

REPORT OF RECOMMENDATIONS AND FINDINGS

By the Surgical Technologists'
Technical Review Committee

To the Nebraska State Board of Health, the
Director of the Division of Public Health, Department of Health and
Human Services, and the Members of the Health and Human
Services Committee of the Legislature

January 14, 2016

Table of Contents

Part One: Preliminary Information.....	Page	3-4
Part Two: Summary of Committee Recommendations.....	Page	5
Part Three: Summary of the Applicants' Proposal.....	Pages	6-8
Part Four: Discussion on issues by the Committee Members.....	Pages	9-15
Part Five: Committee Recommendations.....	Pages	16-21

Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

**LIST OF MEMBERS OF THE SURGICAL TECHNOLOGISTS' TECHNICAL
REVIEW COMMITTEE (November, 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 Tennity, D.P.M.

Part Two: Summary of Committee Recommendations

The committee members recommended approval of the applicants' proposal.

Part Three: Summary of the Applicants' Proposal

This proposal seeks to license surgical technologists. The surgical technologist profession has its own specific certification and educational standards. Under this proposal, the State of Nebraska would adopt the examination from the National Board of Surgical Technology and Surgical Assisting (NBSTSA) as the official exam for licensing the members of the ST profession in Nebraska. Only those surgical technologists who have passed this national surgical technologist certifying exam are eligible for licensure. According to the American College of Surgeons, "surgical technologists are individuals with specialized education who function as members of the surgical team in the role of scrub person." This statement summarizes the proposed surgical technologist scope of practice.

The surgical technologist works under the supervision of the licensed independent practitioner (surgeon) and the nurse, as an integral member of the operating room team.

The proposed scope of practice for a surgical technologist shall include:

1. Maintains highest standard of sterile technique
2. Obtains and opens supplies, instruments, and equipment needed for surgical procedure,
3. Scrubs, gowns and gloves,
4. Sets up sterile table with instruments, supplies, equipment, and medications/solutions needed for procedure,
5. Transfers but does not administer medications according to applicable law,
6. Irrigates with fluid within the sterile field according to applicable law,
7. Performs appropriate counts with circulating nurse,
8. Gowns and gloves surgeon and assistants,
9. Prepares and drapes the patient for the operative procedure,
10. Passes instruments, supplies and equipment to surgeon and assistants during procedure while anticipating the needs of the surgical team,
11. Prepares and cuts suture material,
12. Provides visualization of the operative site through holding retractors, manipulating endoscopes, sponging and suctioning,
13. Applies electrocautery to clamps placed by a licensed independent practitioner on bleeders,
14. Applies skin staples and skin adhesive under the direction of a licensed health care professional who approximates wound edges,
15. Prepares and applies sterile dressings,
16. Connects drains to evacuator/reservoir,
17. Cleans and prepares instruments for terminal sterilization,
18. Assists other members of team with terminal cleaning of room,
19. Assists in prepping room for the next procedure,
20. Positions and transfers the surgical patient,
21. Utilizes appropriate technique in the care of specimens,
22. Assists anesthesia personnel as needed,
23. Applies electrosurgical grounding pads, tourniquets, and monitoring devices before procedure begins,

24. Performs urinary catheterization when necessary,
25. Prepares patient's skin by applying appropriate skin preparation solution and shaving as needed.

During the review process on their proposal the applicants provided the committee members with a more condensed version of this scope of practice, as follows:

- Surgical technologist means a person who performs certain duties, including:
- Preparing the operating suite for the planned surgical procedure including gathering and opening all equipment, supplies, and instrumentation.
 - Creating and maintaining the sterile field through organization and preparation of instruments and supplies including the performance of all necessary surgical counts.
 - Passing instruments, supplies and equipment to the surgeon and assistance during the procedure while anticipating the needs of the surgical team.
 - Assisting the surgeon as directed in accordance with applicable law.
 - Assisting the circulator as directed in the care of the surgical patient.
 - Cleaning the operating suite including decontamination of instruments, supplies and equipment utilized during the surgical procedure.

The Nebraska Board of Medicine and Surgery would establish, by regulation, continuing competency requirements for surgical technologists to renew licensure. Maintenance of the credential requires 60 hours of continuing education every four years. If certification is allowed to lapse, the practitioner is required to sit for the national surgical technologist certification exam again.

There are two CAAHEP-accredited surgical technology programs in the state of Nebraska. One is located in Omaha at Nebraska Methodist College and the other is located at Southeast Community College in Lincoln which also offers their program online to serve the western part of the state. Both programs are associate degree and include several months of clinical education. Once a candidate successfully completes an accredited program, he or she is eligible to take the national surgical technologist certifying exam administered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA). If passed, the person earns the Certified Surgical Technologist (CST) credential.

The State of Nebraska will adopt renewal criteria based upon the standards that the National Board of Surgical Technology and Surgical Assisting have established for surgical technologists. These standards are as follows;

- Complete the continuing education credits required during the renewal cycle and pay the renewal fee; or
- Demonstrate competency through reexamination.

It is recommended that along with the continued competency information, each applicant for renewal be required to report any conviction for a misdemeanor or felony since the last renewal. Applicants should be required to report any discipline

against any health care professional licensed in this state or any health care professional licensed in any other state since the last renewal period.

The applicants informed the committee members that her group is seeking licensure for all surgical technologists who satisfy the educational and training standards defined in their proposal. The applicants commented that 436 surgical technologists have sat for the certification examination, but that there are certainly more surgical technologists than this, perhaps as many as 800 or 900, which is just a guesstimate. She went on to state that the proposal includes a grandfathering period for all currently practicing surgical technologists to last one year after the passage of the act by the Legislature. The proposed licensing act would adopt the current certification examination used by the profession's national certifying body as the official licensing examination for surgical technology licensure for the State of Nebraska. The applicants stated that a candidate for licensure would be required to complete the entire education and training curriculum for surgical technology to qualify to sit for the licensure examination.

The information in Part Three, above, can be found under the surgical technologist subject on the credentialing review program link at http://dhhs.ne.gov/Pages/reg_admcr.aspx

Part Four: Discussion on issues by the Committee Members

What are the shortcomings of the current practice situation, if any?

The applicants stated that one of the reasons for pursuing licensure is to find a means of dealing with the restrictive impact of the 1898 court case **Howard Paul versus the State of Nebraska** which states that physicians cannot delegate complex medical procedures to any unlicensed personnel. Licensing surgical technologists would satisfy the requirement for such delegation by a physician, thereby greatly improving access and efficiency of procedures in the surgical suite.

The applicants commented on the current unregulated state of surgical technologists by stating that there are concerns about the knowledge and skills of those surgical technologists who have come into the profession vis-à-vis 'OJT'. The education and training of these providers is neither as complete nor thorough as is that of those who have completed the certification program, and that potential for patient harm occurs when surgical technologists are not appropriately educated and trained.

Currently in the state of Nebraska, surgical technologists have no education or competency requirements and can be on the job trained. By establishing a license for surgical technologists, a minimum education and competency standard will be set helping to ensure quality patient care for every surgical patient in the state. This license will also provide a pathway for disciplinary action against the practitioner if necessary.

Prior to surgery, surgical technologists are responsible for setting up the operating room and the sterile field. Surgeries can be delayed when a surgical technologist lacks the knowledge and ability to prepare for an emergency surgery for a new patient, or when a new procedure is needed due to a patient emergency, e.g., an emergency hysterectomy during a routine cesarean section. Surgical technologists are also responsible for setting-up and checking equipment. Poorly-assembled or poorly-checked equipment can result in patient harm. Surgical technologists are also responsible for monitoring equipment, such as equipment that can cause surgical fires, a high-risk in operating rooms due to the presence of oxygen and flammable material. The US Food and Drug Administration has launched a surgical fire prevention initiative since too many preventable fires are occurring in U.S. operating rooms, such as trachea fires.

Poor performance by surgical technologists can cause external and internal third-degree burns and many malpractice cases naming surgical technologists involve burns to the legs, thighs, and internal burns from too-hot equipment (hot due to recent sterilization) that the patient cannot feel because he or she is under anesthesia.

Surgical technologists also manage specimens such as cancer specimens, skin grafts and organs for organ replacement surgeries. If cancer specimens are compromised,

the patient may not be as readily diagnosed or treated or might require a second surgery. When surgical technologists mishandle skin grafts, patients must have grafts done in a second location, leading to pain and scarring in a second location.

Surgical technologists are often the only other person in the sterile field besides the surgeon. Surgical technologists must also know how to perform many tasks simultaneously using sterile technique. At break-neck speed, they are frequently simultaneously removing items from the sterile field, loading sutures, preparing multiple instruments for the next series of steps in the surgery and monitoring equipment all while using sterile technique for each step. Surgical technologists impact the pace of the surgery, which is important because every minute a patient is under anesthesia the risk for excess bleeding and adverse events increases.

Surgical technologists are also responsible for the counts of supplies and instruments that were inserted into the patient during surgery to ensure they are extracted to prevent foreign retained objects, which can cause death in some cases, and in others, extreme pain and organ scarring, even after they are discovered and removed. The circulating nurse and the surgical technologist are co-responsible for counts.

A surgical technologist's most important role is to prevent surgical site infections. The surgical technologist is the professional in the operating room charged with the responsibility of maintaining the integrity of the sterile field. The sterile field refers to surfaces that sterile objects, such as surgical instruments, may contact. The sterile field includes the area immediately around a patient that has been prepared for a surgical procedure. Protecting the sterile field involves carrying out specific procedures using sterile technique. Surgical technologists must follow proper technique to prevent surgical site infections. Surgical site infections pose a significant problem and are the second most common health care-associated infection in the United States.

Licensed physicians (surgeons) and registered nurses supervise surgical technologists while in the operating room suite. According to the 1898 ruling in the case Howard Paul vs. State of Nebraska, licensed physicians (surgeons) are not allowed to delegate to unlicensed personnel. However, this occurs on a daily basis in operating rooms across the state of Nebraska related to the practice of the surgical technologist. The practice of the surgical technologist is delegated by the registered nurse under the Nurse Practice Act. Under this act, the nurse is the only health care professional that is able to delegate to unlicensed personnel which the surgical technologist is currently considered.

Due to the inconsistency between current practice and the law of delegation by the surgeon, there is a need to establish a license for surgical technologists. When the surgeon is present in the operating room they supervise and delegate the practice of the surgical technologist. When the surgeon is absent from the OR suite, the registered nurse supervises and delegates the practice of the surgical technologist. Establishment of a license for surgical technologists would allow practice in the

operating room to proceed as it is currently being performed without the potential for it to be seen as unlawful.

Committee member Chasek expressed concern about those surgical technologists who were once certified but who have since allowed their certification to lapse. This committee member also expressed concern about the quality of the services provided by those who have only 'OJT' training to provide the services in question. The applicants responded that there are a wide range of competencies among those 800 or 900 persons providing the services in question including those who have achieved a degree in surgical technology but who have not sat for the examination, as well as those who have sat for the examination but failed to pass it. The applicants added that current law neither requires completion of course work nor the passing of a test in order to work as a surgical technologist. However, some hospitals require that their surgical technologists sit for the certifying examination, but it doesn't matter if they pass it or not.

Jay Slagle, a representative of both the Midwest Eye Surgery Center and the Nebraska Association of Independent Ambulatory Centers, testified in opposition to the proposal. Mr. Slagle informed the committee members that surgery centers are the second largest employers of surgical technologists in Nebraska. He stated that the current surgical technology proposal fails to satisfy the statutory criteria for initial credentialing in Section 71-6221 of Nebraska Revised Statutes which is the statute defined the Credentialing Review Program, specifically criterion one and criterion two. He went on to state that no data suggests that patients are receiving substandard care under the current practice situation. Under the current practice situation surgical technologists work under the supervision of licensed registered nurses or physicians. He went on to state that the applicants argue that the 1898 court case ***Howard Paul versus the State of Nebraska*** has had the effect of prohibiting physicians from delegating to unlicensed personnel, and that they are attempting to remedy this situation by licensing surgical technologists. Instead, he argued, why not seek to find a way to allow physicians to delegate to unlicensed personnel?

The Nebraska Hospital Association stated its opposition to the current surgical technology proposal is for the following reasons:

- Surgical technologists do not have a practice scope. Instead they have a range of functions. Licensure should be limited to professions that have a clear practice scope.
- The functions identified in the surgical technology proposal do not require delegation from a surgeon. Instead they require constant direction from licensed professionals who are trained to render independent judgment such as surgeons, for example, or from supervising RNs, for example. For this reason licensure of surgical technologists is not necessary.
- Licensure of surgical technologists is not necessary for a surgeon to provide direction to them for the functions they perform. Improper delegation would pertain if a surgical technologist were directed to perform suturing, for example. Other

surgical assisting functions are proper under the law and do not require licensure to ensure their continuance.

Does the public need this proposal?

The applicants stated that surgical technologists play a vital role in maintaining a 'sterile field' in the surgical suite, and that they assist RNs and physicians in maintaining a sterile field during surgical procedures. Supervision of surgical technologists is provided by RNs, while physician surgeons do delegate some procedures to them as well.

Dr. Sandstrom then commented that the public does not have direct contact with surgical technologists in the sense that they aren't independent practitioners. They don't hang out a shingle and advertise their services. He then asked the applicants why they think they need a licensed scope of practice. Ms. Glassburner responded that a scope of practice would prevent surgical technologists from being used to perform functions that they should not be used for. Dr. Sandstrom responded that the problem with the proposed surgical technology scope is that it is nothing more than a list of functions and procedures, and does not define a scope of activities or professional services by which the public can be served. Such a list would constantly be vulnerable to rapid changes in technology or medical procedure which sometimes render procedures out-of-date, making it necessary to open up the statute to revise the list of scope elements to meet new technical realities. Dr. Sandstrom continued by stating that the applicants have provided no evidence that the current unregulated state of surgical technology has resulted in any harm to the public.

Ms. Glassburner replied to Dr. Sandstrom's question about the need for a licensure for surgical technologists by stating that there are too many inconsistencies between surgical facilities as to how they are trained and in what they are trained, and that licensure would eliminate these inconsistencies. Ms. Lott expressed agreement with Ms. Glassburner's remark, adding that she has concerns about the inconsistent training of surgical technology employees among rural surgical facilities.

One committee member asked the applicants whether or not some kind of facility credentialing might be a viable alternative to their current proposal. The applicants responded that their group broached this idea with Nebraska Hospital Association representatives and were told that this would be too costly for hospitals to do. The applicants added that this approach could not address the physician delegation problem stemming from the 1898 court case anyway. The committee member expressed skepticism regarding the willingness of the State to shut down surgical services that do not strictly conform to this court ruling from 117 years ago. Another committee member expressed agreement with this comment.

Ben Greenfield, a Licensed Perfusionist, commented that from what he has observed vis-à-vis the surgical first assistant issue, the State has already shown that it is willing to shut down surgical services that do not conform to the aforementioned ruling, and that concerns that this might happen, even as regards surgical technology services, should not be rejected out of hand. An applicant representative commented that advice received from Department legal staff indicates that Nebraska does not make a distinction between specific surgical procedures, on the one hand, and the practice of medicine, on the other. In other words all delegable acts are considered part of the practice of medicine in Nebraska.

Jason Petik, CEO of Sidney Regional Medical Center, submitted written testimony which stated that there is no evidence that the current unregulated status of surgical technology has created a danger to the health, safety, or welfare of the public. This letter is posted on the Program web link described previously in this report. Mr. Petik went on to write that each hospital maintains internal policies and procedures for surgical technology that ensure that these professionals are functioning appropriately and performing within the standards of best practices. He went on to state that he could not find any reported occurrences of adverse patient outcomes stemming from the actions of surgical technologists.

Jay Slagle, a representative of both the Midwest Eye Surgery Center and the Nebraska Association of Independent Ambulatory Centers, commented that modern surgical facilities are all monitored by organizations such as JAACHO and Medicare, for example, and that conformity to the standards of such overarching national organizations makes it virtually impossible to avoid conforming to safe and effective practices. Thorough and detailed regulation is an all-pervasive thing across the board in all surgical facilities in our state.

Mr. Slagle responded to applicant arguments about the need for their proposal by arguing that the imperatives of risk and reputation 'drive' the desire for maintaining high standards in all aspects of the care that health care facilities provide. There's no need for the state to impose additional regulation in this area of care. Dr. Tenny asked Mr. Slagle if he thinks that current market forces, such as a low unemployment rate, would be a bigger factor in hiring and paying surgical staff, versus the applicants' proposal. Ms. Lott responded to Dr. Tenny by stating that rural areas often lag behind urban areas in the impact of the kind of market forces that Dr. Tenny refers to. Profit margins are more constrained therein and the temptation to cut corners by cutting standards is greater in these areas as well.

Are there any aspects of the proposal that would not be in the public interest?

Committee member Chasek expressed concerns about the one-year grandfathering provision in the applicant's proposal, commenting that some who have submitted testimony in writing have advocated a two-year grandfathering provision instead.

Dr. Sandstrom asked the applicants why registration would not address their concerns. The applicants responded that registration could not address issues pertinent to the delegation of surgical procedures by physicians to unlicensed providers in the surgical suite.

Mr. Slagle went on to state that the surgical technology proposal would create economic hardship for the public. The proposal would incur a wide range of additional costs including costs associated with taking courses to qualify for a licensing examination, taking a licensing examination, the licenses per se, licensure renewals, and continuing education. The proposal would also likely drive up salary costs. Because of barriers to entry into the profession associated with the costs of getting licensed fewer people will seek to become surgical technologists. This in turn will drive up salary costs given steady or increased demand for their services.

Bruce Rieker, a representative of the Nebraska Hospital Association (NHA), also spoke against approval of the proposal, citing the likelihood of increased cost of services as the reason for his opposition. Mr. Rieker responded to applicant assertions that there is no evidence of any connection between licensing surgical technologists and increased costs of surgical technology services by stating that to date there are no states that license these professionals. Mr. Rieker stated that minimum competencies in surgical technology services can be maintained without the need for licensure. He added that the registration component in NHA's 2014 surgical first assistant's proposal would be a much less costly means of addressing the regulatory needs of surgical technology than licensure. Licensing surgical technologists would also create confusion regarding supervisory of surgical technology services. Who would supervise them if they were licensed, nurses for physicians? Registering them would not create such concerns.

Jason Petik, CEO of Sidney Regional Medical Center, wrote that imposing both educational and credentialing requirements on surgical technologists will greatly diminish the ability of hospitals and surgical centers to recruit members of this occupational group. The costs associated with acquiring the education and training to become licensed as well as the costs associated with acquiring and maintaining a license per se would create a financial burden for this entry-level position, and would lessen the availability of persons willing to do this kind of work.

Dr. Sandstrom commented that the applicant group needs to find more general language to articulate their scope of practice than that which is currently being used to articulate their scope of practice. He went on to state that the current wording is

far too detailed and is little more than a laundry list of procedures rather than an articulation of a concept for a field of practice, which is what a scope of practice should be. He went on to state that the current wording is so specific that every time there is a change in technology or a change in surgical procedures the practice act would have to be opened to update the scope of practice.

Dr. Vander Broek asked the applicants to address the employment situation of their profession. Ms. Glassburner responded that there is a strong and steady demand by employers for surgical technology graduates. Jay Slagle commented that if the proposal were to pass this strong demand for surgical technologist graduates would be greatly weakened because the cost of employing them would increase greatly, making for significant hardship for independent surgical services which would be unable to employ 'OJT' trained surgical employees anymore. Dr. Tenny agreed with this assessment of the employment situation adding that the proposal would create significant new hardship for independent ambulatory centers.

Is there a better way to address concerns raised about surgical technology services than the applicants' proposal?

Dr. Vander Broek asked the applicants about the proposed registration provision in the surgical first assistant proposal. Ms. Glassburner responded that her group could not get clarification from that applicant group regarding who would oversee the assessment provision for the registry, neither could they get clarification as to what exactly this assessment process would entail.

Dr. Sandstrom commented by asking at what point should hospitals and other surgical facilities be solely responsible for the conduct of their employees? Why do we need professional licensure by the State on top of this to ensure public protection as regards the services of surgical technologists, for example? Dr. Sandstrom asked the applicants whether some kind of title protection might address concerns raised about the unregulated circumstances of surgical technology. Ms. Glassburner responded that the Howard Paul ruling still complicates the situation and limits the ability of something as simple as title protection to address surgical technology concerns. However, Mr. Howorth commented that a more recent court decision from 1998 known as 'the-captain-of-the-ship' ruling argues that during a surgical procedure the surgeon performing the procedure is deemed to have complete authority over all other personnel in the surgical suite and furthermore is solely liable for whatever outcome occurs as a result of the procedure he or she conducts. This should help us see that other options are available for addressing concerns raised about surgical technology than just licensure, for example.

Dr. Tenny commented that there is a need for assurance of professional ability. Mr. Howorth commented that, yes, there is such a need, but from whom should such assurance come? Should it come from the State? Or, should it come from the private sector? Dr. Tenny replied that it's the responsibility of the State. Mr. Howorth responded that in this case the responsibility should be borne by each

surgical facility. Dr. Sandstrom commented that there is a need for assurance of competency but that there is a need for a new proposal to achieve this, one that would bring together both sides of the controversy, adding that one way to do this would be to use continuing education to build common ground among the various parties. Ms. Lott expressed support for the public approach rather than the private facility approach, expressing concern that for-profit institutions might not be the most objective or fair-minded groups to provide leadership in an effort to address competency concerns.

All sources used to create Part Four of this report can be found on the credentialing review program link at http://dhhs.ne.gov/Pages/reg_admcr.aspx

Part Five: Committee Recommendations

Committee Actions Taken on the Four Statutory Criteria:

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

Action taken: A 'yes' vote is a vote in favor of approval of the proposal. A 'no' vote is a vote against approval of the proposal.

Voting yes on this criterion were Chasek, Gaden, Lott, Sandstrom, and Tenny. Voting no was Howorth. Vander Broek abstained from voting.

Comments from committee members:

- Dr. Tenny commented that new technology available in the surgical suite has created a need for competency assurance of surgical technologists. On-the-job training should be in addition to, not in lieu of, formal education.
- Dr. Gaden commented that the technical complexity of the functions of surgical technologists has made it necessary to create a more consistent education and training standard for surgical technologists.
- Ms. Lott commented that education has become a vital concern in the provision of surgical technology services.
- Dr. Vander Broek commented providing a consistent education and training background by those who provide surgical technology services is important.
- Dr. Sandstrom commented that there is potential for harm to the public inherent in the current situation of surgical technology services, and that there is a need to create consistent education and training standards for those who provide these services. He added that there is a need for some kind of disciplinary process under a regulatory board. Regulation by the State would improve the ability of employers to prevent unqualified, unsafe, or impaired

surgical technologists from working in Nebraska. Surgical technologists should be subject to the requirements of the mandatory reporting law. He also stated that the Howard Paul case does raise concerns regarding delegation of duties to surgical technologists in the surgical suite.

- Ms. Chasek commented that most testifiers have indicated that something needs to be done to create assurance of competency in this field, and that currently there is no disciplinary process, no tracking of providers, and no base line definition as to what surgical technologists do or how they are to be trained.
- Mr. Howorth commented that the applicant group presented no evidence that the public has suffered any harmed from the provision of surgical technology services. He went on to state that health facilities are highly regulated by both state and federal governmental laws and institutions, and that because of this there is no need for the state to credential those who provide these services.

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: A 'yes' vote is a vote in favor of approval of the proposal. A 'no' vote is a vote against approval of the proposal.

Voting yes on this criterion was Gaden. Voting no were Lott, Sandstrom, Chasek, Tennity, and Howorth. Vander Broek abstained from voting.

Comments from committee members:

- Mr. Howorth commented that passing this proposal would create real hardships for those facilities that provide surgical services, and that wages would increase as a result of passing this proposal.
- Ms. Chasek commented that the proposal would likely create some hardships for health care facilities that provide surgical services. However, there is a need to create basic education and training requirements for surgical technologists in order to protect the public.
- Dr. Sandstrom stated that the proposal would create real shortages in services if it were to pass because the colleges would not be able to turn out graduates fast enough to keep up with demand within two to four years after enactment. He went on to state that some persons interested in doing this work might move to neighboring states that do not license surgical technologists in order to avoid the additional costs of becoming licensed.

- Ms. Lott commented that there would likely be some hardship for health care facilities but not for the general public.
- Dr. Gaden expressed agreement with Ms. Lott.
- Dr. Tenny stated that wages and costs for health care facilities would likely increase but that the public would not be adversely impacted by the proposal.

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

Action taken: A ‘yes’ vote is a vote in favor of approval of the proposal. A ‘no’ vote is a vote against approval of the proposal.

Voting yes on this criterion were Chasek, Gaden, Lott, Sandstrom, Howorth, and Tenny. Vander Broek abstained from voting.

Comments from committee members:

- Dr. Tenny commented that it is the responsibility of the State to provide assurance that the services in question are safe. The services in question have become too complex for the State to leave this responsibility to health care facilities.
- Dr. Gaden expressed agreement with Dr. Tenny, adding that licensure would address the concerns that have been raised about the potential impact of the Howard Paul on surgical technology services. Dr. Gaden went on to state that there might be merit in the idea of a registry, but that this idea needs to be fleshed out in such a way as to address education and training concerns for surgical technologists, and this, as yet, has not been done.
- Ms. Lott stated that the public does need assurance that surgical technologists receive standardized education and training that enables them to provide safe and effective services.
- Dr. Vander Broek commented that there is a need for such assurance but expressed concern about how this could be done without limiting the pool of persons available to provide the services in question.
- Dr. Sandstrom commented that there is a need to create a standardized education and training regimen for surgical technologists. The State should set minimum training / competency standards for on the job trained surgical

technologists (e.g. hours, content, testing procedures). Requirements for the nurse aide or medication aide registry programs may be helpful in developing consensus standards.

- Ms. Chasek commented that the public expects that all persons who provide surgically related services possess education and training to perform their functions safely and effectively.
- Mr. Howorth commented that the public has the right to expect that the State will police health care facilities so as to ensure that they carry out their responsibility of protecting the public vis-à-vis the services of surgical technologists.

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

Action taken: A ‘yes’ vote is a vote in favor of approval of the proposal. A ‘no’ vote is a vote against approval of the proposal.

Voting yes on this criterion were Chasek, Gaden, Lott, and Tenuity. Voting no were Sandstrom and Howorth. Vander Broek abstained from voting.

Comments from committee members:

- Ms. Chasek commented that registration does offer the possibility of a viable option to the current proposal, but that more information is needed as to how this option would address all concerns raised about the current practice situation.
- Dr. Gaden commented that concerns raised about the potential implications of the Howard Paul case for surgical technology services were vital concerns for him, and were decisive in his support for licensure for this profession.
- Dr. Tenuity stated that the idea of registration for this profession has some potential but that there are so many versions of registration that it’s hard to know which version would be best for this particular profession. He went on to state that licensure would address all concerns raised about education and training as well as concerns raised about Howard Paul, for example, whereas it is not clear whether or not registration would be able to address all of these concerns.
- Dr. Sandstrom stated that there is a better way to address the issues under review than licensing this profession. Surgical technologists who have completed an accredited training program and passed the national certification examination should have title protection. This could take the form

of registration or certification by the State, for example. A scope of practice is not necessary given that this occupation practices only under the supervision of a licensed health professional and within facilities where there is adequate state and federal regulation in place to protect the public from unsafe acts.

- Mr. Howorth commented that the current situation is his preference, but that if creating personnel standards becomes the policy direction of choice he would prefer an option other than licensure because the latter would be too costly and would restrict access to services.

Action taken on the entire proposal was as follows:

Action taken: A ‘yes’ vote is a vote in favor of approval of the proposal. A ‘no’ vote is a vote against approval of the proposal.

Voting yes were Chasek, Gaden, Lott, and Tennity. Voting no were Howorth and Sandstrom. Vander Broek abstained from voting.

Comments from committee members:

- Dr. Tennity commented that action of some kind is needed to address competency and minimum educational standards. The evolving complexity in surgical technology makes it necessary to create a licensing process for this profession. Simple registration would not suffice in improving the current situation.
- Dr. Gaden commented that there is a need to do something to address concerns raised about the current situation and that, right now, licensure seems to hold promise of being the most likely way of addressing all of these concerns. He went on to state that he does have concerns about the potential for significant increases in the cost of services if licensure passes, but concluded his remarks by stating that, right now, he sees no other way than licensure for addressing concerns raised by the Howard Paul case, for example.
- Ms. Lott commented that in today’s health care world it’s essential that there be assurances that each professional possess the education and training necessary to do their work safely and effectively. She stated that this is why she supports licensure for this currently unregulated profession.
- Dr. Sandstrom stated that he respects surgical technologists and recognizes that there is a need to do something to address outstanding concerns about the current situation, but added that licensing this profession is not the best solution. There are better ideas including registration or certification, for example. He went on to state that if the licensure proposal passes access to services could decline significantly. He added that licensure is not the least restrictive regulatory option for this group. Title protection for graduates of an accredited program who pass the national certification examination and State-mandated training / competency standards for on the job trained surgical

technologists would be the best way to address the concerns raised. The Board of Nursing is best suited to regulate this group.

- Ms. Chasek stated that there is a need for assurance of competent practice in this area of health care. Surgical patients are very vulnerable and have no say regarding which surgical technologist is working when their surgery is being conducted.
- Mr. Howorth expressed agreement with Dr. Sandstrom that the current licensing proposal would be too costly and would limit access to services. Regarding concerns about the Howard Paul case he stated that the more recent 1998 'Captain-of-the-Ship' ruling by the Nebraska Supreme Court should be regarded as having super-ceded the Howard Paul decision of 1898, and that consequently the delegation concerns of the applicant group are very much overstated.