

By: Davis of Harris

H.B. No. 3376

A BILL TO BE ENTITLED

AN ACT

relating to the licensure of anesthesiologist assistants;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter B, Chapter 157, Occupations Code, is amended to read as follows:

SUBCHAPTER B. DELEGATION TO ADVANCED PRACTICE NURSES, ~~[AND]~~
PHYSICIAN ASSISTANTS, AND ANESTHESIOLOGIST ASSISTANTS

SECTION 2. Section 157.051, Occupations Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Anesthesiologist assistant" means a person who holds a license issued under Chapter 207.

SECTION 3. Subchapter B, Chapter 157, Occupations Code, is amended by adding Section 157.061 to read as follows:

Sec. 157.061. DELEGATION TO ANESTHESIOLOGIST ASSISTANTS.

(a) In a licensed hospital or ambulatory surgical center, a board certified anesthesiologist may delegate to an anesthesiologist assistant the ordering of drugs and devices necessary for the anesthesiologist assistant to administer an anesthetic or an anesthesia-related service.

(b) Under the anesthesiologist's order and in accordance with facility policies or medical staff bylaws, an anesthesiologist assistant may select, obtain, and administer the drugs and apply the medical devices appropriate to accomplish the

1 anesthesiologist's order and maintain the patient within a sound
2 physiological status.

3 (c) This section shall be liberally construed to permit the
4 full use of safe and effective medication orders to use the skills
5 and services of anesthesiologist assistants.

6 SECTION 4. Subtitle C, Title 3, Occupations Code, is
7 amended by adding Chapter 207 to read as follows:

8 CHAPTER 207. ANESTHESIOLOGIST ASSISTANTS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 207.001. SHORT TITLE. This chapter may be cited as the
11 Anesthesiologist Assistant Licensing Act.

12 Sec. 207.002. DEFINITIONS. In this chapter:

13 (1) "Anesthesiologist" means a physician licensed by
14 the Texas Medical Board who specializes in anesthesiology.

15 (2) "Anesthesiologist assistant" means a person who
16 holds a license issued under this chapter.

17 (3) "Anesthesiologist assistant board" means the
18 Texas Anesthesiologist Assistant Board.

19 (4) "Anesthesiologist assistant practice protocol"
20 means a written agreement of jointly agreed protocols or a standing
21 order between a supervising anesthesiologist and an
22 anesthesiologist assistant that provides for the delegation of
23 health care services from a supervising anesthesiologist to an
24 anesthesiologist assistant and the review of those services.

25 (5) "Anesthesiology" means the practice of medicine
26 that specializes in the relief of pain during and after surgical
27 procedures and childbirth, during certain chronic disease

1 processes, and during the resuscitation and critical care of
2 patients in the operating room and intensive care environments.

3 (6) "Direct supervision" means supervision by an
4 anesthesiologist who is present in the facility in which the
5 anesthesiologist assistant is performing anesthesia services and
6 is immediately available to provide assistance and direction while
7 anesthesia services are being performed.

8 (7) "Immediately available" means in the same physical
9 location or facility in which the services are provided.

10 (8) "Medical board" means the Texas Medical Board.

11 (9) "Physician" means a person licensed by the Texas
12 Medical Board to practice medicine and surgery or osteopathic
13 medicine and surgery.

14 Sec. 207.003. APPLICATION OF SUNSET ACT. The Texas
15 Anesthesiologist Assistant Board is subject to Chapter 325,
16 Government Code (Texas Sunset Act). Unless continued in existence
17 as provided by that chapter, the board is abolished and this chapter
18 expires September 1, 2021.

19 Sec. 207.004. APPLICABILITY OF CHAPTER. (a) A person is
20 not required to hold a license issued under this chapter to practice
21 as:

22 (1) a technician, assistant, or employee of a
23 physician who performs delegated tasks but does not act as an
24 anesthesiologist assistant or represent that the person is an
25 anesthesiologist assistant; or

26 (2) any other licensed health care worker acting
27 within the scope of that person's license if the person:

1 (A) does not use the title "anesthesiologist
2 assistant" or the initials "A.A." or "A.A.-C"; or

3 (B) is not represented or designated as an
4 anesthesiologist assistant.

5 (b) This chapter does not limit the employment arrangement
6 of an anesthesiologist assistant.

7 [Sections 207.005-207.050 reserved for expansion]

8 SUBCHAPTER B. TEXAS ANESTHESIOLOGIST ASSISTANT BOARD

9 Sec. 207.051. ANESTHESIOLOGIST ASSISTANT BOARD. (a) The
10 Texas Anesthesiologist Assistant Board is an advisory board to the
11 medical board.

12 (b) The anesthesiologist assistant board shall:

13 (1) guide, advise, and make recommendations to the
14 medical board; and

15 (2) assist the medical board in carrying out this
16 chapter.

17 (c) The medical board is responsible for the ongoing
18 examination of the scope of practice and promoting the continuing
19 role of anesthesiologist assistants in the delivery of health care
20 services.

21 Sec. 207.052. APPOINTMENT OF BOARD. The anesthesiologist
22 assistant board consists of six members appointed by the governor
23 with the advice and consent of the senate as follows:

24 (1) one member who is a physician;

25 (2) one anesthesiologist assistant;

26 (3) two anesthesiologists; and

27 (4) two members who represent the public and are not

1 licensed or trained in a health care profession.

2 Sec. 207.053. PUBLIC MEMBER ELIGIBILITY. A person is not
3 eligible for appointment as a public member of the anesthesiologist
4 assistant board if the person or the person's spouse:

5 (1) is registered, certified, or licensed by an
6 occupational regulatory agency in the field of health care;

7 (2) is employed by or participates in the management
8 of a business entity or other organization regulated by the medical
9 board or receiving funds from the medical board or anesthesiologist
10 assistant board;

11 (3) owns or controls, directly or indirectly, more
12 than a 10 percent interest in a business entity or other
13 organization regulated by the medical board or anesthesiologist
14 assistant board or receiving funds from the medical board or
15 anesthesiologist assistant board; or

16 (4) uses or receives a substantial amount of tangible
17 goods, services, or money from the medical board or
18 anesthesiologist assistant board, other than compensation or
19 reimbursement authorized by law for anesthesiologist assistant
20 board membership, attendance, or expenses.

21 Sec. 207.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
22 In this section, "Texas trade association" means a cooperative and
23 voluntarily joined association of business or professional
24 competitors in this state designed to assist its members and its
25 industry or profession in dealing with mutual business or
26 professional problems and in promoting their common interest.

27 (b) A person may not be a member of the anesthesiologist

1 assistant board or an employee of the medical board employed in a
2 "bona fide executive, administrative, or professional capacity,"
3 as that phrase is used for purposes of establishing an exemption to
4 the overtime provisions of the federal Fair Labor Standards Act of
5 1938 (29 U.S.C. Section 201 et seq.) if:

6 (1) the person is an officer, employee, manager, or
7 paid consultant of a Texas trade association in the field of health
8 care; or

9 (2) the person's spouse is an officer, board member,
10 employee, or paid consultant of a Texas trade association in the
11 field of health care.

12 (c) A person may not be a member of the anesthesiologist
13 assistant board if the person is required to register as a lobbyist
14 under Chapter 305, Government Code, because of the person's
15 activities for compensation on behalf of a profession related to
16 the operation of the medical board or anesthesiologist assistant
17 board.

18 Sec. 207.055. MEMBERSHIP REQUIREMENTS. Each member of the
19 anesthesiologist assistant board must be a citizen of the United
20 States and a resident of this state. Each physician member of the
21 anesthesiologist assistant board must be licensed to practice
22 medicine in this state.

23 Sec. 207.056. TERMS; VACANCIES. (a) Members of the
24 anesthesiologist assistant board serve staggered three-year terms.
25 The terms of two members expire on January 31 each year.

26 (b) An anesthesiologist assistant board member who is an
27 anesthesiologist assistant or a physician may not serve more than

1 two consecutive terms.

2 (c) At least 90 days before the expiration of a term of a
3 member who is an anesthesiologist or anesthesiologist assistant or
4 as soon as possible after a vacancy occurs, the president of the
5 Texas Society of Anesthesiologists, or its successor, shall submit
6 a list to the medical board of not more than three qualified and
7 willing individuals for each vacancy with a request and
8 recommendation that the governor appoint one of the individuals
9 listed to each vacancy as indicated on the list. The president of
10 the Texas Society of Anesthesiologists, or its successor, shall
11 include a letter of transmittal with the list that describes the
12 method by which the individuals were chosen.

13 (d) If a vacancy occurs during a member's term, the governor
14 shall appoint a new member to serve the unexpired term.

15 Sec. 207.057. OFFICERS; MEETINGS. (a) The
16 anesthesiologist assistant board shall hold an open annual meeting
17 and elect a presiding officer and secretary from among its members.

18 (b) The anesthesiologist assistant board may hold
19 additional meetings as necessary provided that notice of each
20 meeting is given to each member not less than 10 days before the
21 date of the meeting.

22 Sec. 207.058. APPLICABILITY OF OTHER LAW. (a) Chapter
23 2110, Government Code, does not apply to the anesthesiologist
24 assistant board.

25 (b) Except as otherwise provided by this chapter, the
26 anesthesiologist assistant board is subject to Chapters 551 and
27 2001, Government Code.

1 Sec. 207.059. GROUNDS FOR REMOVAL. (a) It is a ground for
2 removal from the anesthesiologist assistant board that a member:

3 (1) does not have at the time of taking office the
4 qualifications required by Sections 207.052, 207.053, and 207.055;

5 (2) does not maintain during service on the
6 anesthesiologist assistant board the qualifications required by
7 Sections 207.052, 207.053, and 207.055;

8 (3) is ineligible for membership under Section
9 207.054;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the member's
12 term; or

13 (5) is absent from more than half of the regularly
14 scheduled anesthesiologist assistant board meetings that the
15 member is eligible to attend during a calendar year without an
16 excuse approved by a majority vote of the anesthesiologist
17 assistant board.

18 (b) The validity of an action of the anesthesiologist
19 assistant board is not affected by the fact that it is taken when a
20 ground for removal of an anesthesiologist assistant board member
21 exists.

22 (c) If the executive director of the medical board has
23 knowledge that a potential ground for removal of an
24 anesthesiologist assistant board member exists, the executive
25 director shall notify the presiding officer of the anesthesiologist
26 assistant board of the potential ground. The presiding officer
27 shall then notify the governor and the attorney general that a

1 potential ground for removal exists. If the potential ground for
2 removal involves the presiding officer, the executive director
3 shall notify the next highest officer of the anesthesiologist
4 assistant board, who shall notify the governor and the attorney
5 general that a potential ground for removal exists.

6 Sec. 207.060. TRAINING. (a) A person who is appointed to
7 and qualifies for office as a member of the anesthesiologist
8 assistant board may not vote, deliberate, or be counted as a member
9 in attendance at a meeting of the anesthesiologist assistant board
10 until the person completes a training program that complies with
11 this section.

12 (b) The training program must provide the person with
13 information regarding:

14 (1) this chapter;

15 (2) the results of the most recent formal audit of the
16 anesthesiologist assistant board;

17 (3) the requirements of laws relating to open
18 meetings, public information, administrative procedure, and
19 conflict of interest; and

20 (4) any applicable ethics policies adopted by the
21 medical board or the Texas Ethics Commission.

22 (c) A person appointed to the anesthesiologist assistant
23 board is entitled to reimbursement, as provided by the General
24 Appropriations Act, for travel expenses incurred in attending the
25 training program regardless of whether the attendance at the
26 program occurs before or after the person qualifies for office.

27 Sec. 207.061. QUALIFICATIONS AND STANDARDS OF CONDUCT

1 INFORMATION. The executive director of the medical board or the
2 executive director's designee shall provide, as often as necessary,
3 to members of the anesthesiologist assistant board information
4 regarding their:

- 5 (1) qualifications for office under this chapter; and
6 (2) responsibilities under applicable laws relating
7 to standards of conduct for state officers.

8 Sec. 207.062. COMPENSATION; REIMBURSEMENT. An
9 anesthesiologist assistant board member may not receive
10 compensation for service on the anesthesiologist assistant board
11 but is entitled to receive reimbursement under the General
12 Appropriations Act for transportation and related expenses
13 incurred while conducting the anesthesiologist assistant board's
14 business.

15 [Sections 207.063-207.100 reserved for expansion]

16 SUBCHAPTER C. POWERS AND DUTIES OF ANESTHESIOLOGIST
17 ASSISTANT BOARD AND MEDICAL BOARD

18 Sec. 207.101. GENERAL POWERS AND DUTIES OF ANESTHESIOLOGIST
19 ASSISTANT BOARD. The anesthesiologist assistant board shall:

20 (1) adopt rules that are reasonable and necessary for
21 the performance of the board's duties under this chapter, as
22 provided by Chapter 2001, Government Code, including rules to
23 establish:

- 24 (A) licensing and other fees;
25 (B) license renewal dates; and
26 (C) procedures for disciplinary actions;
27 (2) review and approve or reject each application for

1 the issuance or renewal of a license;

2 (3) issue each license;

3 (4) deny, suspend, or revoke a license or otherwise
4 discipline a license holder; and

5 (5) take any action necessary to carry out the
6 functions and duties of the board under this chapter.

7 Sec. 207.102. GUIDELINES FOR EARLY INVOLVEMENT IN
8 RULEMAKING PROCESS. (a) The anesthesiologist assistant board
9 shall adopt guidelines to establish procedures for receiving input
10 during the rulemaking process from individuals and groups that have
11 an interest in matters under the anesthesiologist assistant board's
12 jurisdiction. The guidelines must provide an opportunity for those
13 individuals and groups to provide input before the anesthesiologist
14 assistant board submits the rule to the medical board for approval.

15 (b) A rule adopted by the medical board may not be
16 challenged on the grounds that the anesthesiologist assistant board
17 did not comply with this section. If the anesthesiologist
18 assistant board was unable to solicit a significant amount of input
19 from the public or affected persons early in the rulemaking
20 process, the anesthesiologist assistant board shall state in
21 writing the reasons why the anesthesiologist assistant board was
22 unable to do so.

23 Sec. 207.103. POWERS AND DUTIES OF MEDICAL BOARD RELATING
24 TO ANESTHESIOLOGIST ASSISTANTS. (a) The medical board shall adopt
25 rules consistent with this chapter to regulate anesthesiologist
26 assistants and anesthesiologists who supervise anesthesiologist
27 assistants.

1 (b) The medical board, by a majority vote, shall approve or
2 reject each rule adopted by the anesthesiologist assistant board.
3 If approved, the rule may take effect. If the rule is rejected, the
4 medical board shall return the rule to the anesthesiologist
5 assistant board for revision.

6 Sec. 207.104. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

7 The anesthesiologist assistant board shall adopt rules and
8 guidelines as necessary to comply with Chapter 53, except to the
9 extent the requirements of this chapter are stricter than the
10 requirements of Chapter 53.

11 Sec. 207.105. ASSISTANCE BY MEDICAL BOARD. (a) The medical

12 board shall provide administrative and clerical employees as
13 necessary to enable the anesthesiologist assistant board to
14 administer this chapter.

15 (b) Subject to the advice and approval of the medical board,
16 the anesthesiologist assistant board shall develop and implement
17 policies that clearly separate the policy-making responsibilities
18 of the anesthesiologist assistant board and the management
19 responsibilities of the executive director and the staff of the
20 medical board.

21 Sec. 207.106. FEES. The medical board shall set and collect

22 fees in amounts that are reasonable and necessary to cover the costs
23 of administering and enforcing this chapter without the use of any
24 other funds generated by the medical board.

25 Sec. 207.107. RULES RESTRICTING ADVERTISING OR COMPETITIVE

26 BIDDING. (a) The medical board may not adopt rules under this
27 chapter restricting advertising or competitive bidding by a license

1 holder except to prohibit false, misleading, or deceptive
2 practices.

3 (b) In its rules to prohibit false, misleading, or deceptive
4 practices, the medical board may not include a rule that:

5 (1) restricts the use of any medium for advertising;

6 (2) restricts the use of a license holder's personal
7 appearance or voice in an advertisement;

8 (3) relates to the size or duration of an
9 advertisement by the license holder; or

10 (4) restricts the license holder's advertisement under
11 a trade name.

12 Sec. 207.108. ANNUAL REPORT. (a) The medical board shall
13 prepare annually a complete and detailed written report accounting
14 for all funds received and disbursed by the medical board or the
15 anesthesiologist assistant board under this chapter during the
16 preceding fiscal year.

17 (b) The annual report must meet the reporting requirements
18 applicable to financial reporting provided in the General
19 Appropriations Act.

20 Sec. 207.109. TECHNOLOGY POLICY. The medical board shall
21 implement a policy requiring the anesthesiologist assistant board
22 to use appropriate technological solutions to improve the
23 anesthesiologist assistant board's ability to perform its
24 functions. The policy must ensure that the public is able to
25 interact with the anesthesiologist assistant board on the Internet.

26 Sec. 207.110. NEGOTIATED RULEMAKING AND ALTERNATIVE
27 DISPUTE RESOLUTION POLICY. The medical board shall develop and

1 implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008, Government Code, for the adoption of medical board rules for
4 the anesthesiologist assistant board; and

5 (2) appropriate alternative dispute resolution
6 procedures under Chapter 2009, Government Code, to assist in the
7 resolution of internal and external disputes under the
8 anesthesiologist assistant board's jurisdiction.

9 Sec. 207.111. PUBLIC INTEREST INFORMATION. (a) The
10 anesthesiologist assistant board shall prepare information of
11 public interest describing the functions of the anesthesiologist
12 assistant board and the procedures by which complaints are filed
13 with and resolved by the anesthesiologist assistant board.

14 (b) The anesthesiologist assistant board shall make the
15 information available to the public and appropriate state agencies.

16 Sec. 207.112. PUBLIC PARTICIPATION. Subject to the advice
17 and approval of the medical board, the anesthesiologist assistant
18 board shall develop and implement policies that provide the public
19 with a reasonable opportunity to appear before the anesthesiologist
20 assistant board and to speak on any issue under the jurisdiction of
21 the anesthesiologist assistant board.

22 Sec. 207.113. RECORDS OF COMPLAINTS. (a) The
23 anesthesiologist assistant board shall maintain a system to
24 promptly and efficiently act on complaints filed with the board.
25 The board shall maintain:

26 (1) information about the parties to the complaint and
27 the subject matter of the complaint;

1 (2) a summary of the results of the review or
2 investigation of the complaint; and

3 (3) information about the disposition of the
4 complaint.

5 (b) The anesthesiologist assistant board shall make
6 information available describing its procedures for complaint
7 investigation and resolution.

8 (c) The anesthesiologist assistant board shall periodically
9 notify the parties of the status of the complaint until final
10 disposition of the complaint, unless the notice would jeopardize an
11 active investigation.

12 [Sections 207.114-207.150 reserved for expansion]

13 SUBCHAPTER D. LICENSE REQUIREMENTS; EXEMPTIONS; RENEWALS

14 Sec. 207.151. LICENSE REQUIRED. A person may not practice
15 as an anesthesiologist assistant in this state unless the person
16 holds an anesthesiologist assistant license issued under this
17 chapter.

18 Sec. 207.152. ISSUANCE OF LICENSE. (a) The
19 anesthesiologist assistant board shall issue a license to an
20 applicant who:

21 (1) meets the eligibility requirements of Section
22 207.153;

23 (2) submits an application on a form prescribed by the
24 board;

25 (3) pays the required application fee;

26 (4) certifies that the applicant is mentally and
27 physically able to function safely as an anesthesiologist

1 assistant; and

2 (5) submits to the board any other information the
3 board considers necessary to evaluate the applicant's
4 qualifications.

5 (b) The anesthesiologist assistant board may delegate
6 authority to medical board employees to issue licenses under this
7 chapter to applicants who clearly meet all licensing requirements.
8 If the medical board employees determine that the applicant does
9 not clearly meet all licensing requirements, the application shall
10 be returned to the anesthesiologist assistant board. A license
11 issued under this subsection does not require formal
12 anesthesiologist assistant board approval.

13 Sec. 207.153. ELIGIBILITY REQUIREMENTS. (a) To be eligible
14 for a license under this chapter, an applicant must:

15 (1) successfully complete an educational program
16 accredited by the Commission on Accreditation of Allied Health
17 Education Programs or another national accrediting agency approved
18 by the medical board;

19 (2) pass the Certifying Examination for
20 Anesthesiologist Assistants as administered by the National
21 Commission for Certification of Anesthesiologist Assistants or
22 another national testing service and examination approved by the
23 medical board;

24 (3) be of good moral character; and

25 (4) meet any other requirement established by
26 anesthesiologist assistant board rule.

27 (b) In addition to the requirements of Subsection (a), an

1 applicant is not eligible for a license, unless the
2 anesthesiologist assistant board takes into consideration in
3 determining whether to issue the license, if the applicant:

4 (1) has been issued a license, certificate, or
5 registration as an anesthesiologist assistant in this state or from
6 a licensing authority in another state that is revoked or
7 suspended; or

8 (2) is subject to probation or other disciplinary
9 action for cause in this state or another state resulting from the
10 applicant's acts as an anesthesiologist assistant.

11 Sec. 207.154. EXEMPTION FROM LICENSING REQUIREMENT FOR
12 CERTAIN ANESTHESIOLOGIST ASSISTANTS. A person is not required to
13 hold a license issued under this chapter to practice as:

14 (1) an anesthesiologist assistant student enrolled in
15 an anesthesiologist assistant educational program accredited by
16 the Commission on Accreditation of Allied Health Education Programs
17 or by its successor; or

18 (2) an anesthesiologist assistant employed in the
19 service of the federal government while performing duties related
20 to that employment.

21 Sec. 207.155. TEMPORARY LICENSE. (a) The anesthesiologist
22 assistant board may issue a temporary license to an applicant who:

23 (1) meets all the qualifications for a license under
24 this chapter but is waiting for the license to be issued at the next
25 scheduled meeting of the board;

26 (2) seeks to temporarily substitute for a licensed
27 anesthesiologist assistant during the license holder's absence, if

1 the applicant:

2 (A) is licensed or registered in good standing in
3 another state;

4 (B) submits an application on a form prescribed
5 by the board; and

6 (C) pays the appropriate fee prescribed by the
7 board; or

8 (3) has graduated from an educational program for
9 anesthesiologist assistants described by Section 207.153(a)(1) not
10 later than six months before applying for a temporary license and is
11 waiting for examination results from the National Commission for
12 Certification of Anesthesiologist Assistants or another national
13 accrediting agency approved by the medical board.

14 (b) A temporary license may be valid for not more than one
15 year after the date issued as determined by anesthesiologist
16 assistant board rule.

17 Sec. 207.156. LICENSE RENEWAL. (a) On notification from
18 the anesthesiologist assistant board, a person who holds a license
19 under this chapter may renew the license by:

20 (1) paying the required renewal fee;

21 (2) submitting the appropriate form; and

22 (3) meeting any other requirement established by board
23 rule.

24 (b) The anesthesiologist assistant board by rule may adopt a
25 system under which licenses expire on various dates during the
26 year.

27 (c) A person who is otherwise eligible to renew a license

1 may renew an unexpired license by paying the required renewal fee to
2 the anesthesiologist assistant board before the expiration date of
3 the license. A person whose license has expired may not engage in
4 activities that require a license until the license has been
5 renewed.

6 (d) A person whose license has been expired for 90 days or
7 less may renew the license by paying to the anesthesiologist
8 assistant board a fee that is equal to 1-1/2 times the renewal fee
9 for the license.

10 (e) A person whose license has been expired for more than 90
11 days but less than one year may renew the license by paying to the
12 anesthesiologist assistant board a fee equal to two times the
13 renewal fee for the license.

14 (f) A person who was licensed in this state, moved to
15 another state, and is currently licensed and has been in practice in
16 the other state for the two years preceding the date of the
17 application may obtain a new license by paying to the
18 anesthesiologist assistant board a fee that is equal to two times
19 the normally required renewal fee for the license.

20 Sec. 205.157. CONTINUING EDUCATION REQUIREMENTS. The
21 anesthesiologist assistant board by rule shall establish
22 continuing education requirements for an anesthesiologist
23 assistant licensed under this chapter. The rules may require a
24 license holder, as a condition for license renewal, to successfully
25 complete the continuing education required to maintain
26 certification by the National Commission for Certification of
27 Anesthesiologist Assistants or another national certification

1 agency selected by the board.

2 Sec. 205.158. INACTIVE STATUS. (a) A person licensed under
3 this chapter may place the person's license on inactive status by
4 applying to the anesthesiologist assistant board. A person whose
5 license is on inactive status is not required to pay renewal fees
6 for the license.

7 (b) The holder of a license on inactive status may not
8 practice as an anesthesiologist assistant. A violation of this
9 subsection is considered to be practicing without a license.

10 (c) A person whose license is on inactive status under this
11 section may return the person's license to active status by:

- 12 (1) applying to the anesthesiologist assistant board;
13 (2) paying the fee established by the board for
14 returning a license to active status; and
15 (3) satisfying any other requirements established by
16 the board.

17 (d) The anesthesiologist assistant board by rule shall
18 establish a limit on the length of time an anesthesiologist
19 assistant's license may remain on inactive status.

20 [Sections 207.159-207.200 reserved for expansion]

21 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

22 Sec. 207.201. SCOPE OF PRACTICE. (a) An anesthesiologist
23 assistant may assist the supervising anesthesiologist in
24 developing and implementing an anesthesia care plan for a patient.
25 In providing assistance to the supervising anesthesiologist, an
26 anesthesiologist assistant may:

- 27 (1) obtain from the patient a comprehensive patient

1 history, perform relevant elements of a physical examination, and
2 present the patient's history to the supervising anesthesiologist;

3 (2) pretest and calibrate anesthesia delivery systems
4 and obtain and interpret information from the systems and monitors,
5 in consultation with an anesthesiologist;

6 (3) initiate multiparameter monitoring before
7 anesthesia or in other acute care settings under anesthesiologist
8 supervision, including American Society of Anesthesiologists
9 standard monitors and arterial and venous catheters, and may use
10 and interpret data from central venous, pulmonary artery, and
11 intracranial catheters and other monitors or devices that are
12 indicated;

13 (4) establish basic and advanced airway
14 interventions, including intubation of the trachea and the
15 performance of ventilatory support;

16 (5) administer intermittent vasoactive drugs and
17 start and adjust vasoactive infusions;

18 (6) administer anesthetic drugs, adjuvant drugs, and
19 accessory drugs;

20 (7) assist and initiate with the supervising
21 anesthesiologist the performance of epidural anesthetic
22 procedures, spinal anesthetic procedures, and other regional
23 anesthetic techniques;

24 (8) administer blood, blood products, and supportive
25 fluids;

26 (9) provide initial cardiopulmonary resuscitation in
27 response to a life-threatening situation as directed by a physician

1 or protocol until the supervising anesthesiologist arrives;

2 (10) participate in administrative, research, and
3 clinical teaching activities as authorized by the supervising
4 anesthesiologist; or

5 (11) perform other tasks not prohibited by law that
6 are delegated by a licensed anesthesiologist and that the
7 anesthesiologist assistant has been trained and is proficient to
8 perform.

9 (b) An anesthesiologist shall at all times accept and be
10 responsible for the oversight of the health care services rendered
11 by the anesthesiologist assistant.

12 (c) This chapter does not prevent a third-party payor from
13 reimbursing the employer of an anesthesiologist assistant for
14 covered services rendered by the anesthesiologist assistant.

15 Sec. 207.202. CERTAIN PROHIBITED PRACTICES. An
16 anesthesiologist assistant may not:

17 (1) prescribe medication or a controlled substance;

18 (2) administer any drug, medicine, device, or therapy
19 the supervising anesthesiologist is not qualified or authorized to
20 prescribe; or

21 (3) practice or attempt to practice without the
22 supervision of an anesthesiologist or in any location where the
23 supervising anesthesiologist is not immediately available for
24 consultation, assistance, and intervention.

25 Sec. 207.203. IDENTIFICATION REQUIREMENTS. (a) An
26 anesthesiologist assistant must be clearly identified as an
27 anesthesiologist assistant and may not use or permit to be used on

1 the anesthesiologist assistant's behalf the term:

2 (1) "doctor," "Dr.," or "doc," or another term that
3 identifies the person as a physician or surgeon; or

4 (2) "physician assistant" or "P.A." or another term
5 that may imply that the anesthesiologist assistant is a physician
6 assistant.

7 (b) An anesthesiologist assistant may not refer to a license
8 as "board-certified" or use any other terminology that may imply
9 that the anesthesiologist assistant is a physician or surgeon.

10 (c) A student in an anesthesiologist assistant training
11 program shall be identified as a student anesthesiologist assistant
12 or an anesthesiologist assistant student. A student may not use or
13 permit to be used on the student's behalf the term "intern,"
14 "resident," or "fellow," or another term that identifies the
15 student as a physician or surgeon.

16 Sec. 207.204. SUPERVISION REQUIREMENTS. (a) An
17 anesthesiologist assistant shall practice only under the direct
18 supervision of an anesthesiologist who is physically present or
19 immediately available. A supervising anesthesiologist may
20 supervise not more than four anesthesiologist assistants
21 consistent with federal rules or regulations for reimbursement for
22 anesthesia services. An anesthesiologist assistant may have more
23 than one supervising anesthesiologist.

24 (b) Each anesthesiologist who agrees to act as the
25 supervising anesthesiologist of an anesthesiologist assistant
26 shall adopt a written practice protocol that delineates the
27 services the anesthesiologist assistant may provide and the manner

1 in which the anesthesiologist will supervise the anesthesiologist
2 assistant. The protocol must be based on relevant quality
3 assurance standards, including regular review by the supervising
4 anesthesiologist of the medical records of the patients cared for
5 by the anesthesiologist assistant.

6 (c) The supervising anesthesiologist shall oversee the
7 anesthesiologist assistant in accordance with the terms of the
8 protocol and rules adopted by the anesthesiologist assistant board
9 for the supervision of an anesthesiologist assistant. The board
10 may randomly audit or inspect any written practice protocol under
11 which an anesthesiologist assistant works.

12 Sec. 207.205. REQUIREMENTS OF SUPERVISING
13 ANESTHESIOLOGIST. (a) A supervising anesthesiologist must:

14 (1) hold an unrestricted and active license as a
15 physician in this state;

16 (2) be engaged full-time in the medical specialty of
17 anesthesiology; and

18 (3) be certified by the American Board of Medical
19 Specialties, the Bureau of Osteopathic Specialists in
20 Anesthesiology, or another national certifying board approved by
21 the medical board.

22 (b) An individual who does not meet the criteria under
23 Subsection (a) may not supervise or delegate any task to an
24 anesthesiologist assistant.

25 Sec. 207.206. ASSUMPTION OF PROFESSIONAL LIABILITY. (a)
26 Each supervising anesthesiologist retains legal responsibility for
27 an anesthesiologist assistant's patient care activities, including

1 the provision of care and treatment to a patient in a health care
2 facility.

3 (b) If an anesthesiologist assistant is employed by an
4 entity, including a health care facility, the entity shares the
5 legal responsibility for the anesthesiologist assistant's acts or
6 omissions with the anesthesiologist assistant's supervising
7 anesthesiologist.

8 Sec. 207.207. FACILITY LIMITATIONS OF FUNCTIONS. The
9 governing body of each facility in which anesthesiologist
10 assistants practice may limit the functions and activities that an
11 anesthesiologist assistant may perform in the facility.

12 [Sections 207.208-207.250 reserved for expansion]

13 SUBCHAPTER F. COMPLAINTS AND INVESTIGATIVE INFORMATION

14 Sec. 207.251. COMPLAINT INFORMATION AND STATUS. (a) The
15 anesthesiologist assistant board shall keep information on file
16 about each complaint filed with the board.

17 (b) If a written complaint is filed with the
18 anesthesiologist assistant board relating to a person licensed by
19 the board, the board, as often as quarterly and until final
20 determination of the action to be taken on the complaint, shall
21 notify the parties to the complaint of the status of the complaint
22 unless the notice would jeopardize an active investigation.

23 Sec. 207.252. CONDUCT OF INVESTIGATION. (a) The
24 anesthesiologist assistant board shall complete a preliminary
25 investigation of a complaint filed with the board not later than the
26 30th day after the date of receiving the complaint.

27 (b) The anesthesiologist assistant board shall first

1 determine whether the anesthesiologist assistant constitutes a
2 continuing threat to the public welfare. On completion of the
3 preliminary investigation, the board shall determine whether to
4 officially proceed on the complaint.

5 (c) If the anesthesiologist assistant board fails to
6 complete the preliminary investigation in the time required by this
7 section, the board's official investigation of the complaint is
8 considered to commence on that date.

9 Sec. 207.253. LICENSE HOLDER ACCESS TO COMPLAINT
10 INFORMATION. (a) The anesthesiologist assistant board shall
11 provide a license holder who is the subject of a formal complaint
12 filed under this chapter with access to all information in its
13 possession that the board intends to offer into evidence in
14 presenting its case at the contested hearing on the complaint,
15 subject to any other privilege or restriction established by rule,
16 statute, or legal precedent. The board shall provide the
17 information not later than the 30th day after receipt of a written
18 request from the license holder or the license holder's counsel,
19 unless good cause is shown for delay.

20 (b) Notwithstanding Subsection (a), the anesthesiologist
21 assistant board is not required to provide:

- 22 (1) board investigative reports;
23 (2) investigative memoranda;
24 (3) the identity of a nontestifying complainant;
25 (4) attorney-client communications;
26 (5) attorney work product; or
27 (6) other material covered by a privilege recognized

1 by the Texas Rules of Civil Procedure or the Texas Rules of
2 Evidence.

3 (c) The provision of information does not constitute a
4 waiver of privilege or confidentiality under this chapter or other
5 law.

6 Sec. 207.254. HEALTH CARE ENTITY REQUEST FOR INFORMATION.
7 On the written request of a health care entity, the
8 anesthesiologist assistant board shall provide to the entity:

9 (1) information about a complaint filed against a
10 license holder that was resolved after investigation by:

11 (A) a disciplinary order of the board; or

12 (B) an agreed settlement; and

13 (2) the basis of and current status of any complaint
14 under active investigation.

15 Sec. 207.255. CONFIDENTIALITY OF INVESTIGATIVE
16 INFORMATION. A complaint, adverse report, investigation file,
17 other report, or other investigative information in the possession
18 of or received or gathered by the anesthesiologist assistant board
19 or a board employee or agent relating to a license holder, a license
20 application, or a criminal investigation or proceeding is
21 privileged and confidential and is not subject to discovery,
22 subpoena, or other means of legal compulsion for release to any
23 person other than the board or a board employee or agent involved in
24 license holder discipline.

25 Sec. 207.256. PERMITTED DISCLOSURE OF INVESTIGATIVE
26 INFORMATION. (a) Investigative information in the possession of an
27 anesthesiologist assistant board employee or agent that relates to

1 the discipline of a license holder may be disclosed to:

2 (1) a licensing authority in another state or country
3 in which the license holder is licensed or has applied for a
4 license; or

5 (2) a peer review committee reviewing:

6 (A) an application for privileges; or

7 (B) the qualifications of the license holder with
8 respect to retaining privileges.

9 (b) If investigative information in the possession of the
10 anesthesiologist assistant board or a board employee or agent
11 indicates that a crime may have been committed, the board shall
12 report the information to the proper law enforcement agency. The
13 board shall cooperate with and assist each law enforcement agency
14 conducting a criminal investigation of a license holder by
15 providing information relevant to the investigation. Confidential
16 information disclosed by the board to a law enforcement agency
17 under this subsection remains confidential and may not be disclosed
18 by the law enforcement agency except as necessary to further the
19 investigation.

20 [Sections 207.257-207.300 reserved for expansion]

21 SUBCHAPTER G. DISCIPLINARY PROCEEDINGS

22 Sec. 207.301. DISCIPLINE AUTHORITY OF BOARD. (a) On a
23 determination that an applicant or license holder committed an act
24 described in Section 207.302, the anesthesiologist assistant board
25 by order shall take any of the following actions:

26 (1) deny the person's application for a license or
27 license renewal or revoke the person's license or other

1 authorization;

2 (2) require the person to submit to the care,
3 counseling, or treatment of a health care practitioner designated
4 by the board;

5 (3) stay enforcement of an order and place the person
6 on probation;

7 (4) require the person to complete additional
8 training;

9 (5) suspend, limit, or restrict the person's license,
10 including:

11 (A) limiting the practice of the person to, or
12 excluding from the practice, one or more specified activities of
13 the practice as an anesthesiologist assistant; or

14 (B) stipulating periodic board review;

15 (6) assess an administrative penalty;

16 (7) order the person to perform public service; or

17 (8) administer a public reprimand.

18 (b) If the anesthesiologist assistant board stays
19 enforcement of an order and places a person on probation, the board
20 retains the right to vacate the probationary stay and enforce the
21 original order for noncompliance with the terms of probation or
22 impose any other remedial measure or sanction authorized by this
23 section.

24 (c) The anesthesiologist assistant board may restore or
25 reissue a license or remove any disciplinary or corrective measure
26 that the board has imposed.

27 Sec. 207.302. CONDUCT INDICATING LACK OF FITNESS. The

1 anesthesiologist assistant board may take action under Section
2 207.301 against an applicant or license holder who:

3 (1) uses or unlawfully possesses a controlled
4 substance or alcoholic beverage to the extent that the person
5 cannot safely perform as an anesthesiologist assistant;

6 (2) has been finally adjudicated and found guilty, or
7 entered a plea of guilty or nolo contendere, in a criminal
8 prosecution under the laws of any state or of the United States, for
9 an offense reasonably related to the qualifications, functions, or
10 duties of an anesthesiologist assistant, for an offense for which
11 an essential element is fraud, dishonesty, or an act of violence, or
12 for an offense involving moral turpitude;

13 (3) has used fraud, deception, misrepresentation, or
14 bribery in:

15 (A) securing a certificate of registration or
16 authority issued under other law, a permit issued under other law,
17 or a license issued under this chapter; or

18 (B) obtaining permission to take an examination
19 given or required under this chapter;

20 (4) obtains or attempts to obtain a fee, charge,
21 tuition, or other compensation by fraud, deception, or
22 misrepresentation;

23 (5) has acted with incompetence, misconduct, gross
24 negligence, fraud, misrepresentation, or dishonesty in the
25 performance of the functions and duties of an anesthesiologist
26 assistant;

27 (6) has violated or has assisted or enabled another

1 person to violate any provision of this chapter or a rule adopted
2 under this chapter;

3 (7) has impersonated a person holding a certificate of
4 registration or authority, permit, or license, or allowed a person
5 to use a certificate of registration or authority, permit, license,
6 or diploma from any school;

7 (8) is subject to disciplinary action relating to
8 practice as an anesthesiologist assistant by another state,
9 territory, federal agency, or country on grounds for which
10 revocation or suspension is also authorized in this state;

11 (9) has been adjudicated as mentally incompetent;

12 (10) assists or enables another person to practice or
13 offer to practice as an anesthesiologist assistant if the person is
14 not licensed and currently eligible to practice under this chapter;

15 (11) is issued a certificate of registration or
16 authority under other law, a permit under other law, or a license
17 under this chapter based on a material mistake of fact;

18 (12) violates a professional trust or confidence; or

19 (13) violates any ethical standard for an
20 anesthesiologist assistant as defined by board rule.

21 Sec. 207.303. PHYSICAL OR MENTAL EXAMINATION. (a) The
22 anesthesiologist assistant board shall adopt guidelines, in
23 conjunction with persons interested in or affected by this section,
24 to enable the board to evaluate circumstances in which an
25 anesthesiologist assistant or applicant may be required to submit
26 to an examination for mental or physical health conditions, alcohol
27 and substance abuse, or professional behavior problems.

1 (b) The anesthesiologist assistant board shall refer an
2 anesthesiologist assistant or applicant with a physical or mental
3 health condition to the most appropriate medical specialist for
4 evaluation. The board may not require an anesthesiologist
5 assistant or applicant to submit to an examination by a physician
6 having a specialty specified by the board unless medically
7 indicated. The board may not require an anesthesiologist assistant
8 or applicant to submit to an examination to be conducted an
9 unreasonable distance from the person's home or place of business
10 unless the anesthesiologist assistant or applicant resides and
11 works in an area in which there are a limited number of appropriate
12 medical specialists able to perform an appropriate examination.

13 (c) The guidelines adopted under this section do not impair
14 or remove the anesthesiologist assistant board's power to make an
15 independent licensing decision.

16 Sec. 207.304. PROTECTION OF PATIENT IDENTITY. In a
17 disciplinary investigation or proceeding conducted under this
18 chapter, the anesthesiologist assistant board shall protect the
19 identity of each patient whose medical records are examined and
20 used in a public proceeding, unless the patient:

- 21 (1) testifies in the public proceeding; or
22 (2) submits a written release with regard to the
23 patient's records or identity.

24 Sec. 207.305. TEMPORARY SUSPENSION. (a) The presiding
25 officer of the anesthesiologist assistant board, with board
26 approval, shall appoint a three-member disciplinary panel
27 consisting of board members to determine whether a person's license

1 to practice as an anesthesiologist assistant should be temporarily
2 suspended.

3 (b) If the disciplinary panel determines from the evidence
4 or information presented to the panel that a person licensed to
5 practice as an anesthesiologist assistant would, by the person's
6 continuation in practice, constitute a continuing threat to the
7 public welfare, the disciplinary panel shall temporarily suspend
8 the license of that person.

9 (c) A license may be suspended under this section without
10 notice or hearing on the complaint if:

11 (1) institution of proceedings for a hearing before
12 the anesthesiologist assistant board is initiated simultaneously
13 with the temporary suspension; and

14 (2) a hearing is held under Chapter 2001, Government
15 Code, and this chapter as soon as possible.

16 (d) Notwithstanding Chapter 551, Government Code, the
17 disciplinary panel may hold a meeting by telephone conference call
18 if immediate action is required and convening the panel at one
19 location is inconvenient for any member of the panel.

20 Sec. 207.306. SURRENDER OF LICENSE. (a) The
21 anesthesiologist assistant board may accept the voluntary
22 surrender of a license.

23 (b) A surrendered license may not be returned to the license
24 holder unless the anesthesiologist assistant board determines,
25 under board rules, that the former holder of the license is
26 competent to resume practice.

27 (c) The anesthesiologist assistant board by rule shall

1 establish guidelines for determining the competency of a former
2 license holder to return to practice.

3 [Sections 207.307-207.350 reserved for expansion]

4 SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROVISIONS

5 Sec. 207.351. ADMINISTRATIVE PENALTY. (a) The
6 anesthesiologist assistant board by order may impose an
7 administrative penalty against a person licensed under this chapter
8 who violates this chapter or a rule or order adopted under this
9 chapter.

10 (b) The penalty may be in an amount not to exceed \$2,000.
11 Each day a violation continues or occurs is a separate violation for
12 purposes of imposing a penalty.

13 (c) The anesthesiologist assistant board shall base the
14 amount of the penalty on:

- 15 (1) the severity of patient harm;
- 16 (2) the severity of economic harm to any person;
- 17 (3) the severity of any environmental harm;
- 18 (4) increased potential for harm to the public;
- 19 (5) any attempted concealment of misconduct;
- 20 (6) any premeditated or intentional misconduct;
- 21 (7) the motive for the violation;
- 22 (8) prior misconduct of a similar or related nature;
- 23 (9) the license holder's disciplinary history;
- 24 (10) prior written warnings or written admonishments
25 from any government agency or official regarding statutes or
26 regulations relating to the misconduct;
- 27 (11) violation of a board order;

1 (12) failure to implement remedial measures to correct
2 or mitigate harm from the misconduct;

3 (13) lack of rehabilitative potential or likelihood of
4 future misconduct of a similar nature;

5 (14) relevant circumstances increasing the
6 seriousness of the misconduct; and

7 (15) any other matter that justice may require.

8 (d) The anesthesiologist assistant board by rule shall
9 prescribe the procedure by which it may impose an administrative
10 penalty. A proceeding under this section is subject to Chapter
11 2001, Government Code.

12 (e) If the anesthesiologist assistant board by order
13 determines that a violation has occurred and imposes an
14 administrative penalty, the board shall give notice to the person
15 of the board's order. The notice must include a statement of the
16 person's right to judicial review of the order.

17 Sec. 207.352. CRIMINAL PENALTY. (a) A person commits an
18 offense if, without holding a license issued under this chapter,
19 the person:

20 (1) represents that the person is an anesthesiologist
21 assistant;

22 (2) uses any combination or abbreviation of the term
23 "anesthesiologist assistant" to indicate or imply that the person
24 is an anesthesiologist assistant; or

25 (3) acts as an anesthesiologist assistant.

26 (b) An offense under this section is a felony of the third
27 degree.

1 Sec. 207.353. CEASE AND DESIST ORDER. (a) If it appears to
2 the anesthesiologist assistant board that a person who is not
3 licensed under this chapter is violating this chapter, a rule
4 adopted under this chapter, or another state statute or rule
5 relating to anesthesiologist assistant practice, the board after
6 notice and opportunity for a hearing may issue a cease and desist
7 order prohibiting the person from engaging in the activity.

8 (b) A violation of an order under this section constitutes
9 grounds for imposing an administrative penalty under this
10 subchapter.

11 SECTION 5. As soon as practicable after the effective date
12 of this Act, the governor shall appoint six members to the Texas
13 Anesthesiologist Assistant Board in accordance with Chapter 207,
14 Occupations Code, as added by this Act. In making the initial
15 appointments, the governor shall designate two members for terms
16 expiring January 31, 2012, two members for terms expiring January
17 31, 2013, and two members for terms expiring January 31, 2014.

18 SECTION 6. Not later than June 1, 2010, the Texas Medical
19 Board with the advice of the Texas Anesthesiologist Assistant Board
20 shall adopt the rules, procedures, and fees necessary to administer
21 Chapter 207, Occupations Code, as added by this Act.

22 SECTION 7. Notwithstanding Chapter 207, Occupations Code,
23 as added by this Act, an anesthesiologist assistant is not required
24 to hold a license under that chapter to practice as an
25 anesthesiologist assistant in this state before September 1, 2010.

26 SECTION 8. (a) Except as provided by Subsection (b) of this
27 section, this Act takes effect September 1, 2009.

H.B. No. 3376

1 (b) Sections 207.151 and 207.352, Occupations Code, as
2 added by this Act, take effect September 1, 2010.