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December 21, 2015

Ron Briel, Program Manager  
Division of Public Health, Licensure Unit  
Nebraska Department of Health and Human Services  
Lincoln, NE 68509

Dear Mr. Briel and members of the Technical Review Committee:

As a follow-up to the testimony I provided to the Committee on November 19, 2015, I am writing to express my opposition to the licensing of surgical technologists. I do so both as the administrator of an ophthalmic surgery center and as an officer of the Nebraska Association of Independent Ambulatory Centers (NAIAC). The NAIAC represents over 50% of the independent ambulatory surgical centers (ASCs) in Nebraska; in combination with the Nebraska Hospital Association, we represent approximately 75% of all ASCs in Nebraska.

I am opposed to the licensing of surgical technologists for the following reasons:

1. The applicants have not provided evidence that unlicensed surgical technologists clearly harm or endanger the public. For instance, they have quoted the Institute of Medicine's figures on preventable deaths in hospitals. This 287-page report lists the most common fourteen areas that lead to preventable deaths; the role of surgical technologists is not identified in this report. More recent studies provided by the applicants also fail to identify the role of scrub technologists, or particularly unlicensed scrub technologists, as the source of any preventable deaths.

The applicants have submitted studies from Virginia and Minnesota that aim to prove that facilities that only employ certified surgical technologists have lower post-surgical complication rates. However, those studies don't appear to be controlled for dozens of other factors, including the experience and expertise of surgeons operating at those hospitals, the rigor of each hospital's infection control program, the surgical volume of each hospital (outcomes often to improve with volume), the presence or absence of surgeons in training, or the performance of facilities that employ a mixture both certified and uncertified surgical technologists. Peer-reviewed journal articles would account for and isolate the impact of these other factors to determine the true benefit of requiring surgical technologist certification. Instead, the applicants have cherry-picked two unscientific studies to support their push for licensure.

To my knowledge, the applicants have yet to provide any evidence that reflects that unlicensed and uncertified surgical technologists increase the risk to patients. They have provided anecdotal stories about rogue

surgical technologists who are menaces in the operating room. The 407 process is not intended to be a forum for anecdotes. The applicants have not met the burden of proof, as required by Section 71.6221 of the Nebraska Statutes, that unregulated surgical technologists clearly harm or endanger the public.

The applicants' push for licensure also raises a question of where regulators should draw the line when identifying professions that could have an impact on patient safety. Should we license the hospital janitors who are responsible – with virtually no supervision – for cleaning operating rooms, since that role is a key part of a comprehensive infection control program? How about the hospital handyman who monitors humidity levels and air purity? The supply personnel who are responsible for sterile supplies until the day of surgery? The computer programmer who adapts the alerts in a hospital's electronic medical records system? In short, does every healthcare employee need to be licensed?

2. The licensure of surgical technologists will significantly diminish the supply of qualified practitioners, because it would create a barrier to entry.

The Southeast Community College program currently costs \$9,700-\$11,200 for fees and tuition. The Nebraska Methodist programs costs \$35,000. Neither of these figures includes the economic loss of attending school instead of working a full-time job, nor the ongoing costs to obtain and maintain licensure. These costs pose a significant barrier to entry for many high school graduates, particularly for the poor.

President Obama's Council of Economic Advisors issued a report in July 2015 which concluded that, "licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines."<sup>1</sup> Wisconsin Governor, Scott Walker, recently signed legislation that bars local governments from creating new occupational licenses, in part because, "occupational licenses are often little more than a barrier to employment that harms low-income communities the most."<sup>2</sup> Licensure will increase barriers to the surgical technology field, which will lower labor supply and increase wages. When the labor supply shrinks, the 50 hospitals in located in rural Nebraska communities will be hard-pressed to find new technologists.

The applicants have provided data that suggests that licensure will not drive up labor costs. They have provided data for eight states that have implemented surgical technologist licensure requirements since 2004. Licensure for four of those eight states was enacted in 2011 or later. Wage data is only provided through 2014. New York's licensure requirement became effective in 2015, and Oregon's requirement does not become effective until 2016. In addition, nearly all of the states provided a grandfather period for existing technologists, which postpones the labor supply reduction and increased wages that accompany licensure.

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Put simply, there is no evidence that the licensure of surgical technologists is needed, nor is there evidence that unlicensed technologists pose a danger to patients. Licensure will increase the barriers to this field, particularly for low-income individuals. Surgical technology training programs will reap many benefits from licensure, while the rest of us pay the price for this unnecessary regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Slagle". The signature is written in a cursive, slightly slanted style.

Jay P. Slagle  
Administrator

<sup>1</sup> "Licenses to Kill," Wall Street Journal, September 1, 2015

<sup>2</sup> "Wisconsin Moves to Rein in the Licensing Game," October 30, 2015