New Jersey has prohibitions on the practice of surgical assistants (i.e. unlicensed individuals). The New Jersey Professions and Occupations Code in Section 45:9-5.1 \(^1\) states that the practice of medicine includes “surgery.” Section 45:9-21 \(^2\) of the New Jersey Professions and Occupations Code lists professionals who are exempt from the Practice of Medicine law, but surgical assistants are currently not included in this list.

In addition, in the Administrative Regulations of the Board of Medical Examiners, Section 13:35-4.1 A(2) \(^3\) states:

“(b) A major surgical procedure shall be performed by a duly qualified surgeon, duly qualified assisting physician who may be a duly qualified surgical resident in a training program approved by the Educational Council of the American Medical Association of the American Osteopathic Association, except in matters of dire emergency.

(c) In addition to those individuals listed in (b) above who may act as qualified first assistants, in a health care facility licensed by the Department of Health and Senior Services, a duly qualified registered nurse first assistant (RNFA), a duly qualified physician assistant or a licensed podiatric physician may so act. A duly qualified certified nurse midwife (CNM) may also act as a qualified first assistant in the performance of cesarean sections.”

Taking the above laws into consideration might lead to a conclusion that surgical technologists might not be able to first assist in New Jersey, although in cases of minor surgery this might be allowed.

Physician Assistants and Registered Nurse First Assistants approached the New Jersey Board of Medicine in 1995 in order to get an opinion rendered that would allow them to first assist. The current State Board of Medical Examiners decided that a hospital may determine what surgeries count as major surgery, but that a hospital’s definition must at least include:

- A procedure in which an opening is made into any of the three major body cavities (abdomen, chest, or head), exclusive of endoscopic approaches which explore existing channels and involve no transverse of a body wall (for example, bronchoscopy, colonoscopy) or are exclusively diagnostic (for example, laparoscopy, colposcopy). With respect to non-diagnostic endoscopic procedures requiring the transverse of a body wall, a duly qualified first assistant shall be immediately available in the operating suite.

- A procedure involved major amputation
A procedure performed where the locality, the condition, the difficulty or the length of time required to operate would constitute a direct hazard to the life of the patient.

In 1995 the New Jersey Board of Medicine looked at the issue of PA, RN, CFA, and CST first assistants. At that time, the Board of Medicine also considered adding CFA to the language that would allow first assisting in New Jersey. They decided at that time not to add such language.

It remains the position of the Association of Surgical Technologists that qualified holders of the CFA credential should be allowed to practice, but current administrative regulations precludes this in New Jersey at this time.

Please note: The Association of Surgical Technologists provides this information on an educational basis and does not offer legal advice. AST recommends that individuals or health care facilities consult with their attorneys for answers to legal questions.
Appendix

1N.J.S.A. 45:9-5.1

New Jersey Statutes Annotated
Title 45. Professions and Occupations
Subtitle 1. Professions and Occupations Regulated by State Boards of Registration and Examination
Chapter 9. Medicine and Surgery
Article 1. Practice of Medicine and Surgery in General

45:9-5.1. Definitions

Within the meaning of this chapter (45:9-1 et seq.), except as herein otherwise provided, and except for the purposes of the exemptions hereinafter contained in sections 45:9-14.1 to 45:9-14.10, inclusive, the phrase “the practice of medicine or surgery” and the phrase “the practice of medicine and surgery” shall include the practice of any branch of medicine and/or surgery, and any method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition, and the term “physician and surgeon” or “physician or surgeon” shall be deemed to include practitioners in any branch of medicine and/or surgery or method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition. Within the meaning of this act, except as herein otherwise specifically provided, and except for the purposes of the exemptions hereinafter contained in sections 45:9-14.1 to 45:9-14.10, inclusive, the practice of medicine and/or surgery shall be deemed to include, inter alia, the practice of osteopathy, and nothing herein contained shall be construed to exempt the holder of a license issued under or validated by the provisions contained in sections 45:9-14.1 to 45:9-14.10, inclusive, from the operation of the provisions contained in section 45:9-16 of this Title.

A professional school or college shall be taken to mean a medical school or college or other school or college having purposes similar to a medical school or college; provided, however, that as to any applicant for a license under the provisions of this chapter who, prior to October first, one thousand nine hundred and thirty-five, matriculated in such a school or college, a professional school or college shall, for the purposes of the provisions contained in sections 45:9-6 to 45:9-11, inclusive, be taken to mean a medical school or college which required the study of medicine and surgery in all of its branches. In all instances, unless otherwise provided, such school or college shall be approved by the board.

2New Jersey Statutes
Title 45. Professions and Occupations
Subtitle 1. Professions and Occupations Regulated by State Boards of Registration and Examination
Chapter 9. Medicine and Surgery
Article 1. Practice of Medicine and Surgery in General

45:9-21 Certain persons and practices excepted from operation of chapter

The prohibitory provisions of this chapter shall not apply to the following:

a. A commissioned surgeon or physician of the regular United States Army, Navy, or Marine hospital service while so commissioned and actively engaged in the performance of his official duties. This exemption shall not apply to reserve officers of the United States Army, Navy or Marine Corps, or to any officer of the National Guard of any state or of the United States;
b. A lawfully qualified physician or surgeon of another state taking charge temporarily, on written permission of the board, of the practice of a lawfully qualified physician or surgeon of this State during his absence from the State, upon written request to the board for permission so to do. Before such permission is granted by the board and before any person may enter upon such practice he must submit proof that he can fulfill the requirements demanded in the other sections of this article relating to applicants for admission by examination or indorsement from another state. Such permission may be granted for a period of not less than two weeks nor more than four months upon payment of a fee of $50. The board in its discretion may extend such permission for further periods of two weeks to four months but not to exceed in the aggregate one year;

c. A physician or surgeon of another state of the United States and duly authorized under the laws thereof to practice medicine or surgery therein, if such practitioner does not open an office or place for the practice of his profession in this State;

d. A person while actually serving as a member of the resident medical staff of any legally incorporated charitable or municipal hospital or asylum approved by the board. Hereafter such exemption of any such resident physician shall not apply with respect to any individual after he shall have served as a resident physician for a total period of five years;

e. The practice of dentistry by any legally qualified and registered dentist;

f. The ministration to, or treatment of, the sick or suffering by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug material remedy;

g. The practice of optometry by any legally qualified and registered optometrist;

h. The practice of podiatric medicine by any legally licensed podiatrist;

i. The practice of pharmacy by a legally licensed and registered pharmacist of this State, but this exception shall not be extended to give to said licensed pharmacist the right and authority to carry on the business of a dispensary, unless the dispensary shall be in charge of a legally licensed and registered physician and surgeon of this State;

j. A person claiming the right to practice medicine and surgery in this State who has been practicing therein since before July 4, 1890, if said right or title was obtained upon a duly registered diploma, of which the holder and applicant was the lawful possessor, issued by a legally chartered medical institution which, in the opinion of the board, was in good standing at the time the diploma was issued;

k. A professional nurse, or a registered physical therapist, masseur, while operating in each particular case under the specific direction of a regularly licensed physician or surgeon. This exemption shall not apply to such assistants of persons who are licensed as osteopaths, chiropractors, optometrists or other practitioners holding limited licenses;

l. A person while giving aid, assistance or relief in emergency or accident cases pending the arrival of a regularly licensed physician, or surgeon or under the direction thereof;

m. The operation of a bio-analytical laboratory by a licensed bio-analytical laboratory director, or any person working under the direct and constant supervision of a licensed bio-analytical laboratory director;

n. Any employee of a State or county institution holding the degree of M.D. or D.O., regularly employed on a salary basis on its medical staff or as a member of the teaching or scientific staff of a State agency, may apply to the State Board of Medical Examiners of New Jersey and may, in the discretion of said board, be granted exemption from the provisions of this chapter; provided said employee continues as a member of the medical
staff of a State agency or county institution or of the teaching or scientific staff of a State agency and does not conduct any type of private medical practice;

o. The practice of chiropractic by any legally licensed chiropractor; or


3N.J.A.C. 13:35-4.1


New Jersey Administrative Code
Title 13. Law and Public Safety
Chapter 35. Board of Medical Examiners
Subchapter 4. Surgery

13:35-4.1 Major surgery; qualified first assistant

(a) A major surgical procedure is one with a substantial hazard to the life, health or welfare of the patient. By way of example, but not limitation, major surgical procedures include:

1. A procedure performed where the anatomic locality, the condition, the difficulty or the length of time required to operate would constitute a direct hazard to the life of the patient; and

2. A procedure in which an opening is made into any of the three major body cavities (abdomen, chest or head), if the facility's credentials committee, in conjunction with the chair or chief of the relevant department or division, has delineated the procedure as one requiring a qualified first assistant.

(b) A major surgical procedure shall be performed by a duly qualified surgeon with a duly qualified assisting physician who may be a duly qualified resident in or rotating through a training program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association.

(c) In addition to those individuals listed in (b) above who may act as qualified first assistants, in a health care facility licensed by the Department of Health and Senior Services, a duly qualified registered nurse first assistant (RNFA), a duly qualified physician assistant or a licensed podiatric physician may so act. A duly qualified certified nurse midwife (CNM) may also act as a qualified first assistant in the performance of cesarean sections. For purposes of this subsection, a licensed CNM shall be deemed to be “duly qualified” provided that the CNM has taken and passed a 30-hour didactic training course that includes anatomy, physiology, surgical technique (including wound closure), and direct observation of cesarean sections. Following the completion of the course, a CNM shall serve and be supervised as a second assistant on 10 cesarean sections and complete a supervised preceptorship as a first assistant in 20 cesarean sections.

(d) A duly qualified surgeon, duly qualified assistant physician, duly qualified resident, duly qualified registered nurse first assistant, duly qualified physician assistant, or duly qualified certified nurse midwife (CNM) shall be determined by the hospital credentials committee in conjunction with the chairman or chief of the appropriate committee in conjunction with the chairman or chief of the appropriate department or division consistent with the requirements of law or applicable rule.
(e) Licensees shall comply with the rules as promulgated by the medical staff at the health care facility and shall cooperate to assure compliance with the rules of the Board as well as any rules of the Department of Health and Senior Services which licenses the facility.

(f) In all instances in which a registered nurse first assistant, a physician assistant, or duly qualified certified nurse midwife (CNM) may act as first assistant pursuant to (c) above, the operating surgeon shall have discretion to determine whether to utilize such an individual as a first assistant, despite the fact that they are permitted to so act pursuant to this rule.

(g) In the event of incapacity or unavailability of the operating surgeon during a major surgical procedure, the functions of a first assistant who is not a physician shall be limited to maintaining the status of the patient while a substitute operating surgeon is summoned, except in matters of dire emergency. “Dire emergency” shall include only those circumstances posing a significant risk of imminent death or serious bodily injury to the patient, such as uncontrolled bleeding.