

**BEFORE THE ALABAMA BOARD OF NURSING**

<b>IN THE MATTER OF:</b>	)	
	)	<b>IN RE: PETITION FOR</b>
<b>ASHLEY FLYNT JENNINGS</b>	)	<b>DECLARATORY RULING</b>
<b>1-172545 (ACTIVE); CRNA (ACTIVE)</b>	)	
	)	
<b>Petitioner.</b>	)	

**DECLARATORY RULING**

**COMES NOW** the Alabama Board of Nursing, by and through its Executive Officer Peggy Sellers Benson, RN, MSHA, MSN, NE-BC, and issues the following ruling:

**QUESTION PRESENTED**

Pursuant to Rule 610-X-9-.04 of the Alabama Board of Nursing Administrative Code, is it within the scope of practice for a Certified Registered Nurse Anesthetist (CRNA), a Certified Registered Nurse Practitioner (CRNP), or Registered Nurse (RN) to inject botulinum toxin into targeted sites of facial muscles for aesthetic maintenance and to perform the injection under medical direction of a physician licensed to practice medicine or a licensed dentist who has prescription authority?

**FINDINGS OF FACT**

1. On August 10, 2021, and August 25, 2021, Jennings submitted a Declaratory Ruling Request and clarifying information. Jennings seeks a declaratory ruling to determine whether, pursuant to Rule 610-X-9-.04 of the Alabama Board of Nursing Administrative Code, it is within the scope of practice for a Certified Registered Nurse Anesthetist (CRNA), a Certified Registered Nurse Practitioner (CRNP), or Registered Nurse (RN) to inject botulinum toxin into targeted sites of facial muscles for aesthetic maintenance and to perform the injection under medical direction of a physician licensed to practice medicine or a licensed dentist who has prescription authority.

2. Jennings states as follows:

As an Advance Practice Nurse (APRN) with a Doctorate of Nursing (DNP) practice, I would practice within the scope of nursing practice to perform cosmetic/aesthetic procedures under medical direction. According to Article 5 Advanced Practice nursing Declaration of legislation, the nurse anesthetist is qualified in accordance with Section 27-46-3 and is licensed by the Board of Nursing an functions under the direction of a physician licensed to practice medicine or a licensed dentist (Article 5 Advance Practice Nursing).

Within my scope of practice as a CRNA, I have a knowledgeable understanding of the advanced pharmacology of neuromuscular blocking agents and independently administer them when appropriate for the patient. The state of Alabama already considers botulinum toxin injection a practice of nursing the Alabama Board of Medicine allows nurse practitioners to inject botulinum toxin for primary hyperhidrosis. In literature reviews, botulinum for hyperhidrosis has a higher side effect profile compared to botulinum toxin for cosmetic purposes due to an area of larger distribution and higher volume of botulinum toxin units injected (Witmanowskit & Blochowiak, 2021).

I am taking a course approved by the AANA for CE credit for didactics for the fundamentals of neuromodulators for aesthetics. I will receive hands on training certificate offered by Aura Academy of Aesthetics, taught by Suzanne Jagger, CRNA, DNP specifically for advanced practice nurses on August 14, 2021 in Nashville, TN (Aura Academy, 2021).

Willie Furr, the President of the Alabama Nurse Anesthetist Association has said that the organization supports my declaratory ruling request.

According to Bruce Allain, Juris Doctor for the AANA, "Our Professional Practice division has stated that, as advanced practice registered nurses (APRNS) with advanced nursing competencies, CRNAs have a strong foundation in advanced physiology/pathophysiology, pharmacology, and advanced physical assessment. This foundation, coupled with relevant procedure-specific education, training, and clinical competencies, supports the role of appropriately qualified CRNAS to administer, order, oversee, direct, supervise and manage the plan of care of patients undergoing procedures that fall within the individual's clinical competency."

This practice would use the most up to date clinical research and science to provide safe, effective and accessible care for the patients of rural Alabama who currently must travel to larger cities, and even out the state, for cosmetic aesthetic procedures. The standard of care for other states has shown this is a practice of nursing and, unless there is a compelling date to show contrary, it is up to the Board of nursing to consider this a practice of nursing.

3. In September 2021, the ABN issued a Scheduling Order regarding Jennings's declaratory ruling request pursuant to which the Declaratory Ruling Request would be considered by the ABN at its November Board Meeting.

#### **JURISDICTION**

Pursuant to Section 41-22-11 of the Code of Alabama (1975), the Alabama Board of Nursing has jurisdiction to issue declaratory rulings with respect to the validity of a rule, with respect to the

applicability to any person, property or state of facts of any rule or statute enforceable by it, or with respect to the meaning and scope of any order of the agency, if a written petition for declaratory ruling is filed by a person who states with specificity the reason why the person is substantially affected by the rule at issue. See also Alabama Board of Nursing Administrative Code § 610-X-1-.09. Jennings is substantially affected by the rule pertaining to the scope of practice for a CRNA and RN. Jennings is not a CRNP and has not articulated in her declaratory ruling request how she would be affected by the scope of practice for a CRNP. Thus, the ABN will consider the request regarding the scope of practice for a CRNA/RN.

### **CONCLUSIONS OF LAW**

1. The rule about which Jennings seeks a declaratory ruling is Rule 610-X-9-.04 of the Alabama Board of Nursing Administrative Code, which states: “The certified registered nurse anesthetist shall practice in accordance with the standards, scope of practice, and guidelines developed by the American Association of Nurse Anesthetists, congruent with Alabama law.”

2. A review of the AANA Scope of Nurse Anesthesia Practice as published on its website does not appear to include within the CRNA’s scope of practice the administration of botulinum toxin for cosmetic purposes.

3. Alabama law makes clear that CRNA practice in Alabama is limited to “the performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures.” Ala. Code § 34-21-81(4)(c) (emphasis added).

4. The administration of botulinum toxin for aesthetic purposes is not done to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures. This means that possession of the CRNA Certificate of Qualification would not permit a CRNA to administer botulinum toxin for cosmetic purposes at the “direction” of a physician or dentist who is immediately available. See Ala. Code § 34-21-81(4)(c). Unless the statute were to change, a CRNA could not select the medication or dosage or purchase and dispense the botulinum toxin.

5. The question of whether, as a CRNA and RN, Jennings may inject botulinum toxin into targeted sites of facial muscles for aesthetic maintenance under any circumstances is a more difficult question. Administration of botulinum toxin (for various purposes and in various anatomical sites), has been considered over the past two decades by multiple healthcare professional regulatory authorities in Alabama during the last two decades.

A. In March 2004, the ABN determined that the administration of Botulinum Toxin Type A was within the scope of practice for CRNP’s and RN’s pursuant to an

organized program of study, supervised clinical practice, and demonstrated clinical competence. In an October 21, 2004, letter published on the Board of Medical Examiners website, the BME said: "The Board of Medical Examiners at its October 20, 2004 meeting considered your letter dated September 20, 2004. The Board of Medical Examiners considers the procedures (Botox, Restylane, Collagen and Mesotherapy) to be the practice of medicine and as such each procedure must be performed by a licensed physician." The practice of medicine means "to diagnose, treat, correct, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality." Ala. Code § 34-23-50. Following notification of this letter and seeking clarification from the Alabama Board of Medical Examiners, the ABN voted in January 2005 to rescind its opinion regarding administration of Botulinum Toxin Type A, to avoid confusion between the two boards' opinions. In March 2006, the Alabama Board of Medical Examiners issued a letter in which it clarified that its "opinion on Botox dealt strictly with injections where a physician is not actively involved in the procedure."

- B. Presently, physicians are not the only persons who administer botulinum toxin in Alabama. According to the Board of Dental Examiners Frequently Asked Questions, "Dentists are allowed to use cosmetic injectables and topicals in any area of the face to treat maxillofacial trauma, and for the treatment of diagnosed dental and orofacial problems/pain and conditions and for cosmetic purposes following proper continuing education and certification such as is offered by national industry associations or other dental continuing education."
- C. Physician assistants (PA) and CRNPs have been permitted to administer botulinum toxin for the treatment of hyperhidrosis, in the context of their registration/collaborative practice agreements, and with additional training and practice pursuant to required protocols. The CRNP must receive approval to train, may only train for the procedure when the collaborating physician is onsite, and may only perform the procedure when the collaborating physician is physically present on site. The CRNP is also required to document performance of ten procedures at each anatomic location each year to maintain eligibility for the skill. The anatomic locations include the palms, the soles of the feet, and the axilla.
- D. At its September 2018 meeting, the ABN determined that Botox injections for chronic migraine are within the legal scope of practice for a CRNP with documented education, training and experience. At its November 2018 meeting, the Joint Committee for Advanced Practice Nursing voted to approve administration of Botox injections for chronic migraines by CRNPs with documented education, training and experience. However, at its February 2019



meeting, the Alabama Board of Medical Examiners denied a request for a CRNP to train to perform Botox injections for chronic migraine. The injection of Botox for chronic migraine involves injection of the substance into the muscles of the head, several of which are located in the facial area. Some of the muscles to be injected would be the same as those injected for aesthetic purposes (e.g. frontalis, corrugator, procerus).

6. The administration of botulinum toxin for aesthetic purposes by RN's and/or advanced practice nurses is permitted in many states, with varying degrees of medical supervision and autonomy.

7. In Alabama, the practice of professional [i.e. registered] nursing includes "executing medical regimens including administering medications and treatments prescribed by a licensed or otherwise legally authorized physician or dentist. A nursing regimen shall be consistent with and shall not vary any existing medical regimen." Ala. Code § 34-21-1(9)(a). An advanced practice nurse is "a registered nurse that has gained additional knowledge and skills through successful completion of an organized program of nursing education that prepares nurses for advanced practice roles and has been certified by the Board of Nursing to engage in the practice of advanced practice nursing." Ala. Code § 34-21-81(3).

8. To be licensed as a CRNA in Alabama (if not grandfathered), the CRNA must:

- Have an active RN license
- Have met the requirements for completion or graduated from an organized program of study and clinical experience beyond the basic educational preparation as a registered nurse that prepares nurse anesthetists and is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools or its predecessor, the American Association of Nurse Anesthetist and recognized by the Board of Nursing.
- Earned at least a masters' degree, or post-master's certificate in advanced practice nursing from an accredited graduate program in nurse anesthesia recognized by the Board.
- Be currently certified as a registered nurse anesthetist by the National Board of Certification and Recertification for Nurse Anesthetists, or other certifying body approved by the Board of Nursing.

ABN Administrative Code § 610-X-9-.01(1)(a). To sit for the National Certifying Exam to become a CRNA, an applicant must have completed "three separate comprehensive graduate level courses in advanced physiology/pathophysiology, advanced health assessment, and advanced pharmacology." These courses afford a CRNA additional knowledge and skill beyond that of a licensed RN. CRNP, CNM, and CNS curricula generally also include graduate level courses in health assessment,

pathophysiology/physiology, and pharmacology. This coursework would obviously contribute to their capability to successfully perform the injection of botulinum toxin for a variety of purposes and in a variety of anatomical locations, especially following completion of an organized program of study and demonstrated competence specific to the procedure. For a CRNA or CNS, that would necessitate a standardized procedure, and the performance of the skill in a medical facility with a medical director (hospital, private medical office, etc.). For a CRNP or CNM, approval to perform the skill could be obtained through the collaborative practice protocol process and the performance of the skill could occur at an approved practice site.

9. Unfortunately, the Alabama Board of Medical Examiners has previously opined in a letter that the administration of botulinum toxin is the practice of medicine and must be performed by a physician.

10. Although the ABN certainly agrees that it could and, indeed, should be within the scope of practice for registered nurses who possess certificates of qualification to engage in advanced practice nursing and who have successfully completed graduate courses in health assessment, physiology/pathophysiology, and pharmacology, as well as an organized program of study and demonstrated competence, to administer botulinum toxin to patients for aesthetic or other purposes in a medical facility pursuant to an order from a legally authorized prescriber who has examined the patient, the ABN cannot issue a declaratory ruling to that effect, because doing so could expose the advanced practice nurse to injunctive proceedings pursuant to Code of Alabama § 34-24-52 or criminal consequences pursuant to Code of Alabama (1975), § 34-24-51, which states: "Any person who practices medicine or osteopathy or offers to do so in this state without a certificate of qualification having been issued in his or her behalf by the State Board of Medical Examiners and without a license and certificate of registration from the Medical Licensure Commission of Alabama shall be guilty of a Class C felony."

11. It does not appear that the Alabama Board of Medical Examiners' position regarding the administration of botulinum toxin has been formalized through rulemaking, a declaratory ruling, or other proceedings. Should the Alabama Board of Medical Examiners or another lawful authority with jurisdiction to determine what constitutes the practice of medicine decide that lawful prescribers may delegate to registered nurses who possess certificates of qualification to engage in advanced practice nursing and who have successfully completed graduate courses in health assessment, physiology/pathophysiology, and pharmacology, as well as an organized program of study and demonstrated competence, the administration of botulinum toxin to patients for aesthetic or other purposes in a medical facility pursuant to an order from a legally authorized prescriber who has examined the patient, the ABN would certainly find that it would be within the scope of practice for those persons to accept the delegation under those circumstances.

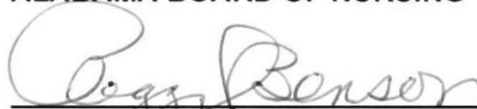
## RULING

Jennings's Request for Declaratory Ruling is hereby granted, and the Alabama Board of Nursing hereby rules as follows:

1. It is not within the scope of practice for a CRNA to inject botulinum toxin into targeted sites of facial muscles for aesthetic maintenance under medical direction of a physician licensed to practice medicine or a licensed dentist who has prescription authority because the injection of botulinum toxin for aesthetic maintenance is not being used to render a patient insensible to pain.
2. The ABN cannot answer whether it is within the scope of practice for a CRNA or RN to inject botulinum toxin into targeted sites of facial muscles for aesthetic maintenance pursuant to an order from a lawful prescriber, because the Alabama Board of Medical Examiners has neither formalized nor overturned its previously stated opinion that the injection of botulinum toxin is the practice of medicine and must be performed by a physician. Thus, no clear answer is determinable. Alabama Board of Nursing Administrative Code § 610-X-1-.09(3)(c).

**DONE** and **ORDERED** on this the 18<sup>th</sup> day of November, 2021.

**ALABAMA BOARD OF NURSING**



**PEGGY SELLERS BENSON RN, MSHA, MSN, NE-BC  
EXECUTIVE OFFICER**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this the 18<sup>th</sup> day of November, 2021, a true and correct copy of the foregoing Declaratory Ruling was served by forwarding the same by United States certified mail, postage prepaid, and addressed as follows:

ASHLEY FLYNT JENNINGS  
1795 PANORAMA WAY W  
GUNTERSVILLE, AL 35976

**ALABAMA BOARD OF NURSING**



**PEGGY S. BENSON, RN, MSHA, MSN, NE-BC  
EXECUTIVE OFFICER**

ADDRESS OF COUNSEL:

Alice Maples Henley  
General Counsel  
Alabama Board of Nursing  
Post Office Box 303900  
Montgomery, Alabama 36130-3900  
334-293-5200 (Telephone)  
334-293-5201 (Facsimile)