

FILED DATE - JAN 07 2022  
Department of Health

By: Bridget Coates  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF NURSING

IN RE: PETITION FOR DECLARATORY STATEMENT OF:  
**PATRICIA ANN BARRANCA**

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**FINAL ORDER**

THIS MATTER came before the Board of Nursing (Board) pursuant to Section 120.565, Florida Statutes and Rule 28-105, Florida Administrative Code, at a duly-noticed public meeting held on December 2, 2021, in Tampa, Florida, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A), filed by Patricia Ann Barranca (Petitioner). Petitioner was represented by counsel, Sabrina Dieguez, Attorney at Law. The Board was represented by Deborah Bartholow Loucks, Senior Assistant Attorney General.

The Petition was filed with the Department of Health on September 29, 2021. Petitioner seeks the Board's opinion as to whether it is within the scope of Petitioner's practice as an Advanced Practice registered nurse to order radiology exams as part of the health care services provided by the clinic where she is employed.

Having considered the Petition, relevant statutes and rules, arguments submitted by counsel for Petitioner and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

**FINDINGS OF FACT**

1. The Petition was duly filed and noticed in the Florida Administrative Register; Volume 47 Number 215 published on October 29, 2021.
2. The Petition is attached hereto and incorporated herein by reference.
3. Petitioner, Patricia Ann Barranca, is a Registered Nurse and an Advanced Practice

Registered Nurse licensed to practice nursing in the State of Florida, having been issued license number RN 9375024 and APRN 11013055.

4. Petitioner is employed at a health care clinic in Sumter County, Florida and has entered into a supervisory protocol with a medical doctor licensed pursuant to Chapter 458, Florida Statutes.

5. Petitioner seeks clarification of whether it is in the scope of practice of an APRN to be the licensed health care practitioner who makes the determination as to the health care risk versus the benefits of obtaining a radiological exam via DEXA scan machine.

6. Petitioner sets forth four specific requests for determination:

a. Is diagnostic radiology a diagnostic test under 464.012(3)(d), Florida Statutes?

b. Is it within Petitioner's scope of practice to order an x-ray for a patient of the clinic for the purpose of providing health care?

c. Is it within Petitioner's scope of practice to order a diagnostic radiology test, such as a DEXA scan, for a patient of the clinic for the purpose of medical or health care?

d. If the answers to a through c are no, would any of the be answered in the affirmative if Petitioner became licensed as an autonomous APRN?

### **CONCLUSIONS OF LAW**

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

8. The petition filed in this matter is in substantial compliance with the provisions of Section 120.565, Florida Statutes and Rule 28-105, Florida Administrative Code.

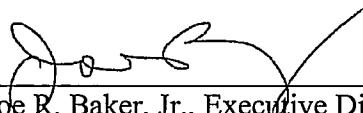
9. Section 464.012(3), Florida Statutes, sets forth the functions authorized to be

performed by an Advanced Practice Registered Nurse (APRN). Section 464.012(3)(d), Florida Statutes, states that an APRN may order diagnostic testes and physical and occupational therapy.

10. The Board found that under the specific facts of the petition, it is within the scope of Petitioner's specific and particular education, training, and experience and the protocol in place with her supervisory physician, that the answer to the requests set forth above in paragraph 6(a),(b), and (c), would be "yes". The Board declined to answer the request set forth in paragraph 6(d) as it was too remote to formulate an answer.

**DONE AND ORDERED** this 6<sup>th</sup> day of **January**, 2022.

BOARD OF NURSING

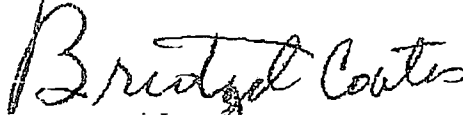
  
\_\_\_\_\_  
Joe R. Baker, Jr., Executive Director  
for Deborah McKeen, CD-LPN, BS, Chair

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida Appellate District where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to **Patricia Barranca, APRN**, by sending same via electronic mail: to her counsels of record, **Geoffrey D. Smith, Esq.**, [Geoff@smithlawtlh.com](mailto:Geoff@smithlawtlh.com); and **Sabrina B. Dieguez**, [Sabrina@smithlawtlh.com](mailto:Sabrina@smithlawtlh.com); and to: **Deborah B. Loucks**, Senior Assistant Attorney General, [deborah.loucks@myfloridalegal.com](mailto:deborah.loucks@myfloridalegal.com), **Cassandra Fullove**, Senior Legal Specialist, Office of the Attorney General, [Cassandra.fullove@myfloridalegal.com](mailto:Cassandra.fullove@myfloridalegal.com); and **Angela Southwell**, Paralegal Specialist, Office of the Attorney General, [angela.southwell@myfloridalegal.com](mailto:angela.southwell@myfloridalegal.com), on 7 January, 2022.



\_\_\_\_\_  
Deputy Agency Clerk

**SMITH  
&  
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**TELEFAX**

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**FROM:** Geoffrey D. Smith  
Sabrina B. Dieguez

**DATE:** September 29, 2021

**PAGES:** 8 (including cover sheet)

**CASE NAME:** In Re: Petition for Declaratory Statement Before the Board  
of Nursing  
Patricia Ann Barranca, Petitioner

**CLIENT NO.:** 948.000

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**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**IN RE:**

**PETITION FOR DECLARATORY  
STATEMENT BEFORE THE BOARD  
OF NURSING,**

**PATRICIA ANN BARRANCA,  
Petitioner.**

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**PETITION FOR DECLARATORY STATEMENT**

Petitioner, Patricia Ann Barranca, petitions pursuant to Section 120.565, Florida Statutes, for a Declaratory Statement seeking a determination as to the interpretation of sections 464.012, 464.0123, 404.22, and 456.001, Florida Statutes, stating:

1. Petitioner is Patricia Ann Barranca, a Registered Nurse and an Advance Practice Registered Nurse in Florida, whose license numbers are RN9375024 and APRN11013055.
2. Petitioner is employed at a health care clinic in Sumter County, Florida.
3. As part of her practice at the Health Care Clinic, Petitioner has entered a supervisory protocol with a medical doctor licensed under chapter 458, Florida Statutes.
4. The purpose of this Petition is to obtain clarification from the Board of Nursing ("the Board") as to whether it is within the scope of practice for Petitioner to order radiology exams, such as a DEXA scan, as part of the health care services provided to patients of the clinic.
5. The Petitioner's address is that of undersigned counsel.

**STATEMENT OF HOW PETITIONER IS SUBSTANTIALLY AFFECTED**

6. 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.

7. The Petitioner is an APRN employed by a clinic owned by Betterhumans, Inc. located in Sumter County, Florida.

8. Petitioner is substantially affected by the scope of practice provisions for APRNs set forth in section 464.012, Florida Statutes, as they apply to section 404.22, Florida Statutes.

9. As a Florida licensed nurse, Petitioner's licenses to practice nursing may be sanctioned for discipline pursuant to sections 456.072 and 464.018, Florida Statutes, for violating the Nurse Practice Act.

10. Petitioner seeks a declaration pursuant to section 464.012, Florida Statutes, to determine if it is within the scope of practice for an APRN to be the licensed health care practitioner who makes the determination as to the health care risk versus the benefits of obtaining a radiological exam via DEXA scan machine. The governing provisions for use of such radiology devices provides that a health care provider, acting within the scope of his or her practice, will make a determination that the medical or health benefit of such diagnostic exam is greater than the health risks posed by the exposure to radiation.

**STATEMENT OF LAWS**

11. The regulation of professions by the Department of Health is governed by section 456, Florida Statutes.

12. Section 456.001 (4) provides as follows:

"Health care practitioner" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463;

chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part I, part II, or part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

Emphasis added.

13. Petitioner is a registered nurse and an advanced practice registered nurse licensed under chapter 464, Florida Statutes.

14. The regulation of radiation in medical diagnostic devices is governed by chapter 404, Florida Statutes, The Florida Radiation Protection Act.

15. Section 404.22 (8)(a) provides as follows:

(8) A human being may be exposed to the useful beam of a radiation machine only under the following conditions:

(a) For the purpose of medical or health care, if a licensed health care practitioner operating within the scope of his or her practice has determined that the exposure provides a medical or health benefit greater than the health risks posed by the exposure and the health care practitioner uses the results of the exposure in the medical or health care of the exposed individual;

Emphasis added.

16. It is not clear from review of the scope of practice provisions of the Nurse Practice Act as to whether it is within the scope of practice for an APRN to determine that exposure of a useful beam of a radiation machine to a human being provides a medical or health benefit greater than the health risks posed by the exposure. Petitioner believes that such determinations are within the scope of practice of an APRN, but due to lack of any specific guidance, seeks the Board's concurrence that an APRN may order such diagnostic radiology testing for patients under her care.

17. Section 464.012, Florida Statutes, delineates the general functions for the APRN and provides in pertinent part as follows:

(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~~. 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:

...

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

...

Emphasis added.

18. The above allowable general functions specify that the APRN may order diagnostic tests however, chapter 464, Florida Statutes, does not define whether such "diagnostic tests" would include typical radiological testing such as x-ray, DEXA-Scan, or similar tests.

19. Chapter 404, Florida Statutes, also fails to define "diagnostic tests."

**STATEMENT OF FACTS APPLICABLE TO DETERMINATION**

20. As stated above, Petitioner is employed in a health care clinic establishment in Florida.

21. The clinic is not yet operational but is located in Lady Lake, Sumter County.

22. Petitioner will be the clinic supervisor as well as provide health care services to the clinic patients.

23. Petitioner has entered a supervisory protocol with a physician currently licensed under chapter 458, Florida Statutes.

24. The physician will not be on the clinic premises on a daily basis but will be available during clinic business hours for consultation with Petitioner in the event it is necessary.

25. The physician and Petitioner will meet on a quarterly basis to review patient files.

26. As part of Petitioner's employment, it is anticipated that there will be patients seen who may benefit from a radiology scan, such as an x-ray or a DEXA scan, in order to assess and monitor their progress under a prescribed plan of care.

27. According to one expert, E. Russell Ritenour, PhD, FAAPM, FACR, DABR at <http://hps.org/publicinformation/ate/q13693.html>, there are a number of different ways to specify radiation dose. The most widely used quantity is the Sievert (Sv). It takes into account the energy deposited by radiation as well as the part of the body irradiated to arrive at a unit that reflects overall potential for harm to cells in the body. Diagnostic radiology uses the smallest doses possible to allow accurate images of the body with x-rays. This requires much less radiation, in the range of thousandths of sieverts or millisieverts (mSv). Some effective doses associated with DEXA and a few other exams in diagnostic radiology are listed below for comparison:

- a. DEXA—Lumbar spine and hip 0.001 mSv
- b. DEXA—Whole body 0.003 mSv
- c. Extremity (hand, foot, etc.) X ray—0.001 mSv
- d. Dental X Ray—0.005 mSv
- e. Chest X Ray—0.1 mSv
- f. Spine Computed Tomography (CT) Scan—6 mSv
- g. Abdomen and Pelvis CT—10 mSv

28. Radiation doses are compared with "natural background," the radiation we receive by living on Earth, through radioactive isotopes all around (e.g., in soil, air, building materials, etc.). Human beings also receive some radiation from cosmic ray sources that exist in the universe, including the sun. The average annual natural background radiation level in the United States is approximately 3 mSv.

**SPECIFIC REQUESTS FOR DETERMINATION**

29. Is diagnostic radiology a diagnostic test under 464.012(3)(d), Florida Statutes?
30. Is it within Petitioner's scope of practice to order an x-ray for a patient of the clinic for the purpose of providing health care services?
31. Is it within Petitioner's scope of practice to order a diagnostic radiology test, such as a DEXA scan, for a patient of the clinic for the purpose of medical or health care?
32. If the answers to 29 through 31 are no, would any of them be answered in the affirmative if Petitioner became licensed under 464.0123, Florida Statutes, as an autonomous APRN?

WHEREFORE, Petitioner, Patricia Ann Barranca, respectfully requests that the Board of Nursing issue a Declaratory Statement under sections 464.012, 464.0123, and 404.22, Florida Statutes, regarding the above issues.

Respectfully submitted this 29<sup>th</sup> day of September 2021.

/s/ Geoffrey D. Smith  
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321-676-5555  
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Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been filed with the Department of Health's Agency Clerk's Office, 4052 Bald Cypress Way, Bin #A02, Tallahassee, Florida 32399-1703 by facsimile to 850-413-8743, this 29<sup>th</sup> day of September 2021.

/s/ Geoffrey D. Smith  
GEOFFREY D. SMITH

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