

## DIRECTOR'S REPORT ON THE PROPOSAL TO LICENSE SURGICAL TECHNOLOGISTS

**Date:** February 5, 2016

**To:** The Speaker of the Nebraska Legislature  
The Chairperson of the Executive Board of the Legislature  
The Chairperson and Members of the Legislative Health and Human Services Committee

**From:** Courtney N. Phillips, MPA  
Chief Executive Officer  
Department of Health and Human Services



### Introduction

The Regulation of Health Professions Act (as defined in Neb. Rev. Stat., Section 71-6201, et seq.) is commonly referred to as the Credentialing Review Program. The Department of Health and Human Services Division of Public Health administers the Act. As Director of this Division, I am presenting this report under the authority of this Act.

### Description of the Issue under Review

The applicant group is seeking to license Surgical Technologists (STs) in Nebraska.

### Summary of Technical Committee and Board of Health Recommendations

The technical review committee members recommended in favor of the applicants' proposal.

The Board of Health recommended against the applicants' proposal.

## **The Director's Recommendations on the Proposal**

### **Action taken on the four criteria:**

**Criterion one: Unregulated practice can clearly harm or danger the health, safety, or welfare of the public.**

**Action taken:** I recommend against the proposal on this criterion.

**Comments:** The applicants provided no evidence to support the contention that the current practice situation of surgical technologists is a source of harm to the public health or welfare.

**Criterion two: Regulation of the profession does not impose significant new economic hardship, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.**

**Action taken:** I recommend against the proposal on this criterion.

**Comments:** The proposal has the potential to create economic hardship for surgical facilities in Nebraska and would limit the pool of available employees for surgical technology positions in such facilities. For example, the proposal would create a barrier to entry into the profession due to the costs a prospective surgical technologist would have to undergo to get the education and training required for licensure.

**Criterion three: The public needs assurance from the state of initial and continuing professional ability**

**Action taken:** I recommend in favor of the proposal on this criterion.

**Comments:** I agree that there is a need to provide greater assurance that surgical technologists are adequately trained and educated to do their jobs safely and effectively. However, I do not believe that licensure of surgical technologists is necessary in order to accomplish this. This could be accomplished under a registry, for example.

**Criterion four: The public cannot be protected by a more effective alternative.**

**Action taken:** I recommend against the proposal on this criterion.

**Comments:** I do not believe that the current licensure proposal is the best way to address concerns raised about surgical technology practice today. Other forms of regulation such as registration or certification would be more appropriate for this profession given that they work from a list of procedures and functions rather than a true scope of practice. Some have argued that we need to license this group because the Howard Paul ruling by the Nebraska Supreme Court in 1898 states that unlicensed assistive personnel cannot work under physician delegation. However, a more recent ruling by the Supreme Court known as the

'Captain-of-the-ship' ruling states that a surgeon is responsible for what happens in the surgical suite.

**Action taken on the entire proposal:** I recommend against approving the proposal.

**Comments:** All things considered, there are better alternatives for addressing the issues and concerns raised during this review than the current licensure proposal as I have already stated in my remarks pertinent to criteria three and four, above, for example.

**LIST OF MEMBERS OF THE SURGICAL TECHNOLOGY TECHNICAL REVIEW  
COMMITTEE (Public Version)  
(Fall 2015)**

**Douglas Vander Broek, DC, (Chair)**

**Christine Chasek, LIMHP, LADC**

**Greg G.Gaden, Ed.D.**

**Jeffrey L. Howorth**

**Jane Lott, RDH, BS**

**Robert Sandstrom, Ph.D., P.T.**

**John Tenny, D.P.M.**