THE SURGICAL ASSISTANT

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**Inside:**



# COLORADO AND NEBRASKA LEGISLATION ENACTED

## The Nebraska Background

The path to professional recognition can be circuitous and unpredictable, and the results depend as much on serendipity as collaboration. Nebraska is the classic example of these forces in action. For several years, the Nebraska legislature has resisted regulation of either surgical assistants or surgical technologists, and achieving results looked more and more remote.

Then, in August 2014 the Nebraska Department of Health and Human Services (DHHS) determined, based upon a 115-year old case, that suturing in the OR constituted the practice of medicine, and that any unlicensed person performing such tasks (even though expressly delegated by a physician) violated Nebraska law regarding unauthorized practice of medicine, which put both the surgical assistant out of business (and out of the operating room) and jeopardized the medical license of the surgeon. That 1898 case, State of Nebraska v. Howard Paul, involved actual surgeries performed by an unlicensed person calling himself a doctor. And, even though those express medical and surgical acts were assigned to him by a licensed physician, the Supreme Court held that delegation notwithstanding, he had broken the law. The case did not involve the act of suturing.

Nevertheless, the Nebraska DHHS determination, which arose after an audit of Sidney Regional Hospital, was that suturing was the practice of medicine and therefore could only be performed by a licensed practitioner. That determination

*continued on page 2...*

LB721
2016

LB721
2016

LEGISLATURE OF NEBRASKA

ONE HUNDRED FOURTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 721**

Introduced by Baker, 30.

Read first time January 06, 2016

Committee: Health and Human Services

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend section 38-2025, Reissue Revised Statutes of Nebraska, section 38-121, Revised Statutes Cumulative Supplement, 2014, and section 38-101, Revised Statutes Supplement, 2015; to adopt the Surgical First Assistant Practice Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

LB721
2016

this act shall be known and may be
Practice Act.
t:
established health profession in
aid in ensuring a safe surgical
ty by using appropriate techniques
mited to, maintaining hemostasis,
ualization of the operative site,
and correct dressing of a wound;
the most effective utilization of
s by enabling them to perform tasks
gical First Assistant Practice Act
tialing Act, unless the context
nd in sections 4 to 10 of this act
dy means a national certification
board, certifies qualified surgical
uirements related to education and
n an area of practice which meets
oard.
assistant education program means a
on Accreditation of Allied Health
Bureau of Health Education Schools
by the board.
Medicine and Surgery.
assistant means a person licensed
er the Surgical First Assistant

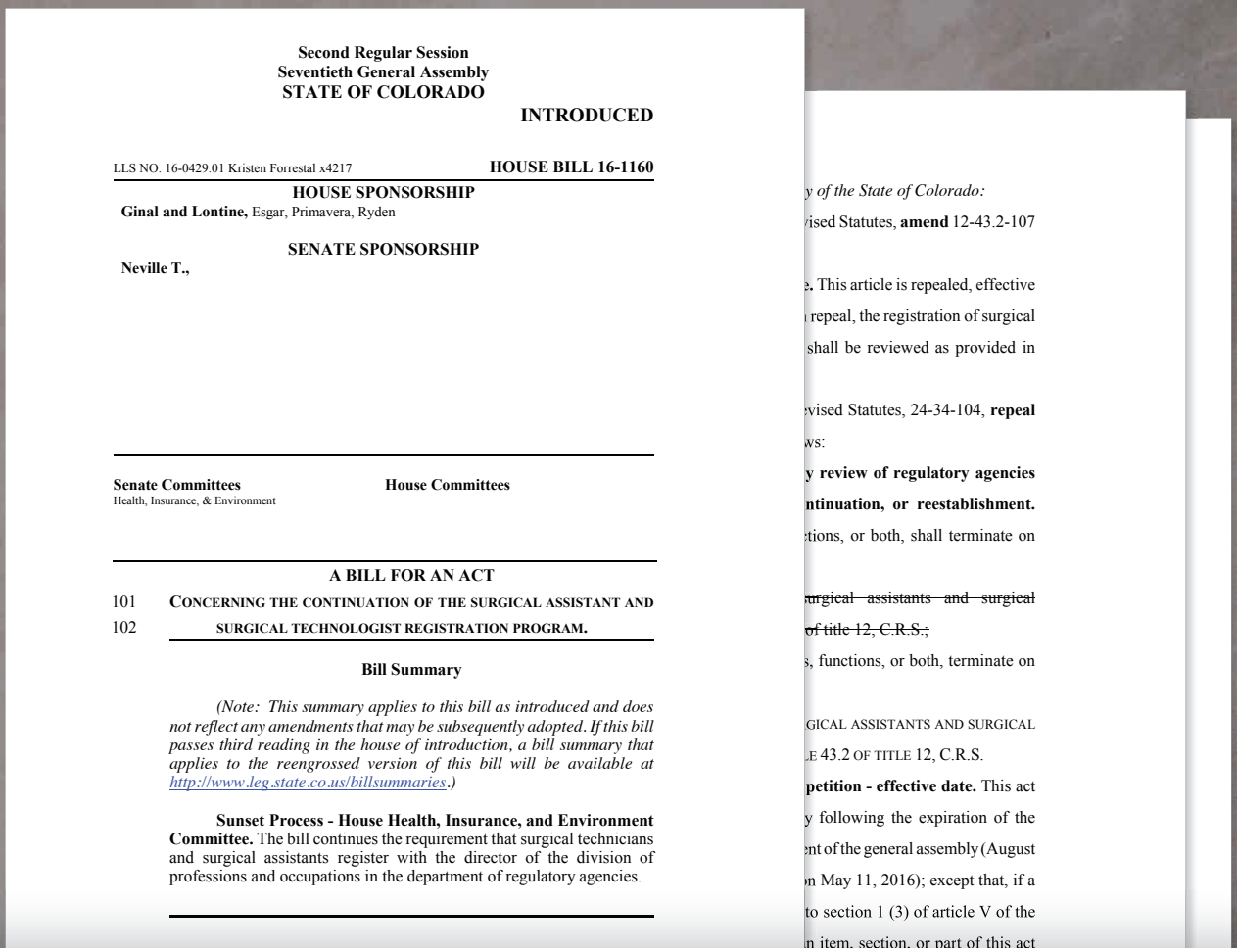
*...continued from page 1*

was enlarged to a statewide ban, and surgical assistants, even though certified, were denied the right to practice in Nebraska. All hospitals and surgery centers in the state prohibited any unlicensed surgical assistant from suturing, which necessarily meant that they were not able to assist in the OR. Surgeons who employed, or relied upon, unlicensed surgical assistants in their practice were unable and unwilling to continue surgical procedures at various hospitals. And the hospitals would have to furnish licensed individuals, such as PAs and RNFAs to perform the functions customarily performed by these skilled surgical assistants.

This untenable situation prompted the Nebraska Hospital Association (which, like its counterparts in other states, routinely oppose licensure) to begin and support an initiative to license surgical assistants in Nebraska. Professional regulation in Nebraska begins with a pre-legislative proves called a “407 proceeding.” Sidney Regional Hospital, as the applicant, began the journey to convince the appointed 407 Committee, the Department of Health, and finally the legislature, to license surgical assistants.

The initial application needed guidance, and NE-AST, together with their surgical assistant colleagues, redrafted and refined the document, proposed the appropriate technical and definitional language, met with stakeholders and interested parties, attended and testified at the 407 Committee hearings, appeared before the Department of Health, assisted in drafting the bill to be considered by the legislature, and lobbied the bill until its successful passage. At one juncture in the proceedings, NE-AST testified as a neutral (not in support) to allow reconsideration and amendment of the bill language to include OJT consideration for CSFA certification to support licensure. WIthout the amended language, 90% of all surgical assistants in the state would have been forced from practice. The law as passed now allows on-the-job experience, not just program attendance and graduation, to support a path to licensure. The bill passed in the 2016 legislative session.

Nebraska surgical technologists are advancing their own registration legislation in 2017, with the support of Senator Kolterman, and they know they can count on reciprocal support from their surgical assistant colleagues. Together. stronger.



Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0429.01 Kristen Forrestal x4217 **HOUSE BILL 16-1160**

**HOUSE SPONSORSHIP**

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**SENATE SPONSORSHIP**

**Neville T.,**

**Senate Committees**
Health, Insurance, & Environment

**House Committees**

**A BILL FOR AN ACT**

**CONCERNING THE CONTINUATION OF THE SURGICAL ASSISTANT AND SURGICAL TECHNOLOGIST REGISTRATION PROGRAM.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)*

**Sunset Process - House Health, Insurance, and Environment Committee.** The bill continues the requirement that surgical technicians and surgical assistants register with the director of the division of professions and occupations in the department of regulatory agencies.

*y of the State of Colorado:*

*ised Statutes,* **amend** 12-43.2-107

**.** This article is repealed, effective
repeal, the registration of surgical
shall be reviewed as provided in

*ised Statutes,* 24-34-104, **repeal**
*ws:*

**y review of regulatory agencies**
**ntinuation, or reestablishment.**
*tions, or both, shall terminate on*

~~*rgical assistants and surgical*~~
~~*of title 12, C.R.S.,*~~
*s, functions, or both, terminate on*

*GICAL ASSISTANTS AND SURGICAL*
*LE* 43.2 OF TITLE 12, C.R.S.
**petition - effective date.** This act
*y following the expiration of the*
*nt of the general assembly (August*
*n May 11, 2016); except that, if a*
*to section 1 (3) of article V of the*
*n item, section, or part of this act*

## The Colorado Background

Again, serendipity was a factor in the passage of legislation in Colorado. The Department of Regulatory Agency (DORA) registration legislation for surgical assistants and surgical technologists was due to sunset in 2016. DORA posited that this registration was no longer needed.

ASA efforts began in 2015 to renew the legislation that was enacted in response to the surgical technologist, Kristen Parker, who stole fentanyl and eventually passed Hepatitis C to 18 unsuspecting surgery patients at Rose Medical Center in 2009. A total of 4,700 surgical patients were screened for possible exposure. (Editor's note: Kristen Parker was not certified or a member of AST).

Memories fade. Last year, the Colorado legislative atmosphere was decidedly anti-regulatory and hopes to renew this legislation dimmed.

Then, Rocky Allen became headline news. He was another surgical technologist (uncertified) who abused fentanyl while employed at Swedish Medical Center beginning in 2015. The hospital advised 2,900 patients to be screened for hepatitis B and C as well as HIV.

Allen's trouble reportedly started while serving in the military in Afghanistan. He was then fired from two hospitals in Washington, one in California, and another two in Arizona— one in which he was found passed out in the bathroom holding a syringe.

There was an apparent history of substance abuse but the can was kicked down the proverbial road until Colorado.

Rocky Allen was registered in Colorado but denied ever being previously fired. At the time, the Colorado registration did not require a background check or drug testing.

Despite this incredible violation of patient safety, DORA maintained that the registration was unnecessary. And then along came the media—an unrelenting media.

The legislative atmosphere changed. New legislation for registration now requires a criminal background check and mandatory drug testing. The new bill was enacted and signed by the governor in June.

These two experiences certainly indicate that no matter how valuable or worthwhile legislative causes are based on—sometimes the final determining factor is out of our hands. That being said, what happened in both Nebraska and Colorado was good.

# SURPRISE MEDICAL BILLING

According to a recent Consumer Reports survey, nearly one third of privately insured Americans received a surprise medical bill when their health plan paid less than expected. Approximately 25 percent of the survey respondents received a doctor's bill that was not anticipated.

This gap in expectations can be attributed to the reimbursement levels set by insurance companies and the bills of out-of-network medical practitioners. These out-of-network medical practitioners include ER physicians, anesthesiologists, radiologists—and surgical assistants. All of these practitioners may be providing services at a patient's insurer's in-network hospital systems.

Some situations may result from an emergency when the patient has had no opportunity to decide on the medical provider(s); or when the patient receives care at his/her in-network hospital; or a healthcare facility and other providers, not in the same network, participate in the treatment. There are even some circumstances where an entire in-network hospital department has contracted for the services of providers who don't participate in the network.

### The surprise medical bill essentially includes two parts:

1. The difference in patient costs between in-network and out-of-network providers (under some insurance plans, patients are responsible for a defined percentage of in-network services and a certain percentage of allowed out-of-network charges.)
2. Balance Billing. Hospitals negotiate a fee schedule for services with in-network providers that typically reflect a discount from the providers' full charges. Network contracts customarily prohibit their in-network providers from billing the difference between the allowed charge and the full charge. However, the out-of-network providers are under no legal obligation and can bill patients for the differences.

## SURVEYS DRAWING ATTENTION TO SURPRISE BILLING

Several national surveys have been published regarding the issues related to surprise billing.

### 1. Consumers Union

*http://consumersunion.org/wp-content/uploads/2015/05/CY-2015-SURPRISE-MEDICAL-BILLS-SURVEY-REPORT-PUBLIC.pdf*

In the past two years, 30% of privately insured Americans received a surprise medical bill (a medical bill where the health plan paid less than expected). This number is lower (23%) among the California subset. When looking at just the hospital subgroup (individuals who had emergency room

visits/hospitalizations/surgery in the past two years), the number rises to 37%

In the past two years, one in seven patients have been surprised to find out that a doctor/lab/facility they thought was In-network, was actually Out-of-network. Many (63%) assumed that doctors working at an in-network hospital are also in-network. Accordingly, the majority (85%) think hospitals should have to notify patients if a doctor/technician involved in a procedure performed at that hospital will be out-of-network.

### 2. New York Department of Financial Services

*http://www.statecoverage.org/files/NY-Unexpected_Medical_Bills-march_7_2012.pdf*

More than 2,000 complaints were filed related to surprise medical bills. The average out-of-network emergency bill was $7,006. Insurers paid an average of $3,228; consumers paid an average of $3,778.

In the same study, results showed that 90 percent of surprise medical bills were not attributed to emergency services but for other in-hospital care, such as anesthesiology, lab services, surgery and radiology. Out-of-network assistant surgeons, often called in without a patient's knowledge, on average billed $13,914, while insurers reimbursed $1,794.

New York implemented a mandatory, dispute resolution system, requiring insurers and providers to resolve out-of-network payment disputes, while holding patients harmless.

### 3. Texas Department of Insurance

*http://forabettertexas.org/images/HC_2014_09_PP_BalanceBilling.pdf*

Insurers determine their own "usual and customary charge" calculations within state standards, and consumers can still be balance billed for provider charges that exceed an insurer's calculation. Varying insurer calculations likely mean some consumers are better protected from balance bills than others. In addition, a recent consumer complaint reviewed by CPPP calls into question whether an insurer is adhering to new state protections, indicating more oversight may be needed.

### 4. West Virginia Committee on Health and Human Resources Report

*http://www.legis.state.wv.us/Bill_Text_HTML/2016_SESSIONS/RS/Bills/HCR108%20intr.htm*

This report referenced a national study which showed that 8 percent of privately insured individuals utilized out-of-network care in 2011, and 40 percent of these cases involved surprise out-of-network claims. A study of surprise medical billings was authorized and results, together with recommendations and legislative remedies, are scheduled to be reported in 2017.

### 5. Florida Surprise Medical Billing Legislation

*http://static-lobbytools.s3.amazonaws.com/bills/2016/pdf/0221ER.pdf*

Nearly, everyone agrees that patients who unwittingly received services from out-of-network providers at in-network facilities should be protected from these bills. The political holdup is determining how much to pay the out-of-network providers. Florida sidestepped the payment issue by leaving that up to a yet-to-be-developed dispute resolution process.

### 6. California Surprise Medical Billing Legislation

*https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB533*

A California bill has been introduced that would eliminate unexpectedly high medical bills, the kind that hit patients who have received care at a medical facility outside of their insurance network without knowing about it. The measure would limit the amount a patient can be charged by an out-of-network provider to no more than what he/she would have paid if that provider had been in-network.

### 7. Missouri Advocacy Health Alliance

*http://www.mohealthalliance.org/issues/surprise-billing*

Currently, the Missouri Advocacy Health Alliance is seeking feedback regarding surprise billing and compiling data to present for possible legislative initiatives.

### 8. Washington Surprise Billing Legislation

*http://app.leg.wa.gov/billinfo/summary.aspx?bill=2447&year=2015*

House Bill 2447 would ensure that patients pay only expected charges — including copays and deductibles — for emergency care. If there's a dispute about contracts or out-of-network fees, the problems would have to be worked out with the insurer and the provider or hospital.

### 9. Colorado Surprise Billing Legislation

Healthcare providers are required to hold harmless from balance billing patients who make a good faith effort to obtain care from an in-network provider. The National Association of Insurance Commissioners (NAIC) has issued a Model Network Adequacy Act which addresses balance billing (Section 7); and the Colorado Department of Insurance is studying implementing provisions of the Model Act into Colorado law. *(ASA members, read the Model Act that is published on the Members Only page under Legislative).*

### 10. National Academy for State Health Policy

*http://www.nashp.org/wp-content/uploads/2016/04/BCBS-Brief.pdf*

States are initiating action to explore the consequences of surprise billing. This report provides an update on state legislative activity to address surprise balance billing.

### 11. US House of Representatives End Surprise Billing Act

*https://www.congress.gov/bill/114th-congress/house-bill/3770/text*

This proposed legislation is intended to amend the Social Security Act to prevent surprise billing practices on a national scale. While surgical assistants cannot bill Medicare, this legislation could potentially have substantive consequences.

## Conclusion

Surprise medical billing is an issue that has become part of the national healthcare discussion. Surgical assistants who provide out-of-network services are advised to understand what initiatives may be active or proposed in their states. This is certainly a challenging topic but individuals across many states are urging action—it cannot be ignored.

# EARN UP TO 13 CONTINUING EDUCATION CREDITS AT THE 2016 ORLANDO MEETING

ASA ASSOCIATION OF SURGICAL ASSISTANTS

## SEPTEMBER 30-OCTOBER 1, 2016
## HOLIDAY INN ORLANDO—LAKE BUENA VISTA
## All CSTs, CSFAs, CSAs and SA-Cs are invited.

## ASA MEETING AGENDA

### FRIDAY, SEPTEMBER 30

11 am–5 pm **Registration**

9 am–1 pm **ACL Graft Workshop** 4 CEs
Chris White, CSFA
*See agenda online on ASA website.*

2–4 pm **Bone Splinting** 2 CEs
- Various splints for upper and lower extremities
- The concepts of Splinting in the OR
- Supplies needed for splinting
- Landmarks, techniques and procedure
- Hands on Splinting—2 Upper and 2 Lower extremities

David Bartczak, CSA, LSA, OPA-C

Noon–4 PM **CSFA Exam Prep Workshop**

5–6 pm **Business Session 1**

6–7 pm **Keynote Address: Creating Value in Healthcare** 1 CE
William Cooper, MD, MBA, FACS

7:15–8:30 PM **Reception**

### SATURDAY, OCTOBER 1 8 CEs

7:45–8 am **Welcome** Kathy Duffy, CSFA, CSA

8–8:50 am **Pedispine** Mark Moran, MD

9–9:50 am **Assisting in Robotics**
George Stransky, MD

10–10:50 am **Health Professions**
Dennis Stover, CSA

11–11:50 am **Billing Q&A**
David Bartczak, CSA, LSA, OPA-C

Noon–12:50 pm
**Lunch** (sponsored by NBSTSA)

1–1:30 pm **Business Session 2**

1:40–2:30 pm **Paraesophageal Hernia**
George Tuchsen, MD

2:40–3:30 pm **TAVR** Michael Morrison, CSFA

3:40–4:30 pm **Hospital vs Independent Assistant**
Joseph Lundberg, CSFA

4:40–5:30 pm **Closing** Sam Araba, MD

Attendance is limited to 125. Confirmation will be emailed. Onsite registration will be available on a space-available basis. All cancellations must be received in writing by September 12, 2016. **Accommodations:** Holiday Inn Orlando Downtown Lake Buena Vista, Florida; 1805 Hotel Plaza Blvd, Lake Buena Vista, Florida 32830, 877-394-5765. **Rates:** $105/night plus tax, single or double. occupancy. **Reservation deadline** is August 23, 2016. Room block is limited.

## ASA ORLANDO MEETING FEES

(Includes Friday reception and keynote, Saturday Ed sessions and lunch).

**Association of Surgical Assistants**
**6 West Dry Creek Circle**
**Suite 200**
**Littleton, CO 80120**
**303-694-9130**
**www.surgicalassistant.org**

### ASA ORLANDO MEETING

**ASA member:** $275

**ASA student member:** $175
*(currently enrolled in CAAHEP-accredited surgical assisting program)*

**Nonmember:** $300

### HANDS-ON WORKSHOPS

**ACL Graft:**
ASA member $250 / nonmember: $275

**Bone Splinting:**
ASA member $125 / nonmember: $150

**Exam Prep:**
ASA member $50 / nonmember: $75

**Register and pay online at**
*www.surgicalassistant.org*

# WHAT DOES ASA DO FOR ME?

## LEGISLATIVE ADVOCACY AND RECOGNITION

- Enacted Virginia Registration Surgical Assistant Law 2013
- Enacted Nebraska Surgical Assistant Licensure Law 2016
- Supported Illinois Registration Law 2015
- Engaging in Texas Sunset Legislative to Sunrise 2015-2016
- Initiating Tennessee Surgical Assistant Legislation 2015
- Enacted Colorado Sunset to Sunrise Legislation 2016
- And more states to come!

## ADVANCED SURGICAL ASSISTANT EDUCATION AND PROFESSIONAL DEVELOPMENT OPPORTUNITIES

**▸ 2011**
- Three hands-on workshops SAN FRANCISCO
  - Endovein Harvesting in partnership with Sorin, Inc. at the SimSurg Center
  - Advanced Suturing Workshop
  - Orthopedic Cadaver Lab with Arthrocare in Sunnyvale, California
- Learning at Sea Cruise and Education MIAMI/EASTERN CARIBBEAN

**▸ 2012**
- Meeting and Workshop CHICAGO
- Robotics Practicum HOUSTON

**▸ 2013**
- Learning at Sea Cruise and Education HOUSTON/WESTERN CARIBBEAN

**▸ 2014**
- Robotics Workshop HOUSTON
- Casting Workshop DENVER
- Covidien Workshop and Meeting ORLANDO

**▸ 2015**
- Spring Meeting and Ethicon Workshop PHOENIX
- Hands-on Pig Lab and Workshop NASHVILLE

**▸ 2016**
- Maquet Endovein Lab LAS VEGAS
- Wound Management LAS VEGAS
- IV Therapy LAS VEGAS
- Spring Meeting LAS VEGAS
- Splinting Workshop ORLANDO
- ACL Graft Prep ORLANDO
- Fall Meeting ORLANDO

**▸ 2017**
- Spring Meeting HOUSTON
- Fall Meeting ATLANTA (TENTATIVE)

## CAREER AND PRACTICE BENEFITS

- Surgical Assistant Salary Survey
- Finance Advisory Committee
- Best-practices guidelines
- Web-based CSFA Exam Prep
- Future Commitments
- Hospital Risk Managers Conference FALL 2016
- Salary Survey 2016


ASA
ASSOCIATION OF SURGICAL ASSISTANTS

**We can accomplish even more when you join ASA.**
**Easy to sign up on line at www.surgicalassistant.org.**