



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2020 Sunset Review

Surgical Assistant and Surgical Technologist Registration
Program



October 15, 2020



COLORADO

Department of
Regulatory Agencies

Executive Director's Office

October 15, 2020

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Surgical Assistant and Surgical Technologist Registration Program. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2021 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 310 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations and staff in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of
Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

October 15, 2020

FACT SHEET

Sunset Review: Surgical Assistants and Surgical Technologists Registration Program

Background

What is regulated?

Surgical assistants and surgical technologists are healthcare professionals who most commonly work in hospitals, ambulatory surgery centers or physicians' offices where procedures are performed.

Why is it regulated?

Regulation allows the public to determine who is authorized to work as a surgical assistant or surgical technologist and to review registrants' self-disclosed information.

Who is regulated?

In fiscal year 18-19, there were a total of 3,097 registrants:

- 738 surgical assistants
- 2,359 surgical technologists

How is it regulated?

The Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies is vested with the authority to regulate surgical assistants and surgical technologists. In order to be listed on the registry, applicants submit an application, pay a fee, pass a fingerprint-based criminal background check, disclose information about their qualifications, including education, experience and work history and any licenses and national certifications they hold.

What does it cost?

In fiscal year 18-19, the total cost of regulation was \$198,852, and there were 0.50 full-time equivalent employees associated with the program

What disciplinary activity is there?

In fiscal years 14-15 through 18-19, the Director imposed discipline five times against registrants, including one revocation and four stipulations.

Key Recommendations

- Continue the surgical assistants and surgical technologists registration program for seven years, until 2028.
- Require a two-year waiting period in case of a surrender or revocation of a surgical assistant or surgical technologist registration.
- Amend the statute so that "failure to act within the limitations created by an illness or other health condition" is grounds for discipline and authorize the Director to enter into a confidential agreement with a surgical assistant or surgical technologist to address a health condition that impacts his or her ability to practice safely.
- Authorize the Director to issue letters of admonition and letters of concern to surgical assistants and surgical technologists for violations of the statute or rules.
- Clarify that the Director has the authority to enter into stipulations with surgical assistants and surgical technologists.
- Authorize the Director to impose discipline for failing to provide a material response to a complaint.

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Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> • Profile. • Legal Framework: History. • Recommendations 1, 7, 9 and 10.
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> • Legal Framework: Legal Summary. • Recommendations 1, 3, 5 and 8.
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> • Legal Framework: Legal Summary. • Program Description and Administration. • Recommendations 2, 4, 6 and 8.
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • Program Description and Administration.
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> • Program Description and Administration.
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> • Profile of the Profession.
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> • Program Description and Administration: Complaint and Disciplinary Activity.

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> • Legal Framework: Legal Summary.
(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> • Program Description and Administration: Collateral Consequences.
(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> • Recommendations 4 and 5.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR’s website at: coprrrr.colorado.gov.

The functions of the Director of the Division of Professions and Occupations (Director and Division, respectively) as enumerated in Article 310 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2021, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the registration program for surgical assistants and surgical technologists pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of surgical assistants and surgical technologists should be continued and to evaluate the performance of the Director. During this review, the Director must demonstrate that the program serves the public interest. COPRRR’s findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division staff, interviewed stakeholders, reviewed Division records, interviewed officials with state and national professional associations, reviewed Colorado statutes and rules, and reviewed the laws of other states.

The major contacts made during this review include, but are not limited to:

- Association of Surgical Technologists
- Colorado Hospital Association
- Colorado Medical Society
- Division of Professions and Occupations
- National Board of Surgical Technology and Surgical Assisting

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the professions do, where they work, who they serve and any necessary qualifications.

Surgical assistants and surgical technologists are healthcare professionals who most commonly work in hospitals, ambulatory surgery centers or physicians' offices where procedures are performed.² These professionals perform distinct job duties during and after a surgical procedure. Importantly, surgical assistants and surgical technologists work under the direction of a surgeon.

Surgical assistants typically perform duties associated with hands-on work with the patient, and surgical technologists are more involved with preparing materials and equipment.³

Surgical assistants, sometimes referred to as surgical first assistants, perform a variety of duties before, during and after surgery. Duties include, but are not limited to:⁴

² Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

³ Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

⁴ Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

-
- Positioning the patient for surgery;
 - Draping the patient for surgery;
 - Performing basic procedures on the patient under the surgeon's direct instruction, including cutting tissue or suturing;
 - Closing wounds;
 - Applying dressings to surgical wounds;
 - Inserting drainage tubes;
 - Selecting and handing the appropriate instrument to the surgeon; and
 - Applying pressure or holding surgical sites open.

Surgical assistants, under supervision, may also perform specific significant tasks such as applying and removing splints and casts; placing catheters and intravenous and arterial lines and administering local anesthesia.⁵

Typical duties associated with surgical technologists include, but are not limited to:⁶

- Preparing operating rooms for surgery,
- Sterilizing equipment and surgical tools,
- Ensuring equipment in the operating room is set up and working properly,
- Preparing patients for surgery,
- Conducting an inventory of surgical supplies, and
- Passing instruments to the surgeon during an operation.

The surgical assistant and surgical technologist registration program, which is administered by the Director, does not require either profession to obtain a certification prior to becoming registered. However, certifications are available through the National Board of Surgical Technology and Surgical Assisting (NBSTSA) and the National Commission for the Certification of Surgical Assistants (NCCSA). The NBSTSA offers certifications for both surgical assistants and surgical technologists, while the NCCSA offers certification for surgical assistants only.

In order to obtain a surgical assistant certification through the NBSTSA, an applicant is required to be a current or previously certified surgical first assistant or a graduate of a surgical first assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP).⁷ Currently, there are 12 CAAHEP-accredited programs, none of which are located in Colorado.

Once an applicant completes the aforementioned education, he or she is eligible to take the Certified Surgical First Assistant (CSFA) examination administered by the

⁵ National Commission for the Certification of Surgical Assistants. *Becoming a CSA*. Retrieved June 3, 2020, from <https://www.csaexam.com/becoming-a-csa/>

⁶ Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

⁷ The National Board of Surgical Technology and Surgical Assisting. *CSFA Candidate Handbook*. Retrieved June 4, 2020, from https://www.nbstsa.org/sites/nbstsa/files/pdf/2020_CSFA_0.pdf

NBSTSA. The CSFA examination consists of 175 multiple choice questions, 150 of which are scored.⁸

In order to obtain a surgical technologist certification through the NBSTSA, an applicant is required to be a:⁹

- Current or previously certified surgical technologist,
- Graduate of a surgical technology program accredited by the CAAHEP or the Accrediting Bureau of Health Education Schools, or
- Graduate of a military surgical technology training program.

Once an applicant achieves one of the requirements, he or she is eligible to take the Certified Surgical Technician (CST) examination. The CST examination consists of 175 multiple choice questions, 150 of which are scored.¹⁰

In order to obtain a surgical assistant certification through NCCSA, a candidate must be:¹¹

- A graduate of a CAAHEP-accredited surgical assistant educational program,
- A medical school graduate (Doctor of Medicine, Doctor of Osteopathy, or a foreign medical or osteopathic medicine graduate), or
- United States military-trained.

Once an applicant fulfills one of the aforementioned requirements and provides the required supporting documentation, he or she is eligible to take the Certified Surgical First Assistant (CSFA) examination administered by the NBSTSA. The CSFA examination consists of 175 multiple choice questions, 150 of which are scored.¹²

COPRRR staff was unable to ascertain the number of surgical assistants and surgical technologists practicing in Colorado who have completed the aforementioned certifications.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession.

⁸ The National Board of Surgical Technology and Surgical Assisting. *CSFA Candidate Handbook*. Retrieved June 4, 2020, from https://www.nbstsa.org/sites/nbstsa/files/pdf/2020_CSFA_0.pdf

⁹ The National Board of Surgical Technology and Surgical Assisting. *CST Candidate Handbook*. Retrieved June 4, 2020 from https://www.nbstsa.org/sites/nbstsa/files/pdf/2020_CST_1.pdf

¹⁰ The National Board of Surgical Technology and Surgical Assisting. *CST Candidate Handbook*. Retrieved June 4, 2020 from https://www.nbstsa.org/sites/nbstsa/files/pdf/2020_CST_1.pdf

¹¹ National Commission for the Certification of Surgical Assistants. *Certification Requirements*. Retrieved June 5, 2020, from <https://www.csaexam.com/becoming-a-csa/certification-requirements/>

¹² The National Board of Surgical Technology and Surgical Assisting. *CSFA Candidate Handbook*. Retrieved June 4, 2020, from https://www.nbstsa.org/sites/nbstsa/files/pdf/2020_CSFA_0.pdf

According to the U.S. Bureau of Labor Statistics, the median salary for surgical technologists is \$48,300 per year, and job growth between 2018 and 2028 is projected to grow seven percent nationally.¹³

¹³ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook: Surgical Technologists. Retrieved August 8, 2020, from <https://www.bls.gov/ooh/healthcare/surgical-technologists.htm#:~:text=in%20May%202019,-,Job%20Outlook,variety%20of%20illnesses%20and%20injuries>.

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

COPRRR completed two sunrise reviews related to surgical assistants and surgical technologists. In 2004, COPRRR completed a sunrise review specific to surgical assistants. Also, in 2010, COPRRR completed a sunrise review of surgical technologists.

Both of the sunrise reviews determined that regulation was unnecessary.

The General Assembly established the registry for surgical assistants and surgical technologists in 2010, when it passed House Bill 10-1415 (HB 1415). The bill defined the duties that surgical assistants and surgical technologists may perform, and required all people performing those duties on or after April 1, 2011 to register with the Director of the Division of Professions and Occupations (Director and Division, respectively) in the Department of Regulatory Agencies. People holding another license or who are otherwise authorized to perform those duties were exempted from the registration requirement. The bill included language specifically stating that a listing on the registry does not mean that registrants possess any particular qualifications, professional competency, or certification. Under the bill, registrants were required to provide specific information, such as education and employment history, to a public database.

In 2013, the General Assembly passed Senate Bill 13-026, which added surgical assistants and surgical technologists to the list of health-care professions that must participate in the Healthcare Professions Profile Program (HPPP). The bill allowed the Director to make the HPPP database the exclusive repository of the database information required under HB 1415.

In 2015, the COPRRR conducted a sunset review of the surgical assistant and surgical technologist registration program. The sunset review contained one recommendation, which was to sunset the registration program but preserve the “safe harbor” that allows employers to share information about employees.

During the 2016 legislative session, the General Assembly did not accept COPRRR’s recommendation and chose to continue the registration program. Additionally, the

General Assembly created a fingerprint-based criminal background check requirement for surgical assistants and surgical technologists.

During the 2019 legislative session, the General Assembly recodified Title 12, C.R.S. At that time, Article 43.2 was repealed and reenacted as Article 310. Though there were changes in the manner in which the law reads and many provisions of law were combined with common elements of other laws, none of those changes effected the implementation or enforcement of the Act.

Legal Summary

The second and third sunset criteria question:

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The laws governing the regulation of surgical assistants and surgical technologists are housed in Article 310, Title 12, C.R.S. The Director is vested with the authority to regulate these professions.

Surgical technologists are defined in the statute as those who perform certain duties, including:¹⁴

- Preparing the operating room and the sterile field for surgical procedures by:
 - Sterilizing supplies, instruments, and equipment; and
 - Ensuring that surgical equipment is functioning properly and safely; and
- Assisting during surgical procedures by:
 - Passing instruments, equipment, or supplies to the surgeon;
 - Sponging or suctioning an operative site;
 - Preparing and cutting suture material;
 - Holding retractors;
 - Transferring but not administering fluids or drugs;

¹⁴ § 12-310-102(5), C.R.S.

-
- Assisting in counting sponges, needles, supplies, and instruments; and
 - Performing other similar duties as directed.

Surgical assistants may perform all the tasks enumerated above and additional tasks including:¹⁵

- Positioning the patient and providing visualization of the operating site,
- Assisting with hemostasis,
- Participating in volume replacement or autotransfusion techniques as appropriate,
- Assisting with closure of body planes,
- Selecting and applying wound dressings, and
- Providing assistance in securing drainage systems to tissue.

In order to work as a surgical assistant or surgical technologist, a person must register with the Director.¹⁶ Prior to registration, a person must submit to a fingerprint-based criminal history background check.¹⁷ If the results of the fingerprint-based criminal history background check reveal a record of arrest without a disposition, the Director must require the person to submit to a name-based criminal history background check.¹⁸

To register with the Director, applicants must pay a fee and provide the following information to a public database:¹⁹

- Name;
- Current address;
- Educational and training qualifications;
- All current employers;
- Employers within the previous five years;
- The jurisdictions other than Colorado where they have been licensed, certified, or registered, if applicable;
- Whether the registrant is currently certified by a nationally accredited certifying organization and, if so, which one;
- Information about any civil, criminal, or administrative action related to performance of the duties of a surgical assistant or surgical technologist taken against them; and
- Any conviction of or entry of a *nolo contendere* plea to a misdemeanor relating to drugs or alcohol or to any felony.

If any of the above information changes, registrants must submit updated information within 30 days of the change, and give the Director written notice of any civil, criminal or administrative actions.²⁰ The Director uses the Healthcare Professions Profile

¹⁵ § 12-310-102(4), C.R.S.

¹⁶ § 12-310-103(1)(a), C.R.S.

¹⁷ § 12-310-107(1), C.R.S.

¹⁸ § 12-310-107(2), C.R.S.

¹⁹ § 12-310-103(3)(b), C.R.S.

²⁰ § 12-310-103(3)(b), C.R.S.

Program to satisfy this database requirement. Information in the registry is open to the public.²¹

Students who are enrolled in an accredited surgical assistant or surgical technologist program and are working under appropriate supervision are exempted from the registration requirement.²² People who perform surgical assistant or surgical technologist functions within the scope of another license, certification, or registration are also exempted.²³

Additionally, the statute allows the Director to impose discipline on registered surgical assistants and surgical technologists for any of the following:²⁴

- Performed the duties of a surgical assistant or surgical technologist without being registered;
- Falsified information in an application or the database or has attempted to obtain a registration by fraud, deception or misrepresentation;
- Been an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance;
- Been affected by a physical condition or disability, a behavioral, mental health or substance use disorder or an intellectual or developmental 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;
- Violated the surgical assistant and surgical technologist law or aided or knowingly permitted a person to violate the law, Director's rule, or any lawful order of the Director;
- Had a registration, license, or certification suspended, revoked, or denied by another jurisdiction for actions that are a violation of Colorado's law;
- Been convicted of or pled guilty or *nolo contendere* to a misdemeanor related to drugs or alcohol or any felony;
- Has fraudulently obtained, furnished or sold any surgical assistant or surgical technologist diploma, certificate, registration, renewal or registration or record or aided or abetted the act;
- Failed to notify the Director of the suspension, revocation, or denial of any past or currently held license, certificate, or registration required to perform the duties of a surgical assistant or surgical technologist in any other jurisdiction; or
- Refused to submit to a physical or mental examination when ordered by the Director.

The Director may revoke, suspend, deny, or refuse to renew a registration or issue a cease and desist order to a registrant found to have violated the laws governing surgical assistants and surgical technologists.

²¹ § 12-310-103(3)(c), C.R.S.

²² § 12-310-104(1)(b), C.R.S.

²³ § 12-310-103(1)(b), C.R.S. and 4 C.C.R. § 745-1-B, Surgical Assistant and Surgical Technologist Registration Rules.

²⁴ § 12-310-106(2), C.R.S.

The Director must notify the Chief Medical Officer within the Department of Public Health and Environment within 30 days after imposing discipline on a registrant for violations of the statute.²⁵

Employers are required to verify that employees are registered in the database before performing the duties of surgical assistants and surgical technologists.²⁶ If an employer takes disciplinary action²⁷ against a registrant based on conduct that would constitute a violation of the statute, the employer must notify the Director in writing within two weeks of the action. If a registrant has been involved in drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies, or violent crimes, the registrant's employer may disclose such information to the registrant's other current or prospective employers.²⁸ Employers that disclose such information in good faith are immune from civil liability.²⁹

²⁵ § 12-310-106(11), C.R.S.

²⁶ §12-310-105(1)(a), C.R.S.

²⁷ Disciplinary action includes the termination or resignation of the registrant while under investigation or in lieu of investigation or disciplinary action or investigation. Section 12-310-105(1)(b), C.R.S.

²⁸ § 12-310-105(2)(b), C.R.S.

²⁹ §§ 12-310-105(2)(d) and (e), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), C.R.S. The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria. Since there is no board or commission affiliated with this program, the fifth sunset criterion does not apply.

The statute that governs the regulatory oversight of surgical assistants and surgical technologists is in section 12-310-101, *et seq.*, Colorado Revised Statutes (C.R.S.). The purpose of the statute is to provide a registry database for surgical assistants and surgical technologists.

The regulation of surgical assistants and surgical technologists is vested in the Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies. The Director is responsible for, among other things, registering practitioners, rulemaking, policymaking and, when necessary, imposing formal discipline on practitioners.

Table 1 highlights the total expenditures and full-time equivalent (FTE) employees allocated to the regulation of surgical assistants and surgical technologists in fiscal years 14-15 through 18-19.

Table 1
Total Program Expenditures in Fiscal Years 14-15 through 18-19

Fiscal Year	Total Expenditures	FTE
14-15	\$97,984	0.25
15-16	\$71,509	0.25
16-17	\$92,092	0.55
17-18	\$188,953	0.50
18-19	\$198,852	0.50

The increase in expenditures in fiscal year 17-18 and the increase in FTE is attributable to the implementation of the fingerprint-based criminal background check requirement, which identified many cases where surgical assistants and surgical technologists had past criminal issues.

In fiscal year 19-20, the Division devoted 0.37 FTE to provide regulatory oversight of surgical assistants and surgical technologists. The FTE are as follows:

- Administrator III—0.15 FTE—responsible for, among other things, case management, correspondence, summarizing as well as researching various cases.
- Program Management III—0.02 FTE—responsible for the overall management of the surgical assistant and surgical technologist registration program, including complaint resolution, stakeholder engagement, case summary review and surgical assistant and surgical technologist application review and approval.
- Technician IV—0.20 FTE—responsible for, among other things, case management, correspondence, case summary preparation, Expedited Settlement Process and Office of the Attorney General referrals.

The aforementioned FTE do not include staff in the centralized offices of the Division, which include the following:

- Director’s Office,
- Office of Investigations,
- Office of Expedited Settlement,
- Office of Examination Services, and
- Office of Licensing.

Table 2 shows the registration fees for surgical assistants and surgical technologists in fiscal years 14-15 through 18-19. The fees are the same for both registration types.

Table 2
Fees in Fiscal Years 14-15 through 18-19

Fiscal Year	Original	Renewal	Reinstatement
14-15	\$35	\$6	\$24
15-16	\$35	\$26	\$41
16-17	\$35	\$28	\$43
17-18	\$35	\$38	\$53
18-19	\$35	\$60	\$75

As highlighted in Table 2, original registration fees have remained stagnant in the past five fiscal years. However, the renewal and reinstatement fees have increased in each of the past five fiscal years. Generally, the increases are attributable to a lower fund balance the previous fiscal year.

Registration

In order to work as a surgical assistant or surgical technologist, a person is required to be registered in the Division’s database. There are no minimum education, experience or certification requirements to be listed, but applicants must complete the registration application, submit to a fingerprint-based criminal background check and pay the required registration fee.

Once an applicant passes the background check and completes the aforementioned registration application, he or she is eligible to seek employment as a registered surgical assistant or surgical technologist.

Practitioners are required to renew their registration annually.

Table 3 illustrates the total number of registered surgical assistants and surgical technologists in fiscal years 14-15 through 18-19.

Table 3
Total Number of Registrants in Fiscal Years 14-15 through 18-19

Fiscal Year	Surgical Assistants	Surgical Technologists
14-15	664	1,924
15-16	742	2,080
16-17	667	3,648
17-18	706	2,194
18-19	738	2,359

As indicated in Table 3, the number of surgical assistant and surgical technician registrants increased from fiscal year 14-15 to fiscal year 18-19.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Anyone, including consumers, employers, and the Director, can file a complaint against a registered surgical assistant or surgical technologist, or an unregistered person (e.g., someone who performed the tasks of a surgical assistant or surgical technologist without being registered).

Table 4 highlights the number and nature of complaints filed against surgical assistants in fiscal years 14-15 through 18-19.

**Table 4
Nature of Complaints Filed Against Surgical Assistants
in Fiscal Years 14-15 through 18-19**

Nature of Complaint	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Practicing without a registration	2	0	1	3	1
Using the titles D.O., M.D, physician, surgeon or any other abbreviation or word to indicate the person is licensed to practice medicine when they are not	0	0	2	0	0
Failure to notify Director of suspension, revocation or denial of license, certification or registration	0	0	6	0	1
Falsified application	0	0	20	0	1
Physical/mental condition	0	0	0	0	1
Discipline in another jurisdiction	0	0	0	0	0
Violated or aided or abetted or knowingly permitted a person to violate the statute	0	0	2	0	0
Substance abuse	0	3	3	1	5
Felony or drug/alcohol related conviction	1	4	33	10	0
Other	0	0	13	11	6
Total	3	7	80	25	15

Table 5 highlights the number and nature of complaints filed against surgical technologists in fiscal years 14-15 through 18-19.

**Table 5
Nature of Complaints Filed Against Surgical Technologists
in Fiscal Years 14-15 through 18-19**

Nature of Complaint	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Failure to notify Director of suspension, revocation or denial of license, certification or registration	0	1	33	4	2
Fraudulently obtained, furnished or sold diploma, certificate, registration, renewal of registration	0	0	0	2	0
Falsified application	0	0	72	6	3
Physical/mental condition	0	0	3	0	0
Discipline in another jurisdiction	1	0	0	0	0
Violated or aided or abetted or knowingly permitted a person to violate the statute	0	0	2	1	0
Substance abuse	3	2	5	14	13
Felony or drug/alcohol related conviction	5	1	117	52	14
Other	0	1	60	21	5
Totals	18	5	292	102	39

Tables 4 and 5 illustrate that surgical assistants and surgical technologists experienced a substantial increase in falsified application and felony or drug/alcohol related conviction complaints in fiscal year 16-17. The increase is attributable to the implementation of a fingerprint-based criminal background check prior to becoming a registered surgical assistant or surgical technologist. Complaints were opened for applicants who failed to notify the Division of information identified from the fingerprint background results.

The “Other” category includes complaints related to surgical assistants or surgical technologists practicing beyond their scope of practice.

Tables 6 shows, for the five fiscal years indicated, the total number of final actions taken against surgical assistants.

Table 6
Final Actions for Surgical Assistants in Fiscal Years 14-15 through 18-19

Type of Action	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Revocations	0	0	0	0	0
Suspensions	0	0	0	1	0
Letter of Admonition	0	0	0	0	0
Stipulations	0	0	1	2	1
Cease and desist orders	0	0	0	0	0
Total Disciplinary Actions	0	0	1	3	1
Dismiss	4	4	26	28	5
Dismiss with letter of guidance	1	5	15	21	6
Totals	5	9	43	55	13

Tables 7 shows, for the five fiscal years indicated, the total number of final actions taken against surgical technologists.

Table 7
Final Actions for Surgical Technologists in Fiscal Years 14-15 through 18-19

Type of Action	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Revocations	0	0	1	0	5
Suspensions	0	0	1	0	1
Letter of Admonition	0	0	0	0	0
Stipulations	0	0	2	0	1
Cease and desist orders	0	0	0	0	2
Voluntary surrender/relinquishment	0	0	0	1	1
Total Disciplinary Actions	0	0	4	1	10
Dismiss	8	6	73	104	23
Dismiss with letter of guidance	3	10	56	84	15
Totals	11	16	137	190	58

As indicated in Tables 6 and 7, the Director imposed very few disciplinary actions on surgical assistants and surgical technologists. The vast majority of complaints against surgical assistants and surgical technologists were dismissed or dismissed with a letter of guidance. Generally, letters of guidance are utilized by the Director when surgical assistants or surgical technologists fail to comply with certain requirements such as ensuring their address is up-to-date. Other examples where a letter of guidance may be utilized by the Director include instances when a registrant fails to respond to a request for information by the Director, or occasionally, if a registrant fails to notify the Director of a criminal conviction.

Importantly, the Director does not have the statutory authority to issue letters of admonition, which are a form of discipline, to surgical assistants and surgical technologists.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

In fiscal year 16-17, the Director denied a surgical technologist registration to one applicant on the basis of his criminal history. The applicant was denied a registration because he had been recently convicted of a third Driving Under the Influence (DUI) charge.

In fiscal year 16-17, the Director also revoked the registrations of three surgical technologists. The revocations are as follows:

- A surgical technologist was convicted of possessing a controlled substance.
- A surgical technologist was convicted of Driving While Ability Impaired (DWAI), as well as failing to report prior convictions to the Director.
- A surgical technologist was convicted of child abuse, resisting arrest and obstructing a police officer.

In fiscal year 17-18, the Director denied a surgical technologist registration to one applicant because he was convicted of DWAI, DUI and leaving the scene of an accident.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the surgical assistant and surgical technologist registration program for seven years, until 2028.

Surgical assistants and surgical technologists are healthcare professionals who most commonly work in hospitals, ambulatory surgery centers or physicians' offices where procedures are performed.³⁰

Surgical assistants typically perform duties associated with hands-on work with the patient, and surgical technologists are more involved with preparing materials and equipment.³¹

Surgical assistants, sometimes referred to as surgical first assistants, perform a variety of duties before, during and after surgery. Duties include, but are not limited to:³²

- Positioning the patient for surgery;
- Draping the patient for surgery;
- Performing basic procedures on the patient under the surgeon's direct instruction, including cutting tissue or suturing;
- Closing wounds;
- Applying dressings to surgical wounds;
- Inserting drainage tubes;
- Selecting and handing the appropriate instrument to the surgeon; and
- Applying pressure or holding surgical sites open.

Surgical assistants, under supervision, may also perform specific significant tasks such as applying and removing splints and casts, placing catheters and intravenous and arterial lines and administering local anesthesia.³³

³⁰ Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

³¹ Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

³² Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

³³ National Commission for the Certification of Surgical Assistants. *Becoming a CSA*. Retrieved June 3, 2020, from <https://www.csaexam.com/becoming-a-csa/>

Typical duties associated with surgical technologists include, but are not limited to:³⁴

- Preparing operating rooms for surgery,
- Sterilizing equipment and surgical tools,
- Ensuring equipment in the operating room is set up and working properly,
- Preparing patients for surgery,
- Conducting an inventory of surgical supplies, and
- Passing instruments to the surgeon during an operation.

The statute that governs the regulatory oversight of surgical assistants and surgical technologists is created in section 12-310-101, *et seq.*, Colorado Revised Statutes (C.R.S.). The purpose of the statute is to provide a registry database for surgical assistants and surgical technologists.

The regulation of surgical assistants and surgical technologists is vested in the Director of the Division of Professions and Occupations (Director and Division, respectively) within the Department of Regulatory Agencies. The Director is responsible for, among other things, rulemaking, policymaking and, when necessary, imposing formal discipline on practitioners.

In fiscal year 18-19, there were 664 registered surgical assistants and 1,924 registered surgical technologists.

The central question of this sunset review is whether the Director's regulation of surgical assistants and surgical technologists is necessary to protect the public health, safety and welfare.

Surgery is inherently risky. It involves sharp instruments, powerful medications, and sophisticated equipment that requires expertise to operate. Patients undergoing surgery are at risk for infection and complications; when they enter the operating room, most are under anesthesia and unable to advocate for themselves. The registration program ensures that surgical assistants and surgical technologists are safe to practice from a criminal history perspective.

To be included on the registry, applicants must complete an application, pay a fee, and disclose information about their qualifications, including their education, experience, and work history, and any licenses and national certifications they hold, as well as pass a fingerprint-based criminal background check. While a listing on the registry does not indicate that the registrant is qualified to perform the tasks associated with surgical assisting or surgical technology, the registry provides a means for the public to know who is authorized to work as a surgical assistant or surgical technologist and to review registrants' self-disclosed information. As such, requiring surgical assistants and surgical technologists to be included on the Division's registry provides protections to consumers.

³⁴ Surgicaltechedu.org. *Surgical Technologists vs. Surgical Assistants*. Retrieved May 29, 2020, from <https://surgicaltechedu.org/surgical-tech-vs-surgical-assistant/>

Additionally, surgical assistants and surgical technologists are required to keep their Healthcare Professional Profile Program (HPPP) information up-to-date, including any disciplinary actions. The primary purpose of the HPPP is,

to provide transparency to the public regarding the competency of persons engaged in the practice of a healthcare profession to assist citizens in making informed health care decisions.³⁵

This transparency is what offers protection to the public. Employers and the public are able to access information relevant to surgical assistants and surgical technologists.

In the past five fiscal years, the Director has disciplined few surgical assistants and surgical technologists. The most common violations of the statute are failing to notify the Director of drug or alcohol convictions. Many of the criminal convictions were identified with the implementation of the fingerprint-based criminal background check requirement. If a surgical assistant or surgical technologist's fingerprint-based criminal background check identified a past criminal conviction related to drugs or alcohol, the Director, most commonly, issued a letter of guidance to a practitioner.

The first sunset criterion asks whether regulation is necessary to protect the public. This sunset review identified few instances where surgical assistants or surgical technologists harmed consumers. In fact, the majority of discipline and letters of guidance were for administrative issues such as practicing on an expired registration, or failing to disclose a criminal conviction.

Importantly, the sunset review completed by the Colorado Office of Policy, Research and Regulatory Reform in 2015 recommended to sunset the surgical assistant and surgical technologist registration program, but continue the safe harbor provision. The safe harbor provision enables hospitals to share information concerning surgical assistants and surgical technologists. During the 2016 legislative session, the General Assembly did not accept COPRRR's recommendation and chose to continue the registration program. Additionally, the General Assembly created a fingerprint-based criminal background check requirement for surgical assistants and surgical technologists.

The implementation of the fingerprint-based criminal background check requirement provides additional protections to consumers by identifying criminal related issues that are not disclosed by an applicant on a surgical assistant or surgical technologist application.

The second sunset criterion asks whether the current statute and regulations establish the least restrictive form of regulation consistent with the public interest. As referenced earlier, the Director rarely imposed formal discipline on surgical assistants or surgical technologists. As such, additional regulatory requirements are not necessary.

³⁵ § 12-30-102(2)(a)(II), C.R.S.

In fact, the current form of regulation serves to provide protection to consumers, mainly through the fingerprint-based criminal background check, and is the least restrictive form of regulation consistent with the public interest.

Therefore, the General Assembly should continue the surgical assistant and surgical technologist program for seven years, until 2028. Doing so will continue to provide fingerprint-based criminal background check information to the Director to ensure consumer protection.

Recommendation 2 - Require a two-year waiting period in case of a surrender or revocation of a surgical assistant or surgical technologist registration.

Currently, the laws governing surgical assistants and surgical technologists do not require a waiting period when the Director revokes a registration.

Most other health-care practitioners who have a license revoked, or who surrender a license or registration in lieu of discipline, must wait two years to reapply for licensure. Some of these practitioners include dentists, direct-entry midwives, optometrists, podiatrists, and pharmacists.

The severity of the violations that result in a revocation or the surrender of a registration, and the amount of time and resources it takes to process revocations and surrenders, indicates that two years is an appropriate waiting period for a practitioner to apply for a new registration.

The third sunset criterion, in part, asks whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statute. The surrender or revocation of a registration is commonly associated with serious allegations against a practitioner. Therefore, requiring a two-year waiting period for surgical assistants or surgical technologists to apply for a new registration will serve to protect the public and enhance agency operations by conserving resources.

As such, the General Assembly should establish a two-year waiting period to apply for a new registration for any surgical assistant or surgical technologist whose registration has been revoked, or who has surrendered a registration in lieu of disciplinary action.

Recommendation 3 - Amend the statute so that “failure to act within the limitations created by an illness or other health condition” is grounds for discipline and authorize the Director to enter into a confidential agreement with a surgical assistant or surgical technologist to address a health condition that impacts his or her ability to practice safely.

Surgical assistants and surgical technologists can become ill and suffer injuries, and some of these conditions may impact their ability to practice safely.

To determine if a surgical assistant or surgical technologist has a health condition that impacts his or her ability to practice, the application for initial registration asks the following question:³⁶

In the past five years, have you engaged in any conduct or exhibited any behaviors that resulted in any of the following: impairment of your ability to practice in a safe, competent, ethical and professional manner?

The renewal application asks a similar question. If a surgical assistant or surgical technologist answers in the affirmative, his or her application may be denied or registration revoked, or the Director may require the surgical assistant or surgical technologist to enter into a stipulated agreement that limits his or her practice, which is a public disciplinary action.

However, the surgical assistant or surgical technologist did not really do anything wrong; the underlying reason for his or her disciplinary action is due to a protected, confidential medical situation.

The second sunset criterion questions whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest.

The General Assembly should revise the statute so that failing to act within the limitations created by a physical or mental condition or disability is grounds for discipline, as opposed to simply having such a condition or disability. Additionally, the surgical assistant or surgical technologist must be required to notify the Director of the illness, condition or disability in a manner and period of time determined by the Director.

One way to ensure that surgical assistants and surgical technologists act within the limitations created by an illness or health condition, thus avoiding discipline, is to authorize the Director to enter into a confidential agreement with such a practitioner whereby the practitioner agrees to limit his or her practice.

However, this process should not be employed for surgical assistants and surgical technologists who are using or abusing drugs or alcohol. Practicing with such a condition constitutes a separate statutory violation, and this recommendation is not intended to address drug or alcohol abuse. Moreover, the Director already has an alternative to discipline surgical assistants and surgical technologists specifically related to drugs and alcohol, which this recommendation is not intended to alter.

Therefore, the General Assembly should amend the statute so that failing to act within the limitations created by a health condition is grounds for discipline, and it should also authorize the Director to enter into confidential agreements with practitioners to

³⁶ Division of Professions and Occupations. Surgical Assistant and Surgical Technologist Registration Application.

address conditions that may impact a practitioner’s ability to practice safely. These should be based on similar provisions in other practice acts.

Recommendation 4 - Authorize the Director to impose discipline for failing to provide a material response to a complaint.

The statute is silent on whether the Director has the authority to formally discipline surgical assistants or surgical technologists for failing to provide a material response to complaints. When complaints are filed against surgical assistants or surgical technologists, the Director sends a letter outlining the nature of the complaint and requires a response within 30 days of receiving the letter. Although a response is required, there is no formal authority delineated in the statute enabling the Director to formally discipline surgical assistants or surgical technologists for failing to provide a material response to a complaint within 30 days.

A material response to a complaint is important because it could provide valuable information to the Director that could assist in determining the merits of a complaint and whether a violation of the statute or applicable rules has occurred.

Failing to provide a material response to a complaint may increase unnecessary expenditures related to an investigation (assumed by the Office of Investigations within the Division) in an attempt to determine whether a violation occurred. According to Division staff, there have been numerous instances where the Director receives a complaint against surgical assistants and surgical technologists and the practitioner failed to provide a material response to Director concerning the complaints.

In order to create an avenue for the Director to impose discipline on surgical assistants or surgical technologists who do not formally respond to complaints filed against them, the General Assembly should include failure to provide a material response to a complaint as a prohibited activity in the statute.

Implementing this Recommendation 4 addresses the third and tenth sunset criteria. The third sunset criterion, in part, asks whether the agency operates in the public interest, and the tenth sunset criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Recommendation 5 - Authorize the Director to issue letters of admonition and letters of concern to surgical assistants and surgical technologists for violations of the statute or rules.

Currently, the statute authorizes the Director to revoke, suspend or deny a registration renewal for violations of the statute or rules. The statute does not currently authorize the Director to issue letters of admonition (LOA) or letters of concern (LOC).

Amending the statute to authorize the Director to issue LOAs and LOCs will provide the Director a broader choice of disciplinary tools to utilize when taking disciplinary action.

Since the current tools are limited, the options available to the Director may not be appropriate given a particular violation. For example, if a registrant practices on an expired registration, the Director does not have the authority to issue an LOA, which is a typical form of discipline in many other practice acts. Instead, the Director must suspend or revoke the registration a practitioner, which are more severe types of discipline, or do nothing at all.

Additionally, LOCs are utilized in many practice acts. LOCs provide the Director with a mechanism to recognize behavior that may not justify formal discipline, but does raise concern if the behavior continues or escalates.

The second sunset criterion asks whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest. Authorizing the Director to issue an LOA for a violation of the statute is far less restrictive than a revocation.

The second sunset criterion asks whether the existing statutes and regulations consistent with the public interest. The implementation of this Recommendation enable the Director to utilize LOAs and LOCs when necessary, which is consistent with the least restrictive form of regulation consistent with public protection.

Also, the tenth sunset criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. Amending the statute to authorize the Director to issue LOAs and LOCs to surgical assistants and surgical technologists for violations of the statute or rules will improve the Division's operations and enable the Director to impose appropriate discipline when necessary.

Therefore, the General Assembly should amend the statute to authorize the Director to issue LOAs and LOCs to surgical assistants and surgical technologists when violations of the statute or rules occur.

Recommendation 6 - Clarify that the Director has the authority to enter into stipulations with surgical assistants and surgical technologists.

In 2019, House Bill 1172 (HB-1172) recodified and reorganized Title 12, which included the creation of a common provisions section. Individual practice acts typically include references to common provisions and the common provisions section also specifically lists any professions to which the common provisions are not applicable.

Stipulations are included in a common provision under section 12-20-405(3), C.R.S. While this section is not referenced in the statute governing surgical assistants and surgical technologists, the common provision also does not list these occupations under the exclusions to this authority, which seems to indicate that the Director does have the authority to enter into stipulations.

The third sunset criterion questions whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

Prior to recodification, the Director had the authority to enter into stipulated agreements. The authority for stipulations is commonly granted to regulatory entities and necessary for the Director to effectively regulate surgical assistants and surgical technologists.

For this reason, the General Assembly should clarify that the Director does have the authority to enter into stipulations according to section 12-20-405(3), C.R.S.

Recommendation 7 - Add failure to notify the Director of any disciplinary actions as a grounds for discipline in the statute.

Currently, section 12-310-106(2)(i), C.R.S., authorizes the Director to impose discipline on surgical assistants and surgical technologists for failing to notify the Director of a suspension, revocation or denial of the practitioner's license, certification or registration in another jurisdiction. Enumerating these specific types of discipline makes some sense, since they mirror the types of actions the Director can take under current law.

However, Recommendation 5 in this sunset review seeks to authorize the Director to issue LOAs, and Recommendation 6 clarifies that the Director can enter into stipulations. To be consistent with current law and the adoption of Recommendations 5 and 6, section 12-310-106(2)(i), C.R.S., should be amended to include failure to notify the Director of any disciplinary action as grounds for discipline.

The first sunset criterion asks whether regulation is necessary to protect the public. Authorizing the Director to discipline practitioners for failing to notify the Director of any disciplinary action will serve to enhance consumer protection.

Therefore, the General Assembly should add failure to notify the Director of any disciplinary actions as grounds for discipline for surgical assistants and surgical technologists. Doing so would enable the Director to impose discipline on practitioners who fail to notify the Director of any disciplinary actions.

Recommendation 8 - Repeal language related to alcohol use disorder and substance use disorder in the grounds for discipline and simply prohibit habitual or excessive use or abuse of alcohol, drugs or controlled substances.

Under section 12-310-106(2)(c), C.R.S., a registrant may be disciplined upon the finding that he or she:

Has an alcohol use disorder, as defined in section 27-81-102, (C.R.S.) or a substance use disorder, as defined in section 27-82-102, (C.R.S.) or engages in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5) other drugs having similar effects

This provision should be amended to instead prohibit the habitual or excessive use or abuse of alcohol, a habit-forming drug or a controlled substance, and references to “alcohol use disorder” and “substance use disorder” should be repealed.

In *Robinson v. California*, 370 U.S. 660 (1962), the U.S. Supreme Court held that narcotic addiction is an illness and that any state law that seeks to punish a person because of an illness violates the Fourteenth Amendment. Although this case involved a criminal prohibition, it may be considered persuasive in the administrative context.

Furthermore, in *Colorado State Board of Nursing v. Crickenberger*, 757 P.2d 1167 (Colo. App. 1988), the Colorado Court of Appeals addressed a provision in the Nurse Practice Act substantially similar to the one at issue here. In vacating the Board’s disciplinary action, the court held that the plain language of the statute requires addiction at the time of hearing.

These two cases, taken together, suggest that disciplinary action based on addiction is not the best way to discipline practitioners who abuse alcohol or controlled substances.

In *Colorado State Board of Medical Examiners v. Davis*, 893 P.2d 1365 (Colo. App. 1995), the Colorado Court of Appeals held that disciplinary action based on excessive use of alcohol or a controlled substance does not require current addiction or use of alcohol or controlled substances at the time of the disciplinary hearing.

The second and third sunset criteria ask:

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes.

Since it may be unconstitutional to discipline a practitioner based on addiction to controlled substances or alcohol and since “excessive use” does not require current addiction or use at the time of the disciplinary hearing, the existing language should be amended.

Several other practice acts have similar language in the grounds for discipline.

For these reasons, the General Assembly should align the grounds for discipline with other practice acts which prohibit habitual or excessive use or abuse of alcohol, habit

forming drugs or controlled substances and repeal language referring to an alcohol use disorder or a substance use disorder.

Recommendation 9 - Add practicing outside the scope of practice as a grounds for discipline in the statute.

Currently, section 12-310-106(2), C.R.S., contains certain grounds for discipline for surgical assistants and surgical technologists. If the Director identifies proof that a registered surgical assistant or surgical technologist violates any grounds for discipline, the Director may discipline a practitioner.

However, the statute does not contain language pertaining to practicing outside the scope of practice as a grounds for discipline. In 2018, a surgical technologist performed suturing on a patient, which is outside the scope of practice for surgical technologists.

Additionally, in 2018, a surgical technologist performed duties of a surgical assistant, which is practicing outside of the scope of practice.

Since the statute does not contain practicing outside the scope of practice as a grounds for discipline, the Director dismissed these cases. Importantly, the cases did not allege harm to the patients, but these cases demonstrate that two surgical technologists performed duties outside their scope of practice. As such, the Director should have the authority to impose discipline on these surgical technologists.

The first sunset criterion asks whether regulation is necessary to protect the public. The aforementioned cases highlight situations where patients could have been harmed by the actions of surgical technologists who practiced outside of their scope of practice.

As a result, the General Assembly should add practicing outside the scope as grounds for discipline for surgical assistants and surgical technologists. Doing so would enable the Director to impose discipline on practitioners who practice outside their scope of practice, which could serve to enhance consumer protection.

Recommendation 10 - Add “failure to meet generally accepted standards of practice” as a grounds for discipline in the statute.

Section 12-310-106(2), C.R.S., contains certain grounds for discipline for surgical assistants and surgical technologists. If the Director identifies proof that a registered surgical assistant or surgical technologist violates any grounds for discipline, the Director may discipline a practitioner.

However, the statute does not contain language pertaining to failing to meet the generally accepted standards of practice. In 2015, a surgical technologist left a piece of gauze in the body of a patient during an operation.

Since the statute does not contain language pertaining to failure to meet general accepted standards of practice as a grounds for discipline, the Director must dismiss such cases. For example, in one case, a surgical technologist left gauze in a patient, thereby failing to meet generally accepted standards of practice, since, among other duties, surgical technologists are responsible for assisting in counting sponges, needles, supplies, and instruments. As such, the Director should have the authority to impose discipline on the surgical technologist for failing to meet generally accepted standards of practice.

The first sunset criterion asks whether regulation is necessary to protect the public. The case highlighted above identifies a situation where a patient could have been harmed by the actions of a surgical technologist who failed to meet generally accepted standard of practice.

In order to enhance consumer protection, the General Assembly should add failure to meet generally accepted standards of practice as grounds for discipline for surgical assistants and surgical technologists. Doing so would enable the Director to impose discipline on practitioners who fail to meet generally accepted standards or practice.