Alan Van Dyne *Legislative Service Commission*

Sub. S.B. 278*

123rd General Assembly
(As Reported by S. Health, Human Services and Aging)

Sen. Drake

BILL SUMMARY

- Prohibits any person, other than a physician, from practicing as an anesthesiologist assistant unless the person holds a valid certificate of registration issued by the State Medical Board.
- Establishes standards of practice for anesthesiologist assistants.
- Authorizes the State Medical Board to enforce laws related to the practice of anesthesiologist assistants.
- Declares an emergency.

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* *This analysis was prepared before the report of the Senate Health, Human Services & Aging Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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CONTENT AND OPERATION

The practice of anesthesiologist assistants

(secs. 4760.01, 4760.08, 4760.09, and 4760.10)

The bill establishes procedures for issuing certificates of registration to practice as an anesthesiologist assistant and standards for the practice of anesthesiologist assistants. The bill specifies that an anesthesiologist assistant is an individual who assists a physician who is an anesthesiologist in developing and implementing anesthesia care plans for patients.

Under the bill, an anesthesiologist assistant may practice only in a hospital. The bill identifies a hospital as an institution classified as a hospital by the Department of Health, in which inpatients receive care for a continuous period lasting longer than 24 hours.

In an individual's practice as an anesthesiologist assistant, the bill specifies that the assistant may do any of the following:

(1) Obtain a comprehensive patient history and present the history to the supervising anesthesiologist;

(2) Pretest and calibrate anesthesia delivery systems and monitors and obtain and interpret information from the systems and monitors;

(3) Assist the supervising anesthesiologist with the implementation of medically accepted monitoring techniques;

(4) Establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;

(5) Administer intermittent vasoactive drugs and start and adjust vasoactive infusions;

(6) Administer anesthetic drugs, adjuvant drugs, and accessory drugs;

(7) Assist the supervising anesthesiologist with the performance of epidural and spinal anesthetic procedures;

(8) Administer blood, blood products, and supportive fluids.

In addition to the activities specified above, the supervising anesthesiologist of an anesthesiologist assistant may authorize the assistant to do the following:

(1) Participate in administrative activities and clinical teaching activities;

(2) Participate in research activities by performing the anesthesia assistance procedures the bill authorizes;

(3) Provide assistance to a cardiopulmonary resuscitation team in response to a life-threatening situation.

At all times when an anesthesiologist assistant is providing direct patient care, the assistant is required by the bill to display in an appropriate manner the title "anesthesiologist assistant" as a means of identifying the individual's authority to practice under the bill.

Supervision and locations of practice

(secs. 4731.22(B)(36), 4760.01, and 4760.08)

Under the bill, an anesthesiologist assistant may practice only under the supervision of an anesthesiologist and only in a hospital. The bill identifies an anesthesiologist as a physician who has successfully completed an approved anesthesiology training program that meets the accreditation requirements that must be met to qualify as graduate medical education under existing law.

Each anesthesiologist who agrees to act as the supervising anesthesiologist of an anesthesiologist assistant is required by the bill to adopt a written practice protocol that delineates the services that the assistant is authorized to provide and the manner in which the anesthesiologist will supervise the assistant. The anesthesiologist must base the protocol's provisions on consideration of relevant quality assurance standards, including regular review by the anesthesiologist of the medical records of the assistant's patients. The bill requires the supervising anesthesiologist to supervise the assistant in accordance with the protocol and the State Medical Board's rules for supervision. The rules must include requirements for enhanced supervision of an anesthesiologist assistant during the assistant's first four years of practice after receiving an initial certificate of registration. Under the bill, failure to provide appropriate supervision of an anesthesiologist assistant constitutes a reason for which the Board may take disciplinary action against the anesthesiologist.

Prohibitions

(secs. 4731.35, 4760.02, and 4760.99)

The bill prohibits anyone from practicing as an anesthesiologist assistant unless the person holds a current, valid certificate of registration to practice as an anesthesiologist assistant. A person who violates the prohibition is guilty of a first degree misdemeanor on a first offense. On each subsequent offense, the person is guilty of a fourth degree felony. The bill specifies that the existing laws governing the practice of medicine do not prohibit an anesthesiologist assistant from practicing according to the bill's provisions.

The prohibition does not apply to a person who otherwise holds professional authority granted under Ohio law to perform any of the activities that an anesthesiologist assistant is authorized to perform. It also does not apply to a person participating in a training program leading toward certification by the National Commission for Certification of Anesthesiologist Assistants. For this exemption to apply, the training program participant must be supervised by one of the following: (1) an anesthesiologist, (2) a hospital resident preparing to practice as an anesthesiologist, or (3) an anesthesiologist assistant with a certificate of registration issued under the bill.

Obtaining a certificate

(secs. 4731.07, 4760.03, and 4760.04)

The bill requires an individual seeking a certificate of registration as an anesthesiologist assistant to file with the State Medical Board a written application

prescribed and supplied by the Board that includes all of the following information:

(1) Evidence satisfactory to the Board that the applicant is at least 21 years of age and of good moral character;

(2) Evidence satisfactory to the Board that the applicant has successfully completed the training that the bill provides is necessary to prepare an individual to practice as an anesthesiologist assistant;

(3) Evidence satisfactory to the Board that the applicant holds current certification from the National Commission for Certification of Anesthesiologist Assistants;

(4) Any other information the Board considers necessary to process the application and evaluate the applicant's qualifications.

The bill provides that at the time of making an application for a certificate of registration, the applicant must pay the Board a fee of $100, no part of which may be returned.

The Board is required by the bill to review all applications received. Not later than 60 days after receiving a complete application, the Board must determine whether each applicant meets the requirements to receive a certificate of registration. An affirmative vote of not fewer than six members of the Board is required to determine that an applicant meets the requirements for a certificate. The certificate expires biennially and may be renewed. The Board is required to keep a register that shows for each applicant whether the applicant was granted or refused a certificate.

Training requirements

(sec. 4760.031)

As a condition of being eligible to receive a certificate of registration as an anesthesiologist assistant, the bill provides that an individual must successfully complete the following training requirements:

(1) A baccalaureate or higher degree program at an institution of higher education accredited by an organization recognized by the board of regents. The program must have included courses in general biology, general chemistry, organic chemistry, physics, and calculus.

(2) A training program conducted for the purpose of preparing individuals to practice as anesthesiologist assistants. If the program was completed prior to

the bill's effective date, the program must have been completed at Case Western Reserve University or Emory University in Atlanta, Georgia. If the program is completed on or after the bill's effective date, the program must be a graduate-level program accredited by the Commission on Accreditation of Allied Health Education programs or any of the commission's successor organizations. In either case, the training program must have included at least all of the following components:

(a) Basic sciences of anesthesia: physiology, pathophysiology, anatomy, and biochemistry. The courses must be presented as a continuum of didactic courses designed to teach students the foundations of human biological existence on which clinical correlations to anesthesia practice are based.

(b) Pharmacology for the anesthetic sciences. The course must include instruction in the anesthetic principles of pharmacology, pharmacodynamics, pharmacokinetics, uptake and distribution, intravenous anesthetics and narcotics, and volatile anesthetics.

(c) Physics in anesthesia.

(d) Fundamentals of anesthetic sciences, presented as a continuum of courses covering a series of topics in basic medical sciences with special emphasis on the effects of anesthetics on normal physiology and pathophysiology.

(e) Patient instrumentation and monitoring, presented as a continuum of courses focusing on the design of, proper preparation of, and proper methods of resolving problems that arise with anesthesia equipment. The courses must provide a balance between the engineering concepts used in anesthesia instruments and the clinical application of anesthesia instruments.

(f) Clinically-based conferences in which techniques of anesthetic management, quality assurance issues, and current professional literature are reviewed from the perspective of practice improvement.

(g) Clinical experience consisting of at least 2,000 hours of direct patient contact, presented as a continuum of courses throughout the entirety of the program, beginning with a gradual introduction of the techniques for the anesthetic management of patients and culminating in the assimilation of the graduate of the program into the work force. Areas of instruction must include the following:

- Preoperative patient assessment;
- Indwelling vascular catheter placement, including intravenous and arterial catheters;

- Airway management, including mask airway and orotracheal intubation;
- Intraoperative charting;
- Administration and maintenance of anesthetic agents, narcotics, hypnotics, and muscle relaxants;
- Administration and maintenance of volatile anesthetics;
- Administration of blood products and fluid therapy;
- Patient monitoring;
- Postoperative management of patients;
- Regional anesthesia techniques;
- Administration of vasoactive substances for treatment of unacceptable patient hemodynamic status;
- Specific clinical training in all the subspecialties of anesthesia, including pediatrics, neurosurgery, cardiovascular surgery, trauma, obstetrics, orthopedics, and vascular surgery.

(h) Basic life support that qualifies the individual to administer cardiopulmonary resuscitation to patients in need. The course must include the instruction necessary to be certified in basic life support by the American Red Cross or the American Heart Association.

(i) Advanced cardiac life support that qualifies the individual to participate in the pharmacologic intervention and management resuscitation efforts for a patient in full cardiac arrest. The course must include the instruction necessary to be certified in advanced cardiac life support by the American Red Cross or the American Heart Association.

Duplicate certificates

(sec. 4760.05)

The bill provides that on the application of the holder of a certificate of registration, the Board must issue a duplicate certificate to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The fee for a duplicate certificate is $35.

Renewing a certificate

(sec. 4760.06)

Under the bill, a person seeking to renew a certificate of registration must, on or before January 31 of each even-numbered year, apply for renewal. The State Medical Board must send renewal notices at least one month prior to the expiration date.

Applications must be submitted to the Board on forms the Board will prescribe and supply. Each application must be accompanied by a biennial renewal fee of $100.

The bill requires the applicant to report any criminal offense that constitutes grounds for refusing to issue a certificate of registration and to which the applicant has pleaded or been found guilty or for which the applicant has been found eligible for intervention in lieu of conviction, since last signing an application for a certificate of registration.

To be eligible for renewal, an anesthesiologist assistant must certify to the Board that the assistant has maintained certification by the National Commission for the Certification of Anesthesiologist Assistants. If an applicant submits a complete renewal application and qualifies for renewal, the Board must issue the applicant a renewed certificate of registration.

A certificate that is not renewed on or before its expiration date is automatically suspended on its expiration date. The State Medical Board must reinstate a certificate suspended for failure to renew on an applicant's submission of the renewal fee and applicable monetary penalty. The penalty is $25 if the certificate has been suspended for two years or less and $50 if it has been suspended for more than two years.

Procedures for imposing licensing sanctions

The bill establishes grounds for discipline of anesthesiologist assistants that are similar to those in existing law for physicians. The procedures for taking disciplinary action against an anesthesiologist assistant are virtually the same as those for action against a physician.

Grounds for discipline

(secs. 4760.13(A) and (B) and 4760.131)

The bill authorizes the State Medical Board, by an affirmative vote of not fewer than six members, to revoke or refuse to grant a certificate of registration as

an anesthesiologist assistant to a person found to have committed fraud, misrepresentation, or deception in applying for or securing the certificate.

It requires the Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, to limit, revoke, or suspend an individual's certificate of registration as an anesthesiologist assistant, refuse to issue a certificate, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for any of the following reasons:

(1) Permitting the holder's name or certificate to be used by another person;

(2) Failure to comply with the bill's requirements, the statutes that apply to the practice of medicine, or any rules adopted by the Board;

(3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any of the bill's requirements, the statutes that apply to the practice of medicine, or rules adopted by the Board;

(4) A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established;

(5) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills;

(6) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;

(7) Willfully betraying a professional confidence;

(8) Making a false, fraudulent, deceptive, or misleading statement in securing or attempting to secure a certificate of registration to practice as an anesthesiologist assistant. The bill defines a "false, fraudulent, deceptive, or misleading statement" as a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived;

(9) Obtaining, or attempting to obtain, money or a thing of value by fraudulent misrepresentations in the course of practice;

(10) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(11) Commission of an act that constitutes a felony in Ohio, regardless of the jurisdiction in which the act was committed;

(12) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice;

(13) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude;

(14) Commission of an act in the course of practice that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which it was committed;

(15) Commission of an act involving moral turpitude that constitutes a misdemeanor in Ohio, regardless of the jurisdiction in which it was committed;

(16) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug, including trafficking in drugs;

(17) Any of the following actions taken by the state agency responsible for regulating the practice of anesthesiologist assistants in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;

(18) Violation of the conditions placed by the Board on a certificate of registration;

(19) Failure to use universal blood and body fluid precautions established by the Board;

(20) Failure to cooperate in an investigation conducted by the Board, including failure to comply with a subpoena or order issued by the Board or failure to answer truthfully a question presented by the Board at a deposition or in written interrogatories, except that the failure to cooperate with an investigation is not to constitute grounds for discipline if a court of competent jurisdiction has issued an

order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue;

(21) Failure to comply with any code of ethics established by the National Commission for the Certification of Anesthesiologist Assistants;

(22) Failure to comply with a court order to make child support payments.

Disciplinary procedures

(sec. 4760.13(C), (D), and (E))

The bill provides that disciplinary actions must be taken by the Board in accordance with the Administrative Procedure Act (R.C. Chapter 119.), except that in lieu of an adjudication, the Board may enter into a consent agreement with an anesthesiologist assistant or applicant to resolve an allegation of a violation of any of the bill's provisions or any rule adopted under them. A consent agreement, when ratified by an affirmative vote of not fewer than six members of the Board, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admissions and findings contained in the consent agreement are to be of no force or effect.

The bill provides that the commission of certain criminal acts may be established by a finding of the Board, pursuant to an adjudication under the Administrative Procedure Act, that the applicant or certificate holder committed the act in question. Under the bill, the Board has no jurisdiction in cases where the trial court renders final judgment in the certificate holder's favor and that judgment is based on an adjudication on the merits. The Board has jurisdiction in cases where the trial court issues an order of dismissal on technical or procedural grounds.

Under the bill, the sealing of conviction records by any court is to have no effect on a prior Board order entered under the bill's disciplinary provisions or on the Board's jurisdiction if, based on a plea of guilty, a judicial finding of guilt, or a judicial finding of eligibility for intervention in lieu of conviction, the Board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

Mental and physical examinations

(sec. 4760.13(F))

Any individual who holds a certificate of registration as an anesthesiologist assistant, or applies for a certificate of registration, is deemed by the bill to have given consent to a mental or physical examination when directed to do so in writing by the Board and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

On a showing of a possible violation of the bill's provision dealing with inability to practice acceptably because of mental or physical illness or because of habitual or excessive use or abuse of drugs or alcohol, the Board may compel an individual who holds a certificate of registration or who has applied for a certificate to submit to a mental examination, a physical examination, or both. The expense of the examination is the responsibility of the individual examined. In the case of an individual who is unable to practice acceptably because of physical illness, a physical examination ordered by the Board may include an HIV test. In the case of an individual who is unable to practice acceptably because of habitual or excessive use or abuse of drugs or alcohol, the mental or physical examination must be undertaken by a treatment provider or physician chosen by the Board who is qualified to conduct the examination.

Failure to submit to a mental or physical examination or consent to an HIV test ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control. A default and final order may be entered without the taking of testimony or presentation of evidence.

If the Board finds that an individual's ability to practice is impaired by the habitual or excessive use or abuse of drugs or alcohol, the Board must suspend the individual's certificate or deny the individual's application and require the individual, as a condition for an initial, continued, reinstated, or renewed certificate, to submit to treatment. If the Board finds that an anesthesiologist assistant is unable to practice because of an inability to practice acceptably because of mental or physical illness, the Board must require the assistant to submit to care, counseling, or treatment by physicians approved or designated by the Board, as a condition for an initial, continued, reinstated, or renewed certificate of registration. An individual affected by mental or physical illness must be afforded an opportunity to demonstrate to the Board the ability to resume practicing in compliance with acceptable and prevailing standards of care.

Before being eligible to apply for reinstatement of a suspended certificate, an anesthesiologist assistant whose ability to practice was found to be impaired by use or abuse of drugs or alcohol must demonstrate the ability to resume practice in compliance with acceptable and prevailing standards of care. The demonstration must include the following:

(1) Certification from a treatment provider approved by the Board that the individual has successfully completed any required inpatient treatment;

(2) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(3) Two written reports indicating that the individual's ability to practice has been assessed and the individual has been found capable of practicing according to acceptable and prevailing standards of care. The reports must be made by individuals or providers approved by the Board for making assessments and describe the basis for their determination. The Board may reinstate a suspended certificate after this demonstration and after the individual has entered into a written consent agreement.

When the impaired anesthesiologist assistant resumes practice, the Board must require continued monitoring. The monitoring must include compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board order after a hearing, and, on termination of the consent agreement, submission to the Board for at least two years of annual written progress reports made under penalty of falsification stating whether the anesthesiologist assistant has maintained sobriety.

Suspension without a hearing

(sec. 4760.13(G))

If the secretary and supervising member of the State Medical Board determine that there is clear and convincing evidence that an anesthesiologist assistant has violated one of the bill's disciplinary provisions and that continued practice presents a danger of immediate and serious harm to the public, the bill permits them to recommend that the Board suspend the assistant's certificate to practice without a prior hearing. Written allegations must be prepared for consideration by the Board.

The Board may, on review of the allegations and by an affirmative vote of not fewer than six of its members, excluding the secretary and supervising member, suspend a certificate without a prior hearing. A telephone conference may be used for reviewing the allegations and taking the vote on the suspension.

Under the bill, the Board must issue a written order of suspension by certified mail or in person in accordance with the Administrative Procedure Act. The order is not subject to suspension by the court during the pendency of any appeal filed under the Administrative Procedure Act. If the anesthesiologist assistant requests an adjudicatory hearing by the Board, the date set for the hearing

must be within 15 days, but not earlier than seven days, after the assistant requests the hearing, unless otherwise agreed to by both the Board and the assistant.

A summary suspension remains in effect, unless reversed on appeal, until a final adjudicative order issued by the Board pursuant to the provisions in the bill and the Administrative Procedure Act becomes effective. The Board must issue its final adjudicative order within 60 days after completion of its hearing. Failure to issue the order within 60 days will result in dissolution of the suspension order, but will not invalidate any subsequent, final adjudicative order.

Overturned convictions

(sec. 4760.13(H))

If the Board takes disciplinary action under the bill against an anesthesiologist assistant for certain criminal actions, and the judicial finding of guilt, guilty plea, or judicial finding of eligibility for intervention in lieu of conviction is overturned on appeal, on exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the Board along with appropriate court documents. On receipt of a petition and supporting court documents, the Board must reinstate the assistant's certificate. The Board may then hold an adjudication under the Administrative Procedure Act to determine whether the individual committed the act in question. Notice of opportunity for hearing must be given in accordance with the Administrative Procedure Act. If the Board finds, pursuant to an adjudication, that the assistant committed the act, or if no hearing is requested, it may order any of the sanctions specified in the bill.

Automatic suspension for committing crimes

(sec. 4760.13(I))

The certificate of registration of an anesthesiologist assistant and the assistant's practice in Ohio are automatically suspended under the bill as of the date the assistant pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for intervention in lieu of conviction in Ohio or treatment or intervention in lieu of conviction in another jurisdiction for any of the following criminal offenses in Ohio or a substantially equivalent criminal offense in another jurisdiction: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary. Continued practice after the suspension is considered practicing without a certificate.

Under the bill, the Board must notify the anesthesiologist assistant by certified mail or in person in accordance with the Administrative Procedure Act. If an anesthesiologist assistant whose certificate is suspended fails to make a timely request for adjudication under the Administrative Procedure Act, the Board must enter a final order permanently revoking the certificate.

Automatic suspension for mental illness or incompetence

(sec. 4760.132)

If an anesthesiologist assistant is adjudged by a probate court to be mentally ill or mentally incompetent, the bill provides that the person's certificate of registration is automatically suspended until the person is restored to competency. The probate court judge must notify the Board of an adjudication of mental illness or mental incompetence and must note the suspension of the certificate of registration in the margin of the court's record.

Under the bill, if the Board has reason to believe that an anesthesiologist assistant is mentally ill or mentally incompetent, it may file in probate court an affidavit for a hearing to determine if the person should be hospitalized or detained. The bill specifies that the Attorney General may represent the Board in any proceeding that is commenced.

Board findings

(sec. 4760.13(J))

The bill provides that in any instance in which the Board is required by the Administrative Procedure Act to give notice of opportunity for hearing and the individual subject to the notice does not timely request a hearing, the Board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the Board's findings. In the order, the Board may take any of the disciplinary actions provided for in the bill.

Conditions for reinstatement

(sec. 4760.13(K))

The bill requires that any disciplinary action taken by the Board that results in a suspension be accompanied by a written statement of the conditions under which the certificate may be reinstated. The Board must adopt rules in accordance with the Administrative Procedure Act governing conditions to be imposed for reinstatement. Reinstatement of a certificate requires an affirmative vote of not fewer than six members of the Board.

Permanent suspension

(sec. 4760.13(L))

When the Board refuses to grant a certificate of registration as an anesthesiologist assistant, revokes a certificate, refuses to issue a certificate, or refuses to reinstate a certificate, the bill permits the Board to specify that its action is permanent. An individual subject to a permanent action taken by the Board is forever ineligible to hold a certificate of registration as an anesthesiologist assistant, and the Board may not accept an application for reinstatement of the certificate or for issuance of a new certificate.

Continuing jurisdiction

(sec. 4760.13(M))

With respect to the Board's authority over an individual who has applied for or received a certificate of registration as an anesthesiologist assistant, the bill provides the following:

(1) The surrender of a certificate of registration is not effective until accepted by the Board. Reinstatement of a certificate surrendered to the Board requires an affirmative vote of not fewer than six members of the Board.

(2) An application for a certificate of registration may not be withdrawn without the approval of the Board.

(3) Failure to renew a certificate of registration does not remove or limit the Board's jurisdiction to take disciplinary action against an individual.

Board investigations

(sec. 4762.14)

The bill requires the State Medical Board to investigate evidence that appears to show that any person has violated any provision of the bill or the rules adopted under it. Any person may report to the Board in a signed writing any information the person has that appears to show a violation of any provision of the bill or the rules. In the absence of bad faith, a person who reports such information or testifies before the Board in an adjudication conducted under the Administrative Procedure Act is not liable for civil damages as a result of reporting the information or providing testimony. Each complaint or allegation of a violation received by the Board must be assigned a case number and recorded by the Board.

Investigations of alleged violations of a provision of the bill or rules must be supervised by the Board member elected as the supervising member and the member elected to serve as secretary. The Board's president may designate another Board member to supervise the investigation in place of the supervising member. A Board member who supervises the investigation of a case may not participate in further adjudication of the case.

In investigating a possible violation of a provision of the bill or rules, the Board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony, except that a subpoena for patient record information may not be issued without consultation with the Attorney General's office and approval of the secretary and supervising member of the Board. Before issuance of a subpoena for patient record information, the secretary and supervising member must determine whether there is probable cause to believe that the complaint filed alleges a violation of a provision of the bill or a rule and that the records sought are relevant to the alleged violation and material to the investigation. The subpoena may apply only to records that cover a reasonable period of time surrounding the alleged violation. On failure to comply with any subpoena issued by the Board and after reasonable notice to the person being subpoenaed, the Board may move for an order compelling the production of persons or records under the Ohio Rules of Civil Procedure.

A subpoena issued by the Board may be served by a sheriff, the sheriff's deputy, or a Board employee designated by the Board. Service of a subpoena issued by the Board may be made by delivering a copy of the subpoena to the person named on it, reading it to the person, or leaving it at the person's usual place of residence. When the person being served is an anesthesiologist assistant, service of the subpoena may be made by certified mail, restricted delivery, return receipt requested, and the subpoena will be deemed served on the date delivery is made or the date the person refuses to accept delivery.

A sheriff's deputy who serves a subpoena under the bill is to receive the same fees as a sheriff. Each witness who appears before the Board in obedience to a subpoena is to receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

The bill provides that proceedings and records within the scope of peer review or utilization review functions of review boards, committees, or corporations are not subject to discovery or introduction in evidence in a disciplinary action against an anesthesiologist assistant.

The bill specifies that information the Board receives pursuant to an investigation is confidential and not subject to discovery in any civil action. The Board is required to conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. The Board may not make public the names or other identifying information about patients or complainants unless proper consent is given.

The bill authorizes the Board to share information received through an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information must comply with the same requirements regarding confidentiality as those with which the State Medical Board must comply. In a judicial proceeding, the information may be admitted into evidence only in accordance with the Rules of Evidence, but the court must require that appropriate measures be taken to ensure that confidentiality is maintained with respect to any part of the information that contains names or other identifying information about patients or complainants whose confidentiality was protected by the State Medical Board when the information was in the Board's possession. Measures to ensure confidentiality that may be taken by the court include sealing its records or deleting specific information from its records.

The Board must develop requirements for and provide appropriate initial training and continuing education for investigators employed by the Board to carry out its duties under the bill. The training and continuing education may include enrollment in courses operated or approved by the Ohio Peace Officer Training Council that the Board considers appropriate.

On a quarterly basis, the bill requires the Board to prepare a report that documents the disposition of all cases during the preceding three months. The report must contain the following information for each case with which the Board has completed its activities:

(1) The case number assigned to the complaint or alleged violation;

(2) The type of certificate to practice, if any, held by the individual against whom the complaint is directed;

(3) A description of the allegations contained in the complaint;

(4) The disposition of the case.

The report must state how many cases are still pending and be prepared in a manner that protects the identity of the person involved in each case. The report is a public record for the purposes of Ohio law.

Reports from prosecutors

(sec. 4760.15)

When an anesthesiologist assistant pleads guilty to, is found guilty of, or is found to be eligible for intervention in lieu of conviction for committing a drug or sex offense, the bill requires that the prosecutor in the case notify the Board. Within 30 days after receiving the information, the Board must initiate action to determine whether to suspend or revoke the assistant's certificate of registration.

The prosecutor in a case against an anesthesiologist assistant also must notify the Board of a plea of guilty to, a finding of guilt of, or a finding of eligibility for intervention in lieu of conviction for a felony, a misdemeanor committed in the course of practice, or a misdemeanor involving moral turpitude. The notice requirement extends to cases in which the trial court issues an order of dismissal on technical or procedural grounds. The report must include the name and address of the assistant, the nature of the offense, and the certified court documents recording the action.

Reports from health care facilities

(sec. 4760.16(A))

The bill requires that a report be made to the Board within 60 days after the imposition of any formal disciplinary action taken against an anesthesiologist assistant by any health care facility. The report must include a summary of the underlying facts leading to the action taken. On request, the Board must be given certified copies of patient records. The bill provides immunity from civil liability for an individual or entity for providing patient records in the absence of fraud or bad faith. The bill specifies that a health care facility's authority to take disciplinary action against an anesthesiologist assistant is not affected by filing a report with the Board, choosing not to file a report, or any action taken by the Board with respect to the assistant.

Reports from practitioners, associations, and malpractice insurers

(secs. 4731.224 and 4760.16(B) to (E))

The bill requires that a report to the Board be made by an anesthesiologist assistant, physician, or professional association or society of anesthesiologist

assistants or physicians when the person or entity believes that a violation has occurred with respect to the requirements of the bill, the laws regulating the practice of medicine, or any of the Board's rules. The bill specifies that reports are not required in the case of an anesthesiologist assistant participating in drug or alcohol treatment, unless the assistant fails to continue treatment.

If a professional association or society composed primarily of anesthesiologist assistants suspends or revokes an individual's membership for violations of professional ethics, or for professional incompetence or malpractice, the association or society must report to the Board. The report must be made within 60 days of the action taken.

Insurers providing professional liability insurance to an anesthesiologist assistant are required by the bill to notify the Board within 30 days after the final disposition or any claim for damages that results in a payment exceeding $25,000. The Board must conduct an investigation in cases of repeated malpractice, which is defined as three or more judgments or settlements for negligence that exceed $25,000 and occur in a five-year period.

Information obtained from reports

(sec. 4760.16(F) and (G))

With regard to the reports made to the Board by health care facilities, practitioners, associations, and malpractice insurers, the bill includes requirements for maintaining the confidentiality of the information in the reports. The bill permits the Board to share the information in a confidential manner with health care facility committees in Ohio or other states that are considering whether to grant practice privileges to an anesthesiologist assistant or supervising physician. Except when a report is made on the belief that a violation has occurred, the assistant must be given a copy of each report made to the Board and the opportunity to file a statement with the Board concerning the correctness or relevance of the information.

Penalty for failure to report

(sec. 4760.99)

If a health care facility, practitioner, association, or malpractice insurer fails to make a report to the Board as the bill requires, the bill provides for the imposition of a criminal penalty. On a first offense, the person who fails to report is guilty of a minor misdemeanor. On each subsequent offense, the person is guilty of a fourth degree misdemeanor with no term of imprisonment but a fine of up to $1,000.

Impaired anesthesiologist assistants

(secs. 4731.25 and 4760.16(H) and (I))

Current law requires the Board to approve treatment providers for practitioners who are impaired by habitual or excessive use or abuse of drugs, alcohol, or other substances. The treatment provider statutes apply to all of the practitioners regulated by the Board, including physicians, podiatrists, physician assistants, cosmetic therapists, and massage therapists.

The bill extends the existing treatment provider statutes to anesthesiologist assistants. It provides immunity from civil liability for reporting an impaired assistant to the Board or referring the assistant to a treatment provider for either examination or treatment.

Enforcement

(sec. 4760.17)

The bill requires the secretary of the State Medical Board to enforce the laws relating to the practice of anesthesiologist assistants. If the secretary has knowledge or notice of a violation of a provision of the bill or the rules adopted under it, the secretary must investigate the matter, and, on probable cause appearing, file a complaint and prosecute the offender. When requested by the secretary, the prosecuting attorney of the proper county must take charge of and conduct the prosecution.

Injunctions

(sec. 4760.18)

The bill provides for issuance of an injunction against a person practicing as an anesthesiologist assistant without a certificate of registration from the Board. An injunction may be applied for by the Attorney General, a prosecuting attorney, the Board, or other person having knowledge of a person unlawfully practicing as an anesthesiologist assistant. In the case of the Board, before applying for an injunction, the secretary of the Board must notify the person, who then has 30 days to respond. The bill requires the court to conduct a hearing on the petition and to give the same preference to the proceeding as is given all proceedings under the Administrative Procedure Act, irrespective of the position of the proceeding on the court's calendar. The bill specifies that injunction proceedings are in addition to, not in lieu of, other penalties or remedies available to the Board.

Adoption of rules

(sec. 4760.19)

The bill permits the Board to adopt any rules necessary to govern the practice of anesthesiologist assistants, the supervisory relationship between the assistants and their supervising anesthesiologists, and the administration and enforcement of the bill. The rules must be adopted in accordance with the Administrative Procedure Act.

Fees

(secs. 4731.24 and 4760.20)

All fees, penalties, and other funds received under the bill by the Board must be deposited into the state treasury to the credit of the existing Occupational Licensing and Regulatory Fund and must be used solely for the administration and enforcement activities of the State Medical Board.

The bill authorizes the Board to increase the $100 application and renewal fees, subject to the approval of the Controlling Board. The fees may not exceed $100 by more than 50%.

Civil immunity

(sec. 4760.21)

The bill provides that no liability for damages to any person is created as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to the bill. This immunity extends, in the absence of fraud or bad faith, to the Board, a current or former Board member, an agent of the Board, a person formally requested by the Board to be the Board's representative, or an employee of the Board. If any of these persons asks to be defended by the state against any claim or action related to the person performing official duties, the bill requires the state to provide and pay for the person's defense and to pay for any resulting judgment, compromise, or settlement. The person must request the assistance within a reasonable time before trial and must cooperate in the defense. At no time is the state to pay for punitive or exemplary damages.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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Reported, S. Health, Human Services & Aging	---	---

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