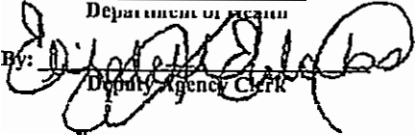


FILED DATE - JAN 09 2023

Department of Health

By: 
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF NURSING

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF:

SUSAN PATRICIA LYNCH, APRN

FINAL ORDER

THIS MATTER came before the Florida Board of Nursing (Board) pursuant to Section 120.565, Florida Statutes. At a duly-noticed public meeting held on October 6, 2022, the Board considered a Petition for Declaratory Statement filed by Susan Patricia Lynch (Petitioner). The Petition was filed with the Department of Health Clerk on August 2, 2022; a copy of which is attached hereto. The Petition was duly filed and noticed in the Florida Administrative Register in Volume 48, Number 157, on August 12, 2022. On September 2, 2022, a Motion to Intervene was filed on behalf of the Florida Medical Association, Inc, Florida Osteopathic Medical Association, Inc. and Florida Psychiatric Society in opposition to the filed Petition for Declaratory Statement.

Petitioner was present at the hearing with her counsel, Susan L. St. John, Attorney at Law. The Board was represented by Deborah Bartholow Loucks, Assistant Attorney General. Mary Thomas, Attorney at Law, appeared on behalf of the intervenors.

The Board granted the Petition to Intervene and heard comments and discussion from both the Petitioner and the intervenors.

Having considered the Petition and relevant statutes and rules, the Board issues the following:

FINDINGS OF FACT

1. The Petition was duly filed and noticed in the Florida Administrative Register; Volume 48 Number 157 published on August 12, 2022.

2. The Petition is attached hereto and incorporated herein by reference.

3. Petitioner is a licensed autonomous practice APRN in the State of Florida holding license numbers RN 9213048 and APRN 9213048.

4. Petitioner holds advanced practice certifications as a Family Nurse practitioner and as a Psychiatric and Mental Health practitioner.

5. Petitioner is asking three specific questions concerning the scope of practice of an autonomous APRN with her training and experience. The questions are:

a. Whether it is within the scope of practice for an autonomous APRN, who is a psychiatric and mental health nurse practitioner, to provide psychiatric and mental health treatment, including psychotherapy, to patients with psychiatric and mental health conditions?

b. Whether it is within the scope of practice for an autonomous APRN to prescribe controlled substances, defined under Section 893.02(2), Florida Statutes, for greater than a seven (7) day supply, for the treatment of psychiatric or mental health conditions?

c. Whether Petitioner needs a supervising physician to provide treatment, including psychotherapy, for psychiatric or mental health conditions?

CONCLUSIONS OF LAW

6. The Board has jurisdiction over this matter pursuant to section 120.565, and Chapter 464, Florida Statutes.

7. After discussion, the Board voted to answer the above-listed questions in the following manner.

a. No, only mental health treatment that is adjunct to general primary care practice may be performed autonomously.

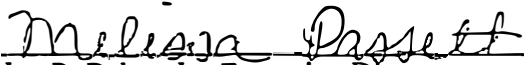
b. This question was continued to the December 2022 meeting for discussion.

c. This question was withdrawn.

On or about December 1, counsel for Petitioner requested to withdraw question 2, and therefore, consideration of this matter was pulled from the December 2022 agenda.

DONE AND ORDERED this 6th day of January, 2023.

BOARD OF NURSING



Joe R. Baker, Jr., Executive Director
for Jose D. Castillo, III, PhD, MSNA, CRNA, APRN, Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to Susan Lynch by sending same via electronic mail to her counsel of record, **Susan L. St. John**, [sstjohn@garfunkelwild.com](mailto:ssjohn@garfunkelwild.com); and by electronic mail to: counsel of record for the intervenors, **Jason Winn**, jwinn@jwinnlaw.com; **Deborah Loucks**, Senior Assistant Attorney General, Deborah.Loucks@mvlfloridalegal.com. and Angela Southwell, Paralegal Specialist, Office of the Attorney General, angela.southwell@mvlfloridalegal.com. on January 9, 2023.



Deputy Agency Clerk

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Ron DeSantis
Governor

Joseph A. Ladapo, MD, PhD
State Surgeon General

Vision: To be the Healthiest State in the Nation

INTEROFFICE MEMORANDUM

DATE: January 3, 2023

TO: Janet Hartman, Chief
Bureau of Health Care Practitioner Regulation

FROM: Joe Baker, Jr., Executive Director
Board of Nursing

SUBJECT: Delegation of Authority

Melissa Passett, Program Ops Administrator, is delegated authority for the Board on Wednesday, January 4, 2023, through Monday, January 9, 2023.

Thank you.

JBjr/ms





**FLORIDA HEALTHCARE
LAW FIRM**
The Law Offices of Jeff Cohen, P.A.

① 151 NW 1st Avenue
Delray Beach, FL 33444

② (888) 455-7702 (Toll Free)
③ (561) 455-7700 (Office)

④ www.FloridaHealthcareLawFirm.com

August 2, 2022

Florida Department of Health
Board of Nursing
4052 Bald Cypress Way, Bin C-02
Tallahassee, FL 32399-3252

DEPARTMENT OF HEALTH
RECEIVED
2022 AUG -2 PM 10:05
OFFICE OF JANE GIBNEY

Re: Petition for Declaratory Statement

To Whom It May Concern:

Enclosed please find a Petition for Declaratory Statement filed via facsimile with the Agency Clerk on August 1, 2022, on behalf of Susan Lynch, APRN.

Your time and attention to the enclosed is greatly appreciated. If you have any questions; please contact Chase Edward Howard, Esq., at 561-455-7700 or Chase@floridahealthcarelawfirm.com.

Sincerely,

Erica Lutters, Executive Administrative

Assistant to Chase Howard

Enclosure

cc: Chase Howard

Facsimile

Note:

Attached is a petition for declaratory statement; questions may be addressed to Chase Howard: 561-455-7700

DEPARTMENT OF HEALTH
OFFICE OF THE CLERK
2022 AUG -2 AM 10:05

To:

From: Erica Lutters

Phone:

Phone: (561) 455-7700 * 113

Fax: (850) 413-8743

Fax: 15614557700

Date: 08/02/2022

Pages: 10

STATE OF FLORIDA
BOARD OF NURSING

RECEIVED
DEPARTMENT OF HEALTH
2022 AUG -2 PM 10:05
OFFICE OF THE CLERK

IN RE:

PETITION FOR DECLARATORY STATEMENT
BEFORE THE BOARD OF NURSING.

SUSAN PATRICIA LYNCH, APRN,
Petitioner.

PETITION FOR DECLARATORY STATEMENT

Petitioner, Susan Patricia Lynch, APRN, through the undersigned, submits this petition for declaratory statement pursuant to Section 120.565, Florida Statutes, and Rule 28-205, Florida Administrative Code, seeking a determination as to the interpretation of Sections 464.0123, 464.012(3), and 464.018, Florida Statutes, and states as follows:

1. Petitioner is Susan Patricia Lynch, a registered nurse and an advanced practice registered nurse, who holds an autonomous license pursuant to Section 464.0123, Florida Statutes. Her license numbers are: RN9213048 and APRN9213048.
2. Petitioner holds specialty certifications as a Family Nurse Practitioner (American Academy of Nurse Practitioners) and as a Psychiatric and Mental Health Nurse Practitioner (American Nurses Credentialing Center). Both credentialing organizations are recognized by the Board of Nursing. See Rule 64B9-4.002, Florida Administrative Code.
3. A Psychiatric and Mental Health Nurse Practitioner – Board Certified (“PMHNP-BC”) is prepared for advanced mental health practice in primary care throughout the life-span and can prescribe medication and administer psychotherapy.
4. Petitioner has been under a protocol with and supervised by a physician for approximately fifteen (15) years from 2007 through 2022.
5. As part of her practice, Petitioner will routinely see patients with psychiatric or

mental health conditions.

6. The purpose of this Petition is to obtain clarification from the Board of Nursing (the "Board") as to:

- (a) Whether it is within the scope of practice for an autonomous APRN who is a psychiatric and mental health nurse practitioner to provide psychiatric and mental health treatment, including psychotherapy, to patients with psychiatric and mental health conditions;
- (b) Whether it is within the scope of practice for an autonomous APRN to prescribe controlled substances, including schedule II controlled substances defined under Section 893.03(2), Florida Statutes, for greater than a seven (7) day supply, for the treatment of psychiatric or mental health conditions; and
- (c) Whether Petitioner needs a supervising physician to provide treatment, including psychotherapy, for psychiatric or mental health conditions.

7. The Petitioner's address is that of the undersigned attorney.

STATEMENT OF HOW PETITIONER IS SUBSTANTIALLY AFFECTED

8. Pursuant to Section 120.565, Florida Statutes, any substantially affected person may seek a declaratory statement from the Board as to the applicability of a statutory provision, or of any rule or order of the Board, as it applies to the Petitioner's particular set of circumstances.

9. Petitioner is substantially affected by the scope of practice provisions for autonomous APRNs set forth in Section 464.0123(3)(a)1 and 3. Section 464.0123(3)((a)1 and 3, Florida Statutes, provide as follows:

- (a) An advanced practice registered nurse who is registered under this section may:

- 1. Engage in autonomous practice only in primary care practice, including family medicine, general pediatrics, and general internal medicine, as defined by board rule.
- 3. Perform the general functions of an advance practice registered nurse under s. 464.012(3) related to primary care.

10. As a licensed autonomous APRN, Petitioner’s license may be sanctioned for discipline pursuant to Sections 456.072 and 464.018, Florida Statutes, for violating the Nurse Practice Act.

11. Petitioner seeks a declaration pursuant to Section 464.0123, Florida Statutes, to determine if it is within the scope of practice of an autonomous APRN to

- (a) provide psychiatric and mental health treatment, including psychotherapy, to patients with psychiatric or mental health conditions; and
- (b) to prescribe controlled substances, including schedule II controlled substances, as defined pursuant to Section 893.03(2), Florida Statutes, to patients with psychiatric or mental health conditions, whether adult or pediatric patients, for greater than a seven (7) day supply.

STATEMENT OF LAWS

12. The regulation of professions by the Department of Health is governed by Chapter 456, Florida Statutes. See 456.002, Florida Statutes.

13. Petitioner is a registered nurse and autonomous APRN licensed under Chapter 464, Florida Statutes. She is subject to regulation by the Department of Health as a licensed health care practitioner. See Section 456.001(4), Florida Statutes.

14. The practice of autonomous APRNs is governed by Section 464.0123, Florida Statutes.

15. Section 464.0123(3)(a)1. and 3., Florida Statutes, provides:

(a) An advanced practice registered nurse who is registered under this section may:

1. Engage in autonomous practice only in primary care practice, including family medicine, general pediatrics, and general internal medicine, as defined by board rule.
4. Perform the general functions of an advanced practice registered nurse under s. 464.012(3) related to primary care.

Primary Care Practice

16. Rule 64B9-4.001(12), Florida Administrative Code, states: "Primary care practice includes physical and mental health promotion, assessment, evaluation, disease prevention, health maintenance, counseling, patient education, diagnosis and treatment of acute and chronic illnesses, inclusive of behavioral and mental health conditions."

17. At least one other statute, Section 409.909, includes psychiatry under primary care specialties. See Section 409.909(2)a), Florida Statutes.

18. Further, Rule 64W-1.002(16), F.A.C. defines "primary care physicians" as physicians in the following practices: family medicine; general internal medicine; general pediatrics; general obstetrics and gynecology; and psychiatry.

19. Section 409.909(2)(a), Florida Statutes, and Rule 64W-1.002(16) lend support for including psychiatry as a primary care specialty so there will be consistency among statutes and rules. However, "primary care practice" as that term is used in Section 464.0123(3)(a)1, Florida Statutes, and Rule 64B9-4.001(12), Florida Administrative Code is not clear as to whether Petitioner may provide psychiatric and mental health treatment, including psychotherapy, as a primary care specialty under her autonomous APRN license or if family medicine must be her primary focus with treatment for behavioral and mental health conditions secondary to a patient's general health issues. Petitioner believes that it is within an autonomous APRN's scope of practice to provide psychiatric and mental health treatment, including psychotherapy, to

patients as a primary care service and seeks the Board's concurrence in this belief. Including psychiatry and mental health treatment under primary care practice brings consistency to the definition of primary care within Florida's statutes and rules.

Controlled Substance Prescribing

20. Section 464.0123(3)(a)3., Florida Statutes, provides that an autonomous APRN may "perform the general functions of an APRN under Section 464.012(3)." Section 464.012(3), Florida Statutes, requires an APRN to have an established protocol with a supervising MD, DO or dentist unless registered under Section 464.0123, Florida Statutes. Section 464.012(3)(a) allows an APRN to prescribe, dispense, administer, or order any drug, except controlled substances under Section 893.03, Florida Statutes, unless the APRN has graduated from a master's or doctoral program in a clinical nursing specialty area with training in specialized practitioner skills.

21. However, Rule 64B9-4.016, Florida Administrative Code, states that APRNs may not prescribe greater than a seven (7) day supply of controlled substances that are listed in Section 893.03, Florida Statutes as schedule II controlled substances unless the APRN is a psychiatric nurse as defined by Section 394.455, Florida Statutes. Otherwise, an APRN may only prescribe a seven (7) day supply of medications included as schedule II controlled substances under Section 893.03, Florida Statutes.

22. Rule 64B9-4.016 does not address controlled substance prescribing by a licensed autonomous APRN. This creates uncertainty as to whether an autonomous APRN may prescribe schedule II controlled substances beyond a seven (7) day supply.

23. Chapter 394, Florida Statutes, is known as "The Florida Mental Health Act" or "The Baker Act." This chapter governs facilities regulated by the Florida Department of Children

and Families and/or the Agency for Health Care Administration, and not autonomous practice by an APRN.

24. Section 394.455(36), Florida Statutes, defines psychiatric nurse "as an advanced practice registered nurse licensed under s. 464.012 who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician." The statute is silent as to persons licensed pursuant to Section 464.0123, Florida Statutes.

25. The definition of psychiatric nurse in Section 394.455(36), Florida Statutes, appears to apply to APRNs and not autonomous APRNs as this statutory provision does not reference Chapter 2020-9, Laws of Florida, which promulgated Section 464.0123, Florida Statutes, licensed autonomous APRNs.

26. Petitioner believes, and seeks concurrence from the Board, that it is within an autonomous APRN's scope of practice to prescribe schedule II controlled substances, defined under Section 893.03, Florida Statutes, greater than a seven (7) day supply, for the treatment of psychiatric and mental health conditions.

STATEMENT OF FACTS APPLICABLE TO DETERMINATION

27. As stated above, Petitioner holds a master's degree in nursing, is a Board Certified Psychiatric and Mental Health Nurse Practitioner, who is licensed as an autonomous APRN.

28. Petitioner is also board certified as a Family Nurse Practitioner.

29. Petitioner anticipates practicing without a supervising physician as she is licensed for autonomous practice.

30. Petitioner will have her own practice and anticipates providing psychiatric and mental health treatment, including psychotherapy, to patients.

31. It is also anticipated that Petitioner will have patients that require treatment with medications classified as schedule II controlled substances pursuant to Section 893.03, Florida Statutes, and that these patients will require more than a seven (7) day supply of such medications.

32. If Petitioner is not allowed to prescribe schedule II controlled substances except for a seven (7) day supply, it will impact her ability to provide psychiatric and mental health treatment to patients and possibly decrease access to care for patients needing psychiatric and mental health treatment.

33. Prior to providing psychiatric and mental health treatment, including prescribing schedule II controlled substances, Petitioner seeks clarification as to whether she may provide psychiatric and mental health treatment and schedule II controlled substances prescriptions, not limited to a seven (7) day supply, to patients so as to ensure Petitioner is compliant with an autonomous APRN's scope of practice.

SPECIFIC REQUESTS FOR RELIEF

34. Does the meaning of primary care, as used in Section 464.0123, Florida Statutes, include psychiatric and mental health treatment, including psychotherapy?

35. Does Petitioner need a supervising physician to provide psychiatry and mental health treatment, including psychotherapy, even though she is licensed as autonomous APRN pursuant to Section 464.0123, Florida Statutes?

36. Does the definition of psychiatric nurse pursuant to Section 394.455, Florida Statutes apply to Petitioner since she is a Board Certified Psychiatric and Mental Health APRN

licensed to practice autonomously?

37. Does controlled substance prescribing as set forth in Rule 64B9-4.016, Florida Administrative Code, apply to Petitioner as an autonomous Board Certified Psychiatric and Mental Health APRN?

38. If Rule 64B9-4.016, Florida Administrative Code applies to Petitioner, may she prescribe more than a seven (7) day supply of scheduled II controlled substances for psychiatric and mental health treatment, as a Board Certified Psychiatric and Mental Health Nurse Practitioner notwithstanding Section 394.455(36), Florida Statutes?

39. Does Petitioner need to have a supervising physician in order to prescribe schedule II controlled substances included under Section 893.03, Florida Statutes?

WHEREFORE, Petitioner, Susan Patricia Lynch, respectfully requests that the Board of Nursing issue a Declaratory Statement under Section 464.0123, Florida Statutes, regarding the above issues.

Respectfully submitted this 1st day of August, 2022.

/s/
Chase Edward Howard, Esq.
Fla. Bar No. 1002257
The Florida Healthcare Law Firm
151 NW 1st Avenue
Delray Beach, FL 33444
Phone: 561-455-7700
Fax: 561-455-7701
Email: Chase@floridahealthcarelawfirm.com

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been filed with the Department of Health’s Agency Clerk’s Office, 4052 Bald Cypress Way, Bin A-02, Tallahassee, FL 32399, by facsimile to 850-413-8743

/s/
Chase Edward Howard, Esq.

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

September 2, 2022

Florida Board of Nursing
Attention: Executive Director
4052 Bald Cypress Way, Bin C-02
Tallahassee, FL 32399-3258
MQA.Nursing@flhealth.gov

CLERK: *Elizabeth Eubanks*

DATE: September 02, 2022

FLORIDA MEDICAL ASSOCIATION, INC., FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION, INC. and FLORIDA PSYCHIATRIC SOCIETY
MOTION TO INTERVENE IN FLORIDA BOARD OF NURSING'S CONSIDERATION OF THE PETITION FOR DECLARATORY STATEMENT IN OPPOSITION TO PETITIONER SUSAN PATRICIA LYNCH, APRN

The Florida Medical Association, Inc. ("FMA"), the Florida Osteopathic Medical Association, Inc. ("FOMA"), and the Florida Psychiatric Society ("FPS"), each by and through its undersigned counsel, hereby respectfully petition the Florida Board of Nursing to allow each of the Petitioners to intervene in the Board of Nursing's discussion of the above Petition in opposition to the Petitioner, pursuant to Rule 28.106.205, Florida Administrative Code. In support of the proposed Intervenors' motion, each of the proposed Intervenors hereby states:

1. The Florida Medical Association, Inc. is a Florida-based trade organization comprised of over 25,000 Florida physicians, many of whom specialize in the treatment of mental, emotional, behavioral health and substance use problems. As a result, members of the FMA, as physicians, would be adversely affected if providers not licensed either pursuant to Chapter 458 or 459 of the Florida Statutes were allowed to independently practice psychiatric and mental health treatments, including psychotherapy, to patients with psychiatric and mental health conditions, without the proper physician supervision. The FMA routinely participates in advocacy efforts on

behalf of its members in matters concerning the rights and obligations of physicians, including their supervision responsibilities.

2. FMA's address, phone number and facsimile number are as follows:

1430 Piedmont Drive East, Tallahassee, FL 32308

(850) 224-6496

Facsimile: (850) 224-6667

Email: legal@flmedical.org

3. Petitioner FMA's counsel's name, address, phone number, facsimile number, and email are Mary Thomas, Esq., 1430 Piedmont Drive East, Tallahassee, Florida 32308.

(850) 224-6496. Facsimile (850) 224-6667. Email: MThomas@flmedical.org

4. The Florida Osteopathic Medical Association (FOMA) is a Florida-based professional trade organization comprised of nearly 7,500 Florida osteopathic physicians, many of whom specialize in the treatment of mental, emotional, behavioral health and substance use problems. As a result, members of the FOMA, as physicians, would be adversely affected if providers not licensed either pursuant to Chapter 458 or 459 of the Florida Statutes were allowed to independently perform such treatment. FOMA routinely participates in advocacy efforts on behalf of its members in matters concerning the rights and obligations of physicians, including supervision issues.

5. FOMA's address, phone number and facsimile number are as follows:

2544 Blairstone Pines Drive, Tallahassee, FL 32301

(850) 878-7364

Facsimile: (850) 942-7538

Email: admin@foma.org

6. Petitioner FOMA legal counsel's name, address, phone number, facsimile number, and email are Jason D. Winn, Esq., of Winn Law, 2709 Killarney Way, Suite 4, Tallahassee FL 32309. (850) 222-7199. (850)519-5876. Facsimile (850) 222-1562.
Email: jwinn@jwinnlaw.com.
7. The Florida Psychiatric Society, Inc. ("FPS") is a Florida-based trade organization comprised of approximately 1,400 Florida physicians, each of whom specializes in the treatment of mental, emotional, behavioral health and substance use problems. As a result, members of FPS, as psychiatrists, routinely perform mental health treatments and are the healthcare professionals most highly trained to integrate psychiatric diagnosis, pharmacological (medications) treatment, somatic treatments and psychotherapy (talking therapy), and other procedures that are the subject of this Petition and would be adversely affected if providers not licensed either pursuant to Chapter 458 or 459 of the Florida Statutes were allowed to independently perform such treatment.
8. FPS routinely participates in advocacy efforts on behalf of its members in matters concerning the rights and obligations of physicians, including issues regarding the services that may be delegated to an Advanced Registered Nurse Practitioner, such as those services cited in the Petition.
9. FPS's address, phone number and facsimile number are as follows:
521 East Park Avenue
Tallahassee, FL 32301
850-222-8404

Email: kendra@floridapsych.org

10. For purposes of this Motion, FPS's counsel's name, address, phone number, facsimile number, and email are Jason D. Winn, Esq., of Winn Law, 2709 Killarney Way, Suite 4, Tallahassee FL 32309. (850) 222-7199. (850)519-5876. Facsimile (850) 222-1562.

Email: jwinn@jwinnlaw.com

11. A substantial number of the members of each of the Petitioners routinely treat mental, emotional, behavioral health and substance use problems. Moreover, a substantial number of the members of each of the parties to this Motion supervise Advanced Practice Registered Nurses performing such treatments. Therefore, a substantial number of the members of each of the proposed Intervenors would be substantially affected by the Board's decision in this matter, as they have a unique and vested interest in the outcome of the subject Petition. As a result, the substantial interests of each of the proposed Intervenors will be affected by the proceeding, and each of the proposed Intervenors therefore has standing to participate in these proceedings. *See Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982).
12. The Petitioner is licensed as an "Advanced Practice Registered Nurse," pursuant to Florida Statute Section 464.012. Section 464.012, F.S., sets forth the scope of practice of such practitioners, to wit:
 13. 464.012 Licensure of advanced practice registered nurses; fees; controlled substance prescribing.—

(1) Any nurse desiring to be licensed as an advanced practice registered nurse must apply to the department and submit proof that he or she holds a current license to practice professional nursing or holds an active multistate license to practice professional nursing pursuant to s. 464.0095 and that he or she meets one or more of the following requirements as determined by the board:

(a) Certification by an appropriate specialty board. Such certification is required for initial state licensure and any licensure renewal as a certified nurse midwife, certified nurse practitioner, certified registered nurse anesthetist, clinical nurse specialist, or psychiatric nurse. The board may by rule provide for provisional state licensure of certified registered nurse anesthetists, clinical nurse specialists, certified nurse practitioners, psychiatric nurses, and certified nurse midwives for a period of time determined to be appropriate for preparing for and passing the national certification examination.

(b) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills. For applicants graduating on or after October 1, 1998, graduation from a master's degree program is required for initial licensure as a certified nurse practitioner under paragraph (4)(a).

1. For applicants graduating on or after October 1, 2001, graduation from a master's degree program is required for initial licensure as a certified registered nurse anesthetist who may perform the acts listed in paragraph (4)(b).

2. For applicants graduating on or after October 1, 1998, graduation from a master's degree program is required for initial licensure as a certified nurse midwife who may perform the acts listed in paragraph (4)(c).

3. For applicants graduating on or after July 1, 2007, graduation from a master's degree program is required for initial licensure as a clinical nurse specialist who may perform the acts listed in paragraph (4)(d).

(2) The board shall provide by rule the appropriate requirements for advanced practice registered nurses for the advanced nursing practices of certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists, and psychiatric nurses.

(3) *An advanced practice registered nurse shall perform those functions authorized in this section within the framework of an established protocol that must be maintained on site at the location or locations at which an advanced practice registered nurse practices, unless the advanced practice registered nurse is registered and practicing under s. 464.0123 (emphasis added).* In the case of multiple supervising physicians in the same group, an advanced practice registered nurse must enter into a supervisory protocol with at least one physician within the physician group practice. A practitioner currently licensed under chapter 458, chapter 459, or chapter 466 shall maintain supervision for directing the specific course of medical treatment. Within the established framework, an advanced practice registered nurse may:

(a) Prescribe, dispense, administer, or order any drug; however, an advanced practice registered nurse may prescribe or dispense a controlled substance as defined in s. 893.03 only if the advanced practice registered nurse has graduated from a

program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills.

(b) Initiate appropriate therapies for certain conditions.

(c) Perform additional functions as may be determined by rule in accordance with s. 464.003(2).

(d) Order diagnostic tests and physical and occupational therapy.

(e) Order any medication for administration to a patient in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893.

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse may perform the following acts within his or her specialty:

(a) The certified nurse practitioner may perform any or all of the following acts within the framework of established protocol:

1. Manage selected medical problems.
2. Order physical and occupational therapy.
3. Initiate, monitor, or alter therapies for certain uncomplicated acute illnesses.
4. Monitor and manage patients with stable chronic diseases.
5. Establish behavioral problems and diagnosis and make treatment recommendations.

14. Petitioner holds a registration as an Autonomous APRN under F.S. 464.0123. Section 464.0123(3) F.S., sets forth the scope of practice of such practitioners and states in relevant part that Autonomous APRNs may “engage in autonomous practice only in primary care practice, including family medicine, general pediatrics, and general internal medicine, as defined by board rule” and “[p]erform the general functions of an advanced practice registered nurse under s. 464.012(3) related to primary care.”
15. The Board of Nursing should deny the first question in the Petition: Whether it is within the scope of practice for an autonomous APRN to provide psychiatric and

mental health treatment, including psychotherapy, to patients with psychiatric and mental health conditions.

16. The first question in the Petition should be denied based upon F.S. 464.0123(3), because autonomous practice includes only primary care, and not the subspecialty of mental health and psychiatric treatment, including psychotherapy, for patients with mental health conditions.
17. Petitioner highlights other areas in the law where psychiatric care is specifically included in the definition of primary care. However, the examples provided in the Petition are all specific to physician-delivered care. Further, the legislature was very much aware of its own broader definitions of “primary care” when it created Section 464.0123 and purposefully chose not to include psychiatric care as a specialty that APRNs may practice autonomously.
18. Finally, Rule 64B9-4.001, FAC, is bound by the parameters of Section 464.0123 and cannot exceed the scope of its granted legislative authority. Thus, the rule itself is bound to primary care practice as it relates to family medicine, general pediatrics, and general internal medicine. The Petition clearly states that the Petitioner intends to operate a specialized psychiatric practice and not a primary care practice. The treatment of behavioral and mental health within primary care is not specialized care and is merely one component of primary care. For these reasons, the first question should be denied.
19. The Board of Nursing should deny the second question in the Petition: Whether it is within the scope of practice for an autonomous APRN to prescribe controlled

substances, including schedule II, for greater than a seven (7) day supply, for the treatment of psychiatric or mental health conditions.

20. The second question should be denied based upon F.S. 464.012(4)(e), allowing for “[a] psychiatric nurse, who meets the requirements in s. 394.455(36), within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.” There is statutorily required supervision of the psychiatric nurse by a psychiatrist with an established protocol. Because Petitioner will not be in an established protocol with a supervising physician (MD or DO), Petitioner fails to meet the requirements to prescribe controlled substances for the treatment of mental health disorders.
21. Further, Section 464.0123(3)(a)3. only authorizes autonomous APRNs to “[p]erform the general functions of an advanced practice registered nurse under *s. 464.012(3)* related to primary care (emphasis added).” As stated above, psychotropic prescriptive authority for psychiatric nurses is referenced in Section (4) of the statute thus should not be considered by this Board within the scope of autonomous practice.
22. The Board of Nursing should deny the final question in the Petition: Whether Petitioner needs a supervising physician to provide treatment, including psychotherapy, for psychiatric or mental health conditions.
23. Any APRN not practicing within primary care as a registered autonomous APRN, must be supervised by a supervising physician with a written established protocol. An autonomous ARPAN may only practice primary care, including family medicine, general pediatrics, and general internal medicine, as defined by board rule. Rule 64B9-4.001(12) defines primary care practice to include behavioral and mental health

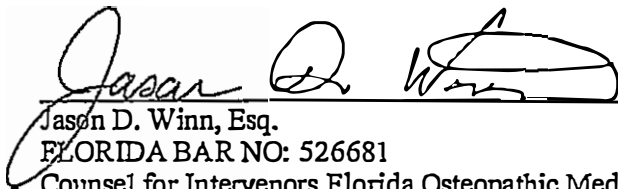
conditions, but is careful not to carve it out as a standalone specialty. Petitioner is requesting the Board of Nursing to allow for sub-specialty designations within autonomous practice nursing. The Board of Nursing does not have delegated authority to allow for subspecialty practice by autonomous APRN's (F.S. 464.0123(3)(a)(1)).

24. Based upon the above, the parties to this Motion aver that the proposed conduct of Petitioner is inconsistent with existing Florida law, which does not authorize an autonomous APRN to perform such treatments and prescribe medications, absent a physician protocol.
25. In addition to the above, the authority of an agency to issue a declaratory statement is limited by Section 120.565, F.S., to a determination "as to the applicability of a statutory provision...to the petitioner's particular set of circumstances." *Lennar Homes, Inc. v. Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes*, 888 So. 2d 50, 53 (Fla. 1st DCA 2004).
26. In the instant case, the Board is being asked to ascertain whether an autonomous APRN who holds dual certifications as a Family Nurse and Psychiatric and Mental Health Nurse Practitioner may practice specialized psychiatric care without supervision. In essence, the Petitioner is requesting the Board to adopt a statutory interpretation that would be applicable to each and every advanced practice registered nurse in Florida to allow them to practice without physician supervision in any specialty or subspecialty, contrary to the intention and language of the statutes and rules governing an autonomous APRN's scope of practice.

27. When an agency is called upon to issue a declaratory statement “which would require a response of such a general and consistent nature as to meet the definition of a rule, the agency should either decline to issue the statement or comply with the provisions of Section 120.54 governing rulemaking.” *Agency for Health Care Administration v. Wingo*. 697 So.2d 1231, 1233 (Fla. 1st DCA 1997). Because the questions presented by the Petition are overly broad and would exceed the Board of Nursing’s delegated authority, granting the Petition would constitute an unlawful non-rule policy and should therefore be dismissed.

WHEREFORE, the FMA, FOMA, and FPS each respectfully requests that, pursuant to Section 120.565, Florida Statutes, it be allowed to intervene in the subject proceeding in opposition to the Petitioner and that the Board of Nursing either issue a Declaratory Order prohibiting the conduct proposed by the Petitioner or dismiss the Petition for Declaratory Statement.

Respectfully submitted this day of September 2, 2022.

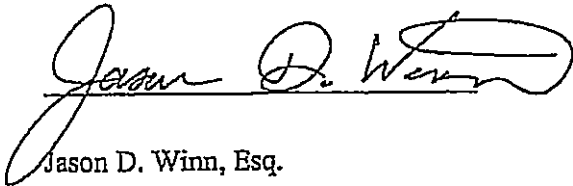


Jason D. Winn, Esq.
FLORIDA BAR NO: 526681
Counsel for Intervenors Florida Osteopathic Medical Association, Inc. &
Florida Psychiatric Society
2709 Killarney Way, Suite 4, Tallahassee FL 32309.
(850) 222-7199
jwinn@jwinnlaw.com

Certificate of Service

On this 2nd day of September 2022, I hereby certify that a copy of the foregoing was served upon:

- Petitioner, Susan Patricia Lynch, APRN, through her counsel Chase Edward Howard, Esq. by U.S. mail to 151 NW 1st Ave., Delray Beach, FL 33444
- Deborah Loucks, by U.S. mail to Office of Attorney General, The Capitol, PL-01, Tallahassee 32399 and via email to deborah.loucks@myfloridalegal.com
- Florida Department of Health, Agency Clerk, by U.S. mail to 4052 Bald Cypress Way, Bin A-02, Tallahassee, FL 32399
- Board of Nursing by U.S. Mail at 4052 Bald Cypress Way, Bin C-02, Tallahassee, FL 32399, and via email to joe.baker@flhealth.gov



Jason D. Winn, Esq.