

CHAPTER 339

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 10-1415

BY REPRESENTATIVE(S) Gagliardi, Apuan, Labuda, Merrifield, Primavera, Riesberg, Schafer S., Todd, Vigil;
also SENATOR(S) Morse, Boyd, Foster, Newell, Tochtrop, Williams.

AN ACT

CONCERNING THE REGISTRATION OF PERSONS WHO ASSIST SURGEONS, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 43.2
Surgical Assistants and Surgical Technologists

12-43.2-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DATABASE" MEANS THE DATABASE REQUIRED BY SECTION 12-43.2-102.

(2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES OR THE DIRECTOR'S DESIGNEE.

(3) "EMPLOYER" MEANS A HEALTH CARE INSTITUTION, AS DEFINED IN SECTION 13-64-202, C.R.S., A HEALTH CARE PROFESSIONAL AS DEFINED IN SECTION 13-64-202, C.R.S., OR AN ENTITY WHO EITHER EMPLOYS A REGISTRANT OR WHO PROVIDES A REGISTRANT TO A HEALTH CARE INSTITUTION OR HEALTH CARE PROFESSIONAL ON A CONTRACTUAL BASIS.

(4) "REGISTER" MEANS TO RECORD THE INFORMATION REQUIRED BY SECTION 12-43.2-102 (3) (b) IN THE DATABASE IN A FORM AND MANNER AS DETERMINED BY THE DIRECTOR. TO BE REGISTERED DOES NOT MEAN THAT THE REGISTRANT:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

- (a) HAS ANY PARTICULAR QUALIFICATIONS OR PROFESSIONAL COMPETENCY; OR
- (b) MUST BE CERTIFIED AS A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST.

(5) "REGISTRANT" MEANS A PERSON REQUIRED TO BE REGISTERED PURSUANT TO THIS ARTICLE.

(6) "SURGICAL ASSISTANT" MEANS A PERSON WHO PERFORMS CERTAIN DUTIES, INCLUDING:

- (a) POSITIONING THE PATIENT;
- (b) PROVIDING VISUALIZATION OF THE OPERATIVE SITE;
- (c) UTILIZING APPROPRIATE TECHNIQUES TO ASSIST WITH HEMOSTASIS;
- (d) PARTICIPATING IN VOLUME REPLACEMENT OR AUTOTRANSFUSION TECHNIQUES AS APPROPRIATE;
- (e) UTILIZING APPROPRIATE TECHNIQUES TO ASSIST WITH CLOSURE OF BODY PLANES;
- (f) SELECTING AND APPLYING APPROPRIATE WOUND DRESSINGS;
- (g) PROVIDING ASSISTANCE IN SECURING DRAINAGE SYSTEMS TO TISSUE; AND
- (h) THE DUTIES SPECIFIED IN SUBSECTION (7) OF THIS SECTION.

(7) "SURGICAL TECHNOLOGIST" MEANS A PERSON WHO PERFORMS CERTAIN DUTIES, INCLUDING:

- (a) PREPARATION OF THE OPERATING OR PROCEDURE ROOM AND THE STERILE FIELD FOR SURGICAL PROCEDURES BY STERILIZING SUPPLIES, INSTRUMENTS, AND EQUIPMENT;
- (b) PREPARATION OF THE OPERATING OR PROCEDURE ROOM FOR SURGICAL PROCEDURES BY ENSURING THAT SURGICAL EQUIPMENT IS FUNCTIONING PROPERLY AND SAFELY; AND
- (c) PASSING INSTRUMENTS, EQUIPMENT, OR SUPPLIES TO A SURGEON; SPONGING OR SUCTIONING AN OPERATIVE SITE; PREPARING AND CUTTING SUTURE MATERIAL; HOLDING RETRACTORS; TRANSFERRING BUT NOT ADMINISTERING FLUIDS OR DRUGS; ASSISTING IN COUNTING SPONGES, NEEDLES, SUPPLIES, AND INSTRUMENTS; AND PERFORMING OTHER SIMILAR DUTIES AS DIRECTED DURING A SURGICAL PROCEDURE.

12-43.2-102. Registration - penalty - renewal - database - fees - rules. (1) ON AND AFTER APRIL 1, 2011:

- (a) NO PERSON MAY PERFORM THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST UNLESS THE PERSON IS REGISTERED BY THE DIRECTOR.

(b) A PERSON WHO PERFORMS THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST WITHOUT BEING REGISTERED COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S., FOR THE FIRST OFFENSE, AND FOR A SECOND OR SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S.

(2) (a) REGISTRATIONS MADE PURSUANT TO THIS ARTICLE ARE VALID FOR THE PERIOD OF TIME ESTABLISHED BY THE DIRECTOR. EACH REGISTRANT SHALL RENEW HIS OR HER REGISTRATION ACCORDING TO A SCHEDULE SET BY THE DIRECTOR. IF A REGISTRANT DOES NOT RENEW HIS OR HER REGISTRATION ACCORDING TO THE SCHEDULE, THE REGISTRATION EXPIRES. A PERSON WHOSE REGISTRATION HAS EXPIRED SHALL NOT PERFORM THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST UNTIL HE OR SHE REINSTATES THE REGISTRATION.

(b) THE DIRECTOR SHALL ESTABLISH A PROCESS FOR RENEWAL OF REGISTRATIONS AND REINSTATEMENT OF EXPIRED REGISTRATIONS. A PERSON RENEWING OR REINSTATING A REGISTRATION SHALL SUBMIT AN APPLICATION IN THE FORM AND MANNER ESTABLISHED BY THE DIRECTOR.

(3) (a) THE DIRECTOR SHALL MAINTAIN A DATABASE OF ALL REGISTRANTS. THE DIRECTOR SHALL CHARGE A FEE IN THE SAME MANNER AS AUTHORIZED IN SECTION 24-34-105, C.R.S., FOR REGISTRATION IN THE DATABASE. THE DIRECTOR SHALL TRANSMIT THE FEES TO THE STATE TREASURER, WHO SHALL DEPOSIT THEM IN THE DIVISION OF REGISTRATIONS CASH FUND CREATED IN SECTION 24-34-105, C.R.S. THE DIRECTOR SHALL USE THE FEES FOR THE ADMINISTRATION OF THIS ARTICLE.

(b) EACH REGISTRANT SHALL PROVIDE FOR REGISTRATION IN THE DATABASE THE REGISTRANT'S NAME; CURRENT ADDRESS; EDUCATIONAL AND TRAINING QUALIFICATIONS; ALL CURRENT EMPLOYERS; EMPLOYERS WITHIN THE PREVIOUS FIVE YEARS; THE JURISDICTIONS OTHER THAN COLORADO IN WHICH THE REGISTRANT IS OR HAS BEEN LICENSED, CERTIFIED, OR REGISTERED, IF APPLICABLE; WHETHER THE REGISTRANT IS CURRENTLY CERTIFIED BY A NATIONALLY ACCREDITED CERTIFYING ORGANIZATION AND, IF SO, WHICH ONE; AND ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION RELATING TO PERFORMING THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST OF WHICH THE REGISTRANT WAS THE SUBJECT IN THIS OR ANY OTHER JURISDICTION. REGISTRANTS SHALL UPDATE SUCH INFORMATION IN THE DATABASE WITHIN THIRTY DAYS AFTER ANY CHANGE AND GIVE THE DIRECTOR WRITTEN NOTICE OF ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTIONS. WHEN RECORDING THE INFORMATION REQUIRED BY THIS SECTION, EACH REGISTRANT SHALL INDICATE WHETHER HE OR SHE HAS BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY MISDEMEANOR RELATING TO DRUGS OR ALCOHOL OR TO ANY FELONY.

(c) INFORMATION IN THE DATABASE SHALL BE OPEN TO THE PUBLIC.

(4) THE DIRECTOR SHALL PROMULGATE RULES NECESSARY AND CONVENIENT FOR THE ADMINISTRATION OF THIS ARTICLE.

12-43.2-103. Scope of article - exclusion. (1) THIS ARTICLE DOES NOT PREVENT OR RESTRICT THE PRACTICE, SERVICES, OR ACTIVITIES OF:

(a) A PERSON LICENSED, OTHERWISE REGULATED, OR SPECIFICALLY EXEMPTED IN THIS STATE BY ANY OTHER LAW FROM ENGAGING IN HIS OR HER PROFESSION OR OCCUPATION AS DEFINED IN THE ARTICLE UNDER WHICH HE OR SHE IS LICENSED OR OTHERWISE REGULATED OR REQUIRE A PERSON WHO IS LICENSED, OTHERWISE REGULATED, OR SPECIFICALLY EXEMPTED PURSUANT TO ARTICLES 29 TO 43.9 OF THIS TITLE TO REGISTER PURSUANT TO THIS ARTICLE; OR

(b) A PERSON PURSUING A COURSE OF STUDY IN AN ACCREDITED EDUCATIONAL SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST PROGRAM IF THAT PERSON IS DESIGNATED BY A TITLE THAT CLEARLY INDICATES HIS OR HER STATUS AS A STUDENT AND IF HE OR SHE ACTS UNDER APPROPRIATE INSTRUCTION AND SUPERVISION.

12-43.2-104. Employers - requirements - references. (1) ON AND AFTER APRIL 1, 2011, AN EMPLOYER OF A REGISTRANT SHALL:

(a) CHECK THE DATABASE TO VERIFY THAT THE PERSON IS REGISTERED IN THE DATABASE BEFORE THE PERSON MAY PERFORM THE DUTIES SPECIFIED IN SECTION 12-43.2-101 (6) OR (7); AND

(b) GIVE THE DIRECTOR WRITTEN NOTICE WITHIN TWO WEEKS AFTER A DISCIPLINARY ACTION OR INVESTIGATION THAT IS BASED ON CONDUCT THAT CONSTITUTES A VIOLATION OF THIS ARTICLE. FOR PURPOSES OF THIS PARAGRAPH (b), "DISCIPLINARY ACTION" INCLUDES TERMINATION OR RESIGNATION OF THE REGISTRANT WHILE UNDER INVESTIGATION OR IN LIEU OF INVESTIGATION OR DISCIPLINARY ACTION. THE DIRECTOR SHALL ESTABLISH A NOTIFICATION FORM ON THE DEPARTMENT'S WEB SITE.

(2) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT SECTIONS 8-2-110 AND 8-2-111, C.R.S., WHICH PROHIBIT THE MAINTENANCE OR USE OF BLACKLISTS, WERE ENACTED TO PROTECT EMPLOYEES FROM RETRIBUTION AND HARASSMENT IN THE PURSUIT OF THEIR LAWFUL ACTIVITIES. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT THESE PROHIBITIONS AGAINST BLACKLISTING HAVE IN SOME INSTANCES BEEN ABUSED AND HAVE BEEN USED AS A SHIELD BY PERSONS RESPONSIBLE FOR DRUG VIOLATIONS OR PATIENT ENDANGERMENT.

(b) IN RESPONSE TO A REQUEST BY AN EMPLOYER, IT SHALL NOT BE UNLAWFUL NOR A VIOLATION OF THE PROHIBITIONS AGAINST BLACKLISTING SPECIFIED IN SECTION 8-2-110 OR 8-2-111, C.R.S., FOR AN EMPLOYER, WHEN ACTING IN GOOD FAITH, TO DISCLOSE INFORMATION KNOWN ABOUT ANY INVOLVEMENT IN DRUG DIVERSION, DRUG TAMPERING, PATIENT ABUSE, VIOLATION OF DRUG OR ALCOHOL POLICIES, OR CRIMES OF VIOLENCE, AS LISTED IN SECTION 18-1.3-406 (2) (a), C.R.S., COMMITTED BY A REGISTRANT WHO IS AN EMPLOYEE OR FORMER EMPLOYEE OF THE RESPONDING EMPLOYER.

(c) THE PROVISION OF EMPLOYMENT INFORMATION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) DOES NOT CONSTITUTE A VIOLATION OF THE PROHIBITION AGAINST BLACKLISTING AS PROVIDED IN SECTIONS 8-2-110 AND 8-2-111, C.R.S., NOR DOES IT CONSTITUTE AN UNFAIR LABOR PRACTICE IN VIOLATION OF ANY PROVISION OF ARTICLE 3 OF TITLE 8, C.R.S.

(d) (I) AN EMPLOYER WHO PROVIDES INFORMATION PURSUANT TO THIS SUBSECTION (2) TO A PROSPECTIVE EMPLOYER OF THE REGISTRANT UPON REQUEST OF THE PROSPECTIVE EMPLOYER OR THE REGISTRANT IS IMMUNE FROM CIVIL LIABILITY AND IS NOT LIABLE IN CIVIL DAMAGES FOR THE DISCLOSURE OR ANY CONSEQUENCES OF THE DISCLOSURE; EXCEPT THAT THIS IMMUNITY DOES NOT APPLY WHEN THE REGISTRANT SHOWS BY A PREPONDERANCE OF THE EVIDENCE BOTH OF THE FOLLOWING:

(A) THE INFORMATION DISCLOSED BY THE CURRENT OR FORMER EMPLOYER WAS FALSE; AND

(B) THE EMPLOYER PROVIDING THE INFORMATION KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE INFORMATION WAS FALSE.

(II) THIS SUBSECTION (2) APPLIES TO ANY EMPLOYEE, AGENT, OR OTHER REPRESENTATIVE OF THE CURRENT OR FORMER EMPLOYER WHO IS AUTHORIZED TO PROVIDE AND WHO PROVIDES INFORMATION IN ACCORDANCE WITH THIS SUBSECTION (2).

(e) AN EMPLOYER OR ANY OFFICER, DIRECTOR, OR EMPLOYEE THEREOF WHO DISCLOSES INFORMATION UNDER THIS SUBSECTION (2) SHALL BE PRESUMED TO BE ACTING IN GOOD FAITH UNLESS IT IS SHOWN BY A PREPONDERANCE OF THE EVIDENCE THAT THE EMPLOYER, OFFICER, DIRECTOR, OR EMPLOYEE INTENTIONALLY OR RECKLESSLY DISCLOSED FALSE INFORMATION ABOUT THE EMPLOYEE OR FORMER EMPLOYEE.

(f) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO ABROGATE OR CONTRADICT THE PROVISIONS OF PART 1 OF ARTICLE 2 OF TITLE 8, C.R.S.

12-43.2-105. Grounds for discipline - disciplinary proceedings - judicial review. (1) THE DIRECTOR MAY TAKE DISCIPLINARY ACTION AGAINST A REGISTRANT IF THE DIRECTOR FINDS THAT THE REGISTRANT HAS REPRESENTED HIMSELF OR HERSELF AS A REGISTERED SURGICAL ASSISTANT OR TECHNOLOGIST AFTER THE EXPIRATION, SUSPENSION, OR REVOCATION OF HIS OR HER REGISTRATION.

(2) THE DIRECTOR MAY REVOKE, SUSPEND, DENY, OR REFUSE TO RENEW A REGISTRATION, OR ISSUE A CEASE-AND-DESIST ORDER TO A REGISTRANT IN ACCORDANCE WITH THIS SECTION UPON PROOF THAT THE REGISTRANT:

(a) HAS PERFORMED THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST WITHOUT BEING REGISTERED;

(b) HAS FALSIFIED INFORMATION IN AN APPLICATION OR THE DATABASE OR HAS ATTEMPTED TO OBTAIN OR HAS OBTAINED A REGISTRATION BY FRAUD, DECEPTION, OR MISREPRESENTATION;

(c) IS AN EXCESSIVE OR HABITUAL USER OR ABUSER OF ALCOHOL OR HABIT-FORMING DRUGS OR IS A HABITUAL USER OF A CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102, C.R.S., OR OTHER DRUGS HAVING SIMILAR EFFECTS;

(d) HAS A PHYSICAL OR MENTAL CONDITION OR DISABILITY THAT RENDERS THE

REGISTRANT UNABLE TO PERFORM HIS OR HER TASKS WITH REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH OR SAFETY OF INDIVIDUALS RECEIVING SERVICES;

(e) HAS VIOLATED THIS ARTICLE OR AIDED OR ABETTED OR KNOWINGLY PERMITTED ANY PERSON TO VIOLATE THIS ARTICLE, A RULE ADOPTED UNDER THIS ARTICLE, OR ANY LAWFUL ORDER OF THE DIRECTOR;

(f) HAD A REGISTRATION, LICENSE, OR CERTIFICATION SUSPENDED, REVOKED, OR DENIED BY ANOTHER JURISDICTION FOR ACTIONS THAT ARE A VIOLATION OF THIS ARTICLE;

(g) HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A MISDEMEANOR RELATED TO DRUGS OR ALCOHOL OR A FELONY. A CERTIFIED COPY OF THE JUDGMENT OF A COURT OF COMPETENT JURISDICTION OF THE CONVICTION OR PLEA SHALL BE CONCLUSIVE EVIDENCE OF THE CONVICTION OR PLEA. IN CONSIDERING THE DISCIPLINARY ACTION, THE DIRECTOR SHALL BE GOVERNED BY SECTION 24-5-101, C.R.S.

(h) HAS FRAUDULENTLY OBTAINED, FURNISHED, OR SOLD ANY SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST DIPLOMA, CERTIFICATE, REGISTRATION, RENEWAL OF REGISTRATION, OR RECORD OR AIDED OR ABETTED SUCH ACT;

(i) HAS FAILED TO NOTIFY THE DIRECTOR OF THE SUSPENSION, REVOCATION, OR DENIAL OF THE PERSON'S PAST OR CURRENTLY HELD LICENSE, CERTIFICATE, OR REGISTRATION REQUIRED TO PERFORM THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST IN THIS OR ANY OTHER JURISDICTION;

(j) HAS REFUSED TO SUBMIT TO A PHYSICAL OR MENTAL EXAMINATION WHEN ORDERED BY THE DIRECTOR PURSUANT TO SECTION 12-43.2-106; OR

(k) HAS OTHERWISE VIOLATED ANY PROVISION OF THIS ARTICLE OR LAWFUL ORDER OR RULE OF THE DIRECTOR.

(3)(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE DIRECTOR NEED NOT FIND THAT THE ACTIONS THAT ARE GROUNDS FOR DISCIPLINE WERE WILLFUL BUT MAY CONSIDER WHETHER SUCH ACTIONS WERE WILLFUL WHEN DETERMINING THE NATURE OF DISCIPLINARY SANCTIONS TO BE IMPOSED.

(b) UPON THE FAILURE OF A REGISTRANT TO COMPLY WITH ANY CONDITIONS IMPOSED BY THE DIRECTOR PURSUANT TO SUBSECTION (2) OF THIS SECTION, UNLESS COMPLIANCE IS BEYOND THE CONTROL OF THE REGISTRANT, THE DIRECTOR MAY SUSPEND THE REGISTRATION OF THE REGISTRANT UNTIL THE REGISTRANT COMPLIES WITH THE CONDITIONS OF THE DIRECTOR.

(4) (a) THE DIRECTOR MAY COMMENCE A PROCEEDING TO DISCIPLINE A REGISTRANT WHEN THE DIRECTOR HAS REASONABLE GROUNDS TO BELIEVE THAT THE REGISTRANT HAS COMMITTED AN ACT ENUMERATED IN THIS SECTION OR HAS VIOLATED A LAWFUL ORDER OR RULE OF THE DIRECTOR.

(b) IN ANY PROCEEDING UNDER THIS SECTION, THE DIRECTOR MAY ACCEPT AS

EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION ANY DISCIPLINARY ACTION TAKEN AGAINST A REGISTRANT IN ANOTHER JURISDICTION IF THE VIOLATION THAT PROMPTED THE DISCIPLINARY ACTION IN THE OTHER JURISDICTION WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER THIS ARTICLE.

(5) DISCIPLINARY PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND THE HEARING AND OPPORTUNITY FOR REVIEW SHALL BE CONDUCTED PURSUANT TO THAT ARTICLE BY THE DIRECTOR OR BY AN ADMINISTRATIVE LAW JUDGE, AT THE DIRECTOR'S DISCRETION. THE DIRECTOR HAS THE AUTHORITY TO EXERCISE ALL POWERS AND DUTIES CONFERRED BY THIS ARTICLE DURING THE DISCIPLINARY PROCEEDINGS.

(6) (a) THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL TO SEEK AN INJUNCTION, IN ANY COURT OF COMPETENT JURISDICTION, TO ENJOIN A PERSON FROM COMMITTING AN ACT PROHIBITED BY THIS ARTICLE. WHEN SEEKING AN INJUNCTION UNDER THIS PARAGRAPH (a), THE ATTORNEY GENERAL SHALL NOT BE REQUIRED TO ALLEGE OR PROVE THE INADEQUACY OF ANY REMEDY AT LAW OR THAT SUBSTANTIAL OR IRREPARABLE DAMAGE IS LIKELY TO RESULT FROM A CONTINUED VIOLATION OF THIS ARTICLE.

(b) (I) IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND THIS ARTICLE, THE DIRECTOR IS AUTHORIZED TO INVESTIGATE, HOLD HEARINGS, AND GATHER EVIDENCE IN ALL MATTERS RELATED TO THE EXERCISE AND PERFORMANCE OF THE POWERS AND DUTIES OF THE DIRECTOR.

(II) IN ORDER TO AID THE DIRECTOR IN ANY HEARING OR INVESTIGATION INSTITUTED PURSUANT TO THIS SECTION, THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (6) IS AUTHORIZED TO ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND ISSUE SUBPOENAS COMPELLING THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ALL RELEVANT RECORDS, PAPERS, BOOKS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING, INVESTIGATION, ACCUSATION, OR OTHER MATTER BEFORE THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(III) UPON FAILURE OF ANY WITNESS OR REGISTRANT TO COMPLY WITH A SUBPOENA OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE SUBPOENAED PERSON OR REGISTRANT RESIDES OR CONDUCTS BUSINESS, UPON APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED PERSON OR REGISTRANT, MAY ISSUE TO THE PERSON OR REGISTRANT AN ORDER REQUIRING THAT PERSON OR REGISTRANT TO APPEAR BEFORE THE DIRECTOR; PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, OR MATERIALS IF SO ORDERED; OR GIVE EVIDENCE TOUCHING THE MATTER UNDER INVESTIGATION OR IN QUESTION. IF THE PERSON OR REGISTRANT FAILS TO OBEY THE ORDER OF THE COURT, THE PERSON OR REGISTRANT MAY BE HELD IN CONTEMPT OF COURT.

(c) THE DIRECTOR MAY APPOINT AN ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., TO CONDUCT HEARINGS, TAKE EVIDENCE, MAKE FINDINGS, AND REPORT SUCH FINDINGS TO THE DIRECTOR.

(7) (a) THE DIRECTOR, THE DIRECTOR'S STAFF, ANY PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR, AN EMPLOYER WHO NOTIFIES THE DIRECTOR

PURSUANT TO SECTION 12-43.2-104 (1) (b), AND ANY PERSON WHO LODGES A COMPLAINT PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM OR HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS DIRECTOR, STAFF, CONSULTANT, EMPLOYER, OR WITNESS, RESPECTIVELY, IF SUCH PERSON WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS, HER, OR ITS RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE FACTS OF THE MATTER AS TO WHICH HE, SHE, OR IT ACTED, AND ACTED IN THE REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM, HER, OR IT WAS WARRANTED BY THE FACTS.

(b) A PERSON PARTICIPATING IN GOOD FAITH IN MAKING A COMPLAINT OR REPORT OR IN AN INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING PURSUANT TO THIS SECTION SHALL BE IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY THAT OTHERWISE MIGHT RESULT BY REASON OF THE PARTICIPATION.

(8) A FINAL ACTION OF THE DIRECTOR IS SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S.

(9) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

(10) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT A REGISTRANT IS ACTING IN A MANNER THAT IS AN IMMINENT THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, OR A PERSON IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION, THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR THE PERFORMANCE OF UNREGISTERED ACTIVITIES IMMEDIATELY CEASE.

(b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (10), THE RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER ACTS IN VIOLATION OF THIS ARTICLE HAVE OCCURRED. THE HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S.

(11) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT A PERSON HAS VIOLATED ANY OTHER PROVISION OF THIS ARTICLE, IN ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS ARTICLE, THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO SHOW CAUSE AS TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING THE PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT OR UNREGISTERED ACTIVITY.

(b) A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (11) SHALL BE NOTIFIED PROMPTLY BY THE DIRECTOR OF THE ISSUANCE OF THE ORDER, ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL BASIS FOR THE ORDER, AND THE DATE SET

BY THE DIRECTOR FOR A HEARING ON THE ORDER. THE NOTICE MAY BE SERVED ON THE PERSON AGAINST WHOM THE ORDER HAS BEEN ISSUED BY PERSONAL SERVICE, BY FIRST-CLASS, POSTAGE PREPAID UNITED STATES MAIL, OR IN ANOTHER MANNER AS MAY BE PRACTICABLE. PERSONAL SERVICE OR MAILING OF AN ORDER OR DOCUMENT PURSUANT TO THIS PARAGRAPH (b) SHALL CONSTITUTE NOTICE OF THE ORDER TO THE PERSON.

(c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE HELD NO SOONER THAN TEN AND NO LATER THAN FORTY-FIVE CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION BY THE DIRECTOR AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (11). THE HEARING MAY BE CONTINUED BY AGREEMENT OF ALL PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER, BUT IN NO EVENT SHALL THE HEARING BE HELD LATER THAN SIXTY CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION.

(II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (11) DOES NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE THAT NOTIFICATION WAS PROPERLY SENT OR SERVED ON THE PERSON PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (11) AND SUCH OTHER EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS AFTER THE DIRECTOR'S DETERMINATION RELATED TO REASONABLE ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER SHALL BECOME FINAL AS TO THAT PERSON BY OPERATION OF LAW. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S.

(III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION, OR HAS OR IS ABOUT TO ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS ARTICLE, A FINAL CEASE-AND-DESIST ORDER MAY BE ISSUED, DIRECTING THE PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR UNREGISTERED PRACTICES.

(IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (11), OF THE FINAL CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) SHALL BE EFFECTIVE WHEN ISSUED AND SHALL BE A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.

(12) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED OR IS ABOUT TO ENGAGE IN AN UNREGISTERED ACT OR PRACTICE; AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE, A RULE PROMULGATED PURSUANT TO THIS ARTICLE, OR AN ORDER ISSUED PURSUANT TO THIS ARTICLE; OR AN ACT OR PRACTICE CONSTITUTING GROUNDS FOR ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE, THE DIRECTOR MAY ENTER INTO A STIPULATION WITH THE PERSON.

(13) IF ANY PERSON FAILS TO COMPLY WITH A FINAL CEASE-AND-DESIST ORDER

OR A STIPULATION, THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

(14) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF THE DIRECTOR'S FINAL ORDER AS PROVIDED IN SUBSECTION (8) OF THIS SECTION.

(15) THE DIRECTOR SHALL NOTIFY THE CHIEF MEDICAL OFFICER OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WITHIN THIRTY DAYS AFTER TAKING ACTION REGARDING CONDUCT OF A REGISTRANT THAT VIOLATES EITHER THIS ARTICLE OR ANY APPLICABLE REQUIREMENT OF TITLE 25, C.R.S., AND POST A NOTICE OF SUCH ACTION ON THE DIVISION'S WEB SITE.

12-43.2-106. Mental and physical examination. (1) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A REGISTRANT IS UNABLE TO PERFORM THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST, AS APPROPRIATE, WITH REASONABLE SKILL AND SAFETY, THE DIRECTOR MAY ORDER THE REGISTRANT TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION ADMINISTERED BY A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE DIRECTOR. UNLESS DUE TO CIRCUMSTANCES BEYOND THE REGISTRANT'S CONTROL, IF THE REGISTRANT REFUSES TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION, THE DIRECTOR MAY SUSPEND THE REGISTRANT'S REGISTRATION UNTIL THE RESULTS OF THE EXAMINATION ARE KNOWN AND THE DIRECTOR HAS MADE A DETERMINATION OF THE REGISTRANT'S FITNESS TO PERFORM THE DUTIES OF A SURGICAL ASSISTANT OR SURGICAL TECHNOLOGIST. THE DIRECTOR SHALL PROCEED WITH AN ORDER FOR EXAMINATION AND SHALL MAKE HIS OR HER DETERMINATION IN A TIMELY MANNER.

(2) AN ORDER REQUIRING A REGISTRANT TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION SHALL CONTAIN THE BASIS OF THE DIRECTOR'S REASONABLE CAUSE TO BELIEVE THAT THE REGISTRANT IS UNABLE TO WORK WITH REASONABLE SKILL AND SAFETY. FOR PURPOSES OF A DISCIPLINARY PROCEEDING AUTHORIZED UNDER THIS ARTICLE, THE REGISTRANT SHALL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIBILITY OF THE EXAMINING PHYSICIAN'S OR OTHER LICENSED HEALTH CARE PROFESSIONAL'S TESTIMONY OR EXAMINATION REPORTS ON THE GROUND THAT THEY ARE PRIVILEGED COMMUNICATIONS.

(3) THE REGISTRANT MAY SUBMIT TO THE DIRECTOR TESTIMONY OR EXAMINATION REPORTS FROM A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL CHOSEN BY THE REGISTRANT AND PERTAINING TO ANY CONDITION THAT THE DIRECTOR HAS ALLEGED MAY PRECLUDE THE REGISTRANT FROM WORKING WITH REASONABLE SKILL AND SAFETY. THE TESTIMONY AND REPORTS SUBMITTED BY THE REGISTRANT MAY BE CONSIDERED BY THE DIRECTOR IN CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS FROM THE PHYSICIAN OR OTHER LICENSED HEALTH CARE PROFESSIONAL DESIGNATED BY THE DIRECTOR.

(4) THE RESULTS OF A MENTAL OR PHYSICAL EXAMINATION ORDERED BY THE DIRECTOR SHALL NOT BE USED AS EVIDENCE IN ANY PROCEEDING OTHER THAN ONE BEFORE THE DIRECTOR AND SHALL NOT BE DEEMED A PUBLIC RECORD OR MADE

AVAILABLE TO THE PUBLIC.

12-43.2-107. Repeal. THIS ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2016. PRIOR TO SUCH REPEAL, THE REGISTRATION OF SURGICAL ASSISTANTS AND SURGICAL TECHNOLOGISTS SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

SECTION 2. 24-34-104 (47.5), Colorado Revised Statutes, is amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

(a) The nursing facility culture change accountability board created in section 25-1-107.5 (6), C.R.S., and the use of moneys in the nursing home penalty cash fund for the purposes described in section 25-1-107.5 (4) (c) (II), C.R.S.;

(b) THE REGISTRATION OF SURGICAL ASSISTANTS AND SURGICAL TECHNOLOGISTS PURSUANT TO ARTICLE 43.2 OF TITLE 12, C.R.S.

SECTION 3. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the fiscal year beginning July 1, 2010, the sum of forty-three thousand four hundred fourteen dollars (\$43,414) cash funds and 0.4 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of three thousand seven hundred sixty-nine dollars (\$3,769), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to conduct occurring on or after the applicable effective date of this act.

Approved: June 5, 2010