, and educational qualifications for physical therapists' assistants. The board may establish reasonable fees for the certification, renewal, and endorsement of physical therapists' assistants. The fees shall not exceed corresponding fees for physical therapists.
- (14)~~(13)~~ The board shall promulgate administrative regulations governing the physical and mental examination of physical therapists, physical therapists' assistants, or applicants, who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a physical therapist, physical therapist's assistant, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.

**Approved April 9, 2004**