Note: Please see the January 12, 2024, Declaratory Ruling of the Alabama Board of Medical Examiners (appended to the end of this document) for further clarification.

BEFORE THE ALABAMA BOARD OF NURSING

IN THE MATTER OF:	)	**PETITION FOR**
	)	**DECLARATORY RULING**
LLOYD RAY DUNN II, ABN LICENSE NO. 1-095285 MSL (Active); CRNA	)	
	)	
Petitioner.	)	

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 Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to train an anesthesiologist assistant or anesthesiologist assistant student?

Pursuant to Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to supervise an anesthesiologist assistant or anesthesiologist assistant student?

FINDINGS OF FACT

1. By petition dated May 4, 2023, Lloyd Ray Dunn II submitted a petition for declaratory ruling. Included with this petition were the AANA Position on CRNAs Teaching AA Students in the Clinical Setting, A Final Order of the State of Florida Board of Nursing in re the Petition for Declaratory Statement of Paul Dow, CRNA, and minutes of the Nebraska Board of Nursing from October 13, 2022.

2. Dunn seeks a declaratory ruling regarding whether it is within the scope of practice for CRNAs in Alabama to train or supervise Anesthesiologist Assistants or Anesthesiologist Assistant Students. Dunn, a CRNA, states that "many CRNAs are employees of an anesthesia group or hospital that may choose to employ AAs. Knowing this reality, CRNAs are forced to orient new AAs to practice when CRNAs are unaware of the training or skill level of this provider type." Dunn further notes that "the AA student is not equal to the CRNA student (SRNA). AAs are not required to have any patient experience prior to entry to the program. This has the potential to place a CRNA at a tremendous liability if required to train the AA student."

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. Dunn is substantially affected by the Board's rule regarding scope of practice for CRNA's because he possesses a Certificate of Qualification to engage in advanced practice nursing as a CRNA and is seeking guidance regarding the scope of his practice. Although the petition for declaratory ruling also seeks a determination regarding Alabama Board of Medical Examiners Administrative Code § 540-X-7-.49, and although the ABN's answering of this petition necessarily involves an analysis of the ALBME regulations, the ABN only has jurisdiction to issue a declaratory ruling with respect to a rule enforceable by the ABN. In the absence of any guidance from the ALBME regarding the meaning of its laws and regulations, the ABN must answer the question regarding its own licensees' scope of practice by incorporating a plain reading of the ALBME law and regulations. Should the ALBME in the future amend or offer different guidance regarding its law and/or regulations, the ABN could certainly revisit the questions answered in this declaratory ruling.

CONCLUSIONS OF LAW

1. A petition for declaratory ruling to the Alabama Board of Nursing should state the name and address of the petitioner, a statement of facts sufficient to show that the petitioner is substantially affected by the rule, and identification of the rule, statute or order and the reasons for the questions. Alabama Board of Nursing Administrative Code § 610-X-1-.09. Petitioner has satisfied these requirements.

2. Section 34-21-81(4)(c) of the Code of Alabama (1975) provides:

> (4) ADVANCED PRACTICE NURSING. The delivery of health care services by registered nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that prepares nurses for advanced practice roles as certified registered nurse practitioners, certified nurse midwives, certified nurse anesthetists, and clinical nurse specialists:
>
> (c) Practice as a certified registered nurse anesthetist (CRNA) means the performance of or the assistance in any act involving the determination, preparation, administration, procedural ordering, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures. The nurse anesthetist is qualified in accordance with Section 27-46-3 and is licensed by the Board of Nursing and functions under the direction of or in coordination with a physician licensed to practice medicine, a podiatrist, or a dentist, who is immediately available. Nothing in this paragraph shall be construed to restrict the authority of a health care facility to adopt policies relating to the provision of anesthesia and analgesia services.

The Alabama Board of Nursing has the statutory authority to adopt standards of nursing practice. Ala. Code (1975) § 34-21-2(j)(23). "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." ABN Admin. Code § 610-X-9-.04.

3. The American Association of Nurse Anesthetists Scope of Nurse Anesthesia Practice states: "The scope of an individual CRNA's practice is determined by education, experience, local, state and federal law, and organization policy."

4. The American Society of Anesthesiologists most recently amended its Statement Comparing Certified Anesthesiologist Assistant and Certified Registered Nurse Anesthetist Education and Practice on October 26, 2022. The statement says: "differences do exist between anesthesiologist assistants and nurse anesthetists with regard to the educational program prerequisites, instruction, and requirements for supervision in practice as well as maintenance of certification. These are the result of the different backgrounds associated with the two professions related to development, and the stated preference of anesthesiologist assistants to work exclusively on teams with physician anesthesiologists. The committee found no evidence that any of these differences result in disparity in knowledge base, technical skills, or quality of care when supervised by a physician anesthesiologist."

5. The American Association of Nurse Anesthesiology has issued a statement titled "AANA Position on CRNAs Teaching AA Students in the Clinical Setting." The AANA concludes: "While CRNAs may be able to train other professional in specific clinical skills, CRNAs cannot educate other professionals in the entire practice of anesthesia if they are a dependent healthcare provider or their scope of practice is more limited than that of CRNAs. Therefore, the AANA's position and advice is that CRNAs not participate in teaching anesthesiologist assistant (AA) students in any setting." The AANA based this position on four factors: (1) the fact that AAs work under the direct supervision of anesthesiologists, whereas CRNAs may practice as autonomous providers; (2) tasks are delegated to AAs by an anesthesiologist, whereas a CRNA may "formulate and implement anesthesia care plans autonomously based on critical thinking and in-depth knowledge"; (3) differences in education and clinical background, and (4) CRNAs can train other providers on "specific technical skills" but "cannot educate and evaluate students" who are not "training to be independent/autonomous anesthesia providers."

6. In 2006, the State of Florida Board of Nursing determined that a CRNA in Florida "is not authorized by statute, and is not qualified by licensure, education or experience, to supervise an AA trainee engaged in the practice of anesthesia assistance during an approved training program." The bases for this ruling appears to have been Florida laws prohibiting a CRNA from "aiding, assisting, procuring, employing or advising any unlicensed person to practice a profession contrary to the chapter regulating the profession" and the Florida law which prohibits "anyone other than a physician to supervise an AA, much less an unlicensed AA intern or trainee." In Re: The Petition for Declaratory Statement of Paul Dow, CRNA, DOH-06-1351.

7. In October 2022, the Nebraska Board of Nursing adopted the AANA Position on CRNAs Teaching AA Students in the Clinical Setting. The Nebraska Board's minutes note that "having CRNAs teach AA students was not appropriate because the two professions use different models" and that "the practice would be akin to making nurse practitioners responsible for teaching physician assistants."

8. In Alabama, the statutory authority for anesthesiologist assistants is the law regarding assistants to physicians. See Ala. Code (1975) § 34-24-290, et seq. Assistants to physicians may render medical services "when the services are rendered under the supervision of a licensed physician or physicians approved by the board." Ala. Code § 34-24-292(a). "In the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation, or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service." Ala. Code § 34-24-292(b). Under this statutory authority, the Alabama Board of Medical Examiners has promulgated rules regarding the practice of anesthesiologist assistants in Alabama.

A. "Anesthesiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between an anesthesiologist assistant and the supervising anesthesiologist to whom the assistant is registered or an anesthesiologist who is acting in a Board-approved supervisory role to the anesthesiologist assistant." ALBME Admin. Code § 540-X-7-.56(1). Although supervision does not "require the constant physical presence of the supervising anesthesiologist[,]" "the anesthesiologist must remain readily available in the facility" and except in life-threatening situations, "the supervising anesthesiologist shall be readily available for personal supervision and shall be responsible for pre-operative, intra-operative and post-operative care." ALBME Admin. Code § 540-X-7-.56(2) and (3). Moreover, "[t]he supervising anesthesiologist shall insure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the anesthesiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising anesthesiologist. The supervising anesthesiologist's signature on the anesthetic record will fulfill this requirement for all written entries on the anesthetic record." "All of the above is to emphasize that there shall be no independent, unsupervised practice by anesthesiologist assistants." ALBME Admin. Code § 540-X-7-.56(4) and (5).

B. The Board of Medical Examiners further requires that "the supervising anesthesiologist shall, at all times, be responsible for the activities of the anesthesiologist assistant." ALBME Admin. Code § 540-X-7-.58(1). The medical services provided by the anesthesiologist assistant are "delegated by the supervising anesthesiologist." ALBME Admin. Code § 540-X-7-.58(2). The AA "administers anesthesia under the supervision of an anesthesiologist," performs CPR at the direction of a physician, "establishes multi-parameter monitoring of patients prior to, during and after anesthesia or in other acute care situation. This may include invasive/non-invasive monitoring under the direct supervision of an anesthesiologist. Also, other monitoring as may be developed for anesthesia and intensive care use may be incorporated." ALBME Admin. Code § 540-X-7-.58(2)(a), (b), and (c). The AA "manages perioperative anesthetic care, including ventilatory support and other respiratory care parameters directed by an anesthesiologist," "instructs others in principles and practices of anesthesia, respiratory care and cardiopulmonary resuscitation as directed by the anesthesiologist," and "assists an anesthesiologist in gathering routine perioperative data." ALBME Admin. Code § 540-X-7-.58(2)(d), (e), and (f). "The choice of anesthesia and drugs to be employed are prescribed by anesthesiologist for each patient except: 1. where standard orders for the conduct of a specified anesthetic are prescribed; and 2. where life-threatening emergencies arise necessitating the utilization of standard therapeutic or resuscitation procedures. An anesthesiologist will be immediately available for consultation regarding changes from standard procedures." ALBME Admin. Code § 540-X-7-.58(2)(h). The anesthesiologist practices pursuant to a model job description promulgated by the Board of Medical Examiners, except that a supervising anesthesiologist can request changes and additional specialized duties and tasks for approval by the Board of Medical Examiners. ALBME Admin. Code § 540-X-7-.58(3), (4), (5), (6), and (7), and Appendix C to Chapter 7. "An anesthesiologist assistant may administer drugs commonly used in anesthesia practice, by protocol (i.e., routine or urgent/emergent) or as directed by the supervising anesthesiologist who formulates the anesthetic plan and maintains continual supervision." ALBME Admin. Code § 540-X-7-.61.

C. The ALBME rules do allow for the reality that different models of health care organizations may result in an AA not being in the direct employ of the anesthesiologist. In those cases, the ALBME places on the applicant "the burden of satisfying the Board that there exists the supervisory relationship between the anesthesiologist and the anesthesiologist assistant contemplated by these rules." In determining whether to approve the registration, the ALBME considers the following factors: "The anesthesiologist's authority to terminate the employment of the anesthesiologist assistant"; "The anesthesiologist's authority to determine or recommend levels of compensation for the anesthesiologist assistant"; The anesthesiologist's authority to enforce compliance with orders and directives and to initiate suitable disciplinary action for violation of such orders and directives"; "The extent to which the anesthesiologist assistant may be subject to the direction and control in matters relating to patient care of a person other than the anesthesiologist to whom the assistant is registered"; and "The extent to which the anesthesiologist assistant is subject to the supervisory authority of a non-physician." ALBME Admin. Code § 540-X-7-.55. A plain reading of these factors suggests that the ALBME considers the supervision by an anesthesiologist to be more than just supervision of the medical services provided by the AA.

9. CRNAs and AAs may both provide anesthesia services in the context of the anesthesia care team model. CRNAs may also provide anesthesia services at the direction of or in coordination with a physician, podiatrist, or dentist, meaning that the CRNA may be the sole anesthesia provider in a facility, unlike an AA, for whom the supervising anesthesiologist must be on the premises. The scopes of practice for CRNAs and AAs overlap, and there is no reason why CRNAs and AAs cannot work alongside one another in anesthesiology practices in Alabama. Nevertheless, the law and regulations pertaining to AAs clearly require that AAs be supervised by anesthesiologists, and that supervision is described as "direct, continuing, and close." The scope of practice for a CRNA in Alabama must be congruent with Alabama law. Thus, because Alabama law requires an anesthesiologist to "supervise" an AA, it is not within the scope of practice of a CRNA in Alabama to supervise an AA or, by implication, an AA Student (may also be referred to as "trainee"). This does not mean that a CRNA cannot perform management activities that indirectly affect AAs but do not touch upon the medical services provided by AAs. By way of example but not exclusion, a CRNA may be charged with managing scheduling for an anesthesia practice that utilizes both CRNAs and AAs without exceeding his/her scope of practice.

10. The question of whether it is within the scope of practice of a CRNA to "train" an AA or AA Student is a more difficult question. The ABN's law and rules do not provide a definition of "train." Training could mean allowing another person, licensed or unlicensed, to observe the CRNA performing a procedure. Training could mean a CRNA reviewing facility policies or providing instruction regarding use of equipment in the operating room. Training could also include a CRNA observing and instructing an AA or AA Student who is performing an anesthesia-related skill and/or instructing an AA or AA Student regarding the independent judgments made in providing anesthesia care. There are endless examples of actions that could constitute training, some of which would overlap with supervision or would involve the AA being trained to practice beyond the scope of his/her own license and registration.

11. The ABN's standards of practice speak to assignment, supervision, and delegation. "Supervision, Direct" requires that "the licensed nurse is physically present in the facility and readily accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. Direct supervision by a registered nurse is required for new

graduates practicing on a temporary permit." ABN Admin. Code § 610-X-6-.01(20). "Supervision, Indirect" requires the licensed nurse to be "available for periodic inspection and evaluation through physical presence, electronic or telephonic communication for direction, consultation, and collaboration." ABN Admin. Code § 610-X-6-.01(21). "[A]ssignment of tasks from one licensed nurse to another" "transfer[s] . . . responsibility and accountability for nursing activities." ABN Admin. Code § 610-X-6-.01(4). In assignment of tasks to "unlicensed assistive personnel", the "licensed nurse making the assignment retains accountability for accurate and timely completion and outcome of the tasks." ABN Admin. Code § 610-X-6-.01(3). Delegation is "[t]he act of authorizing a competent individual to perform selected nursing activities supportive to registered nurses or licensed practical nurses in selected situations, while retaining accountability for the outcome, if the delegation is to an unlicensed individual." ABN Admin. Code § 610-X-6-.01(7). "Supervision shall be provided to individuals to whom nursing functions or responsibilities are delegated or assigned." ABN Admin. Code § 610-X-6-.11(5). "Tasks delegated to unlicensed assistive personnel may not include tasks that require: . . . Invasive or sterile procedures" and "assistance with medications, except as provided in Chapter 610-X-7". ABN Admin. Code § 610-X-6-.011(4)(b) and (c). ABN's rules do not appear to directly address assignment or delegation to persons who are licensed in some healthcare profession other than nursing.

12. Nursing students are required to engaged in clinical learning experiences, which in Alabama nursing programs must be supervised by a clinical supervisor who holds a RN license and is "readily accessible to assign or prescribe a course of action, provide procedural guidance, direction, and evaluation for students engaged in the clinical learning experience." ABN Admin. Code § 610-X-3-.02(14). When student nurses are in clinical settings, they often perform nursing functions that have been assigned to the licensed nurse employed at the facility, and this does not constitute an unlawful delegation to unlicensed assistive personnel. The reason for this exception is founded in the Alabama Nurse Practice Act, which exempts from the practice of nursing "the practice of nursing by students enrolled in approved schools of nursing, as may be incidental to their course of study." Ala. Code (1975) § 34-21-6. But this statute also exempts "nursing aides, orderlies, and attendants, carrying out duties necessary for the support of nursing services, including those duties which involve supportive nursing services performed in hospitals and elsewhere under the direction of licensed physicians or dentists." Id.

13. The Standards and Guidelines for the Accreditation of Educational Programs for the Anesthesiologist Assistant, Adopted by the American Academy of Anesthesiologist Assistants, American Society of Anesthesiologists Accreditation Review Committee for the Anesthesiologist Assistant and Commission on Accreditation of Allied Health Education Programs, provide that "Faculty for the supervised clinical practice portion of the educational program must include a physician alone or a physician with an Anesthesiologist Assistant or a physician with another non-physician anesthesia provider." (2016 Guidelines, page 5).

14. Without interrupting the direct, continuing and close supervision of an AA or AA Student by the supervising anesthesiologist, an AA or AA Student could certainly observe the provision of anesthesia care by a CRNA. A CRNA could certainly orient an AA to facility equipment and policies (e.g. use of automated dispensing cabinet, location of equipment, review of policy manuals, etc.). Given the statutory requirement that the AA is "conclusively presumed to be the agent . . . solely of the licensed physician [in the case of an AA, it would be an anesthesiologist] under whose supervision he or she performs the [medical] service," and the regulatory requirements for direct, continuing, and close supervision of the AA by the supervising anesthesiologist and delegation of the medical services from the supervising anesthesiologist to the AA, it is difficult to conceive how a CRNA could direct an AA or AA Student in the AA or AA

Student's provision of a medical service that must be directly supervised by an anesthesiologist, and it is difficult to conceive how an anesthesiologist who is required to directly supervise and delegate to an AA could institute a global delegation of the AA's training to a CRNA. In any case, determining whether it is within the CRNA's scope of practice to perform a training function with regard to an AA or AA Student would require a task-specific analysis conducted while taking into consideration the limitations imposed by the Alabama laws governing AA's.

RULING

The Petition for a Declaratory Ruling is hereby granted, and the Alabama Board of Nursing hereby rules as follows:

1. Because Alabama law requires an Anesthesiologist Assistant to be supervised by an anesthesiologist who has a direct, continuing and close supervisory relationship with the AA, it is not within the scope of practice for a Certified Registered Nurse Anesthetist to supervise an Anesthesiologist Assistant or Anesthesiologist Assistant Student.

2. Because Anesthesiologist Assistants and Certified Registered Nurse Anesthetists have overlapping scopes of practice, and in the absence of a statutory or regulatory definition of the word "train," whether it is within the scope of practice for a Certified Registered Nurse Anesthetist to train an Anesthesiologist Assistant or Anesthesiologist Assistant Student would involve a task-specific analysis. There may well be situations in which it would be within the scope of practice of a CRNA to train an AA or AA Student on a specific task that does not by law require the anesthesiologist to directly supervise the AA or AA Student, but given the statutory and regulatory constraints regarding supervision of AAs and AA Students, and the lesser degree of autonomy under which AAs practice, a determination would have to be made on a task by task basis. It does not appear that it would be within the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologist of global responsibility for training of the anesthesiologist's supervisee AA/AA Student.

DONE and **ORDERED** on this the 19th day of May, 2023.

ALABAMA BOARD OF NURSING

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

CERTIFICATE OF SERVICE

I hereby certify that this the 22nd day of May, 2023, 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:

LLOYD RAY DUNN II
14810 HIGHWAY 171
NORTHPORT, ALABAMA 35475

ALABAMA BOARD OF NURSING

Peggy S Benson

PEGGY S. BENSON, MSHA, MSN, NE-BC
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DECLARATORY RULING OF

THE ALABAMA STATE BOARD OF MEDICAL EXAMINERS

On December 14, 2023, the Alabama State Board of Medical Examiners ("the Board") considered a request submitted on behalf of the Alabama Board of Nursing ("Petitioner") for a declaratory ruling pursuant to Ala. Code § 41-22-11 and Ala. Admin. Code r. 540-X-1-.10, concerning the application of Alabama's statutes and regulations governing the practice of anesthesiology assistants ("AAs"), physician anesthesiologists, and the participation by certified registered nurse anesthetists ("CRNAs") in the training of AAs.

FACTS PRESENTED

Petitioner presents the following factual background[1]:

CRNA Scope of Practice

Section 34-21-81(4)(c) of the Code of Alabama (1975) provides:

> (4) ADVANCED PRACTICE NURSING. The delivery of health care services by registered nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that prepares nurses for advanced practice roles as certified registered nurse practitioners, certified nurse midwives, certified registered nurse anesthetists, and clinical nurse specialists:
>
> (c) Practice as a certified registered nurse anesthetist (CRNA) means the performance of or the assistance in any act involving the determination, preparation, administration, procedural ordering, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures. The nurse anesthetist is qualified in accordance with Section 27-46-3 and is licensed by the Board of Nursing and functions under the direction of or in coordination with a physician licensed to practice medicine, a podiatrist, or a dentist, who is immediately available. Nothing in this paragraph shall be construed to restrict the authority of a health care facility to adopt policies relating to the provision of anesthesia and analgesia services.

The Alabama Board of Nursing has the statutory authority to adopt standards of nursing practice. Ala. Code § 34-21-2(j)(23). "The certified registered nurse

[1] A complete copy of Petitioner's petition is attached as Attachment A.

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." Ala. Admin. Code r. 610-X-9-.04 (emphasis added).

Recently, Petitioner answered the following questions regarding a Declaratory Ruling[2]:

> Pursuant to Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to train an anesthesiologist assistant or anesthesiologist assistant student?
>
> Pursuant to Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to supervise an anesthesiologist assistant or anesthesiologist assistant student?
>
> The ABN answered as follows:
>
> Because Alabama law requires an Anesthesiologist Assistant to be supervised by an anesthesiologist who has a direct, continuing and close supervisory relationship with the AA, it is not within the scope of practice for a Certified Registered Nurse Anesthetist to supervise an Anesthesiologist Assistant or Anesthesiologist Assistant Student.
>
> Because Anesthesiologist Assistants and Certified Registered Nurse Anesthetists have overlapping scopes of practice, and in the absence of a statutory or regulatory definition of the word "train," whether it is within the scope of practice for a Certified Registered Nurse Anesthetist to train an Anesthesiologist Assistant or Anesthesiologist Assistant Student would involve a task-specific analysis. There may well be situations in which it would be within the scope of practice of a CRNA to train an AA or AA Student on a specific task that does not by law require the anesthesiologist to directly supervise the AA or AA Student, but given the statutory and regulatory constraints regarding supervision of AAs and AA Students, and the lesser degree of autonomy under which AAs practice, a determination would have to be made on a task by task basis. It does not appear that it would be within the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologist of global responsibility for training of the anesthesiologist's supervisee AA Student.

In reaching these conclusions, the ABN considered Alabama law affecting the supervision and oversight of anesthesiologist assistants and anesthesiologist

[2] A complete copy of Petitioner's declaratory ruling is attached as Attachment B.

assistant trainees because the scope of practice for a CRNA must be congruent with Alabama law. The ABN considered multiple legal requirements imposed by statute and rules of the Alabama Board of Medical Examiner.

Overview of Law Regarding Anesthesiologist Assistant and Trainee Supervision

In Alabama, the statutory authority for anesthesiologist assistants is the law regarding assistants to physicians. See Ala. Code § 34-24-290, et seq. Assistants to physicians may render medical services "when the services are rendered under the supervision of a licensed physician or physicians approved by the board." Ala. Code § 34-24-292(a). "In the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation, or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service." Ala. Code § 34-24-292(b). Note that § 34-24-292 is labelled: "Services performed by trainees and assistants." This was not the title of the Act, but rather was the heading of Section 3 within the body of the Act itself, as originally enacted by the Alabama Legislature. See Acts of Alabama 1971 at page 3148 ("Section 3: Services Performed by Trainees and Assistants."). Under this statutory authority, the Alabama Board of Medical Examiners has promulgated rules regarding the practice of anesthesiologist assistants in Alabama.

"Anesthesiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between an anesthesiologist assistant and the supervising anesthesiologist to whom the assistant is registered or an anesthesiologist who is acting in

a Board-approved supervisory role to the anesthesiologist assistant.” Ala. Admin. Code r. 540-X-7-.56(1). Although supervision does not require the constant physical presence of the supervising anesthesiologist, the anesthesiologist must remain readily available in the facility, and except in life-threatening situations, “the supervising anesthesiologist shall be readily available for personal supervision and shall be responsible for pre-operative, intra-operative and post-operative care.” Ala. Admin. Code r. 540-X-7-.56(2) and (3). Moreover, "[t]he supervising anesthesiologist shall insure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the anesthesiologist assistant." . . . "All of the above is to emphasize that there shall be no independent, unsupervised practice by anesthesiologist assistants." Ala. Admin. Code r. 540-X-7-.56(4) and (5).

The [Board] further requires that "the supervising anesthesiologist shall, at all times, be responsible for the activities of the anesthesiologist assistant." Ala. Admin. Code r. 540-X-7-.58(1). The medical services provided by the anesthesiologist assistant are "delegated by the supervising anesthesiologist." Ala. Admin. Code r. 540-X-7-.58(2). The AA "administers anesthesia under the supervision of an anesthesiologist," and performs various tasks and patient monitoring. Ala. Admin. Code r. 540-X-7-.58(2)(a), (b), and (c). The AA "manages perioperative anesthetic care, including ventilatory support and other respiratory care parameters directed by an anesthesiologist," and "instructs others in principles and practices of anesthesia, respiratory care and cardiopulmonary resuscitation as directed by the anesthesiologist." Ala. Admin. Code r. 540-X-7-.58(2)(d) and (e). "An anesthesiologist assistant may administer drugs commonly used in anesthesia practice, by protocol (i.e., routine or urgent or emergent) or as directed by the supervising

anesthesiologist who formulates the anesthetic plan and maintains continual supervision." Ala. Admin. Code r. 540-X- 7-.61.

Reason for the Question

Recently, Petitioner received inquiries regarding the ability of CRNAs to train AA Trainees, and Petitioner has requested clarification from the [Board] regarding its governing statutes and rules to be able to answer these questions.

Specifically, a Board-licensed physician/anesthesiologist presented the following questions:

> Question 1: There is a question as to whether or not a CRNA under the direction and supervision of an anesthesiologist, can be involved in the teaching of an AA student. The declaratory ruling by the ABON dated May 19, 2023, is vague in its final statement: 'It does not appear that it would be in the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologists of global responsibility for training of the anesthesiologist's supervisee ANAA student.' It would seem that a medically directed CRNA would not be in a situation that would meet the 'global' part of that sentence, but clarification is needed. I have CRNAs that want to teach AA students, but this verbiage has them concerned about an enforcement action by ABON for a possible scope of practice violation.
>
> Can a CRNA participate in the training and teaching of an AA student while being medically directed by an Anesthesiologist? To be specific, can a CRNA, who is under the medical direction of an Anesthesiologist, have an AA student in the operating room with them, and assist in the teaching and training of said AA student?
>
> Question 2: Can a CRNA teach an AA student about providing anesthesia care? In other words, if an AA student is "observing" a CRNA, (which is specifically allowed in the declaratory ruling) can that CRNA explain what they are doing, and answer questions regarding anesthesia care?
>
> Please provide some clarification on this matter. . . . We know that CRNAs in various institutions teach respiratory therapists, paramedics, medical students, anesthesia residents, and crna [sic] students. There is no certainly no reason they shouldn't be able to teach AA students as well. . . .One point that we need to be clear about is that we are not talking about AAs. AAs are

licensed practitioners who work under the supervision and direction of Anesthesiologists, at a maximum ratio of 4:1.

We are specifically talking about the education of anesthesia students of an accredited learning institution in the state of Alabama. In an anesthesia teaching model as described by the COA of nurse anesthesia programs, the anesthesiologist and/or the [CRNA] are the ONLY individuals with responsibility for anesthesia care of the patient . . . . The licensed anesthesia provider(s) is/are completely responsible for the care of the patient, regardless of [the] presence of any student. The main point is that an AA student is no different than a CRNA student when it comes to who is responsible for the care of the patient.

Clinical supervision - Clinical supervision of students must not exceed (1) 2 students to 1 CRNA, or (2) 2 students to 1 physician anesthesiologist, if no CRNA is involved. The CRNA and/or physician anesthesiologist are the only individual(s) with responsibility for anesthesia care of the patient, and have responsibilities including, but not limited to: providing direct guidance to the student; evaluating student performance; and approving a student's plan of care . . . .

The declaratory ruling states that a task specific analysis would be required to determine if a specific training activity is within the scope of practice of a CRNA. What would be involved in that process and how would it need to be initiated?

. . . My goal is to get specific guidance and verbiage from ABN, that CRNAs can be directly involved in the education of AA students (or medical students, nursing students, paramedics, etc. for that matter) in the same way that they can be with CRNA students, such that in any of those scenarios, the licensed anesthesia providers are the only individuals responsible for the care of the patient, which makes the presence or absence of a student irrelevant as it pertains to scope of practice.

A CRNA also inquired whether the following situation would be within the scope of practice for a CRNA:

. . . the supervising Anesthesiologist leaving the AA student with the CRNA alone in the operating room to continue instruction on anesthesia modalities in the absence of the attending Anesthesiologist. The doctor is available in the facility, but not constantly present in the OR.

Standards for Anesthesiologist Assistant Programs

In his requests to Petitioner, the physician/anesthesiologist referred to the "COA of nurse anesthesia programs." The relevant accreditation standards are those for anesthesiologist assistant programs, which state:

> Faculty for the supervised clinical practice portion of the educational program must include a physician alone or a physician with an Anesthesiologist Assistant or a physician with another non-physician anesthesia provider. Resident physicians may contribute to clinical or didactic instruction. However, the physician faculty roster should be composed predominantly of board-certified physician anesthesiologists.
>
> Commission on Accreditation of Allied Health Education Programs Standards and Guidelines for the Accreditation of Educational Programs for the Anesthesiologist Assistant (2016) at page 5.

Further, the standards state:

> The intent of the students' patient management experience must always be focused on patient safety while maximizing the educational experience. Students must undertake patient care duties commensurate with their level of competency. The students must at no time be considered the anesthesia provider of record. When students are assigned to any patient care duty, a physician anesthesiologist must be immediately available to provide hands-on care that can affect the patient outcome. As students approach graduation, the supervising physician anesthesiologist may assign to them an increased level of responsibility for the delivery of anesthesia care to patients commensurate with their demonstrated knowledge, skills, and clinical judgment.
>
> Anesthesiologist Assistant (2016) at page 7.

Anesthesiologist Assistant Program Handbook

> The VCOM student handbook describes the clinical supervision as follows:
>
> Supervision of Students.
>
> A student on clinical rotations must be supervised in patient care situations. Supervision involves a responsible licensed physician anesthesiologist to:

- Be physically located in the facility where patient treatment is rendered;

- Grant authorization of services provided by the student anesthetist;
- Examine all patients seen by the student anesthetist;
- Witness procedures when performed by the student anesthetist;
- Be physically present during any invasive procedure; and
- Assure the documentation in the patient's medical record is appropriate.

VCOM/Bluefield Master of Health Science in Anesthesia Program, 2023-2024 Student Handbook at Page 130.

The VCOM student handbook also states:

Performing Patient Care Activities

Student involvement in patient care is permitted when authorized by the Program and the assigned clinical faculty member. Supervision by a physician anesthesiologist or authorized anesthesia/medical professional (i.e., CAA, CRNA, resident in training, etc.) who are under the supervision of the faculty physician anesthesiologist is required. In certain cases, such as PACU or ICU, a nurse, or Advanced Practice Provider (APP) is an appropriate supervisor. The student's supervising faculty/preceptor is the faculty member that is responsible for the patient's care. The Director of Clinical Rotations and the Assistant Program Director for Clinical Affairs assure all core clinical faculty have the appropriate credentialing for student supervision. Students may not perform any patient treatment or procedures without appropriate supervision and that is not appropriate for his or her level of training. The faculty member/preceptor should be present for any treatment or invasive procedure. **Students are not to take the place of qualified anesthesia staff.**

Students may not write patient care orders independently and all such orders must be reviewed and approved by the faculty member/preceptor. Students may not accept payment or remuneration for services.

VCOM/Bluefield Master of Health Science in Anesthesia Program, 2023-2024 Student Handbook at Page 130.

Considering Accreditation Requirements and Handbook Policies in Light of Alabama Law

Alabama law requires that "[i]n the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation,

or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service." Ala. Code § 34-24-292(b). As noted above, the heading for this statutory provision makes clear that it applies to "Services performed by trainees and assistants." If a CRNA were assigned to supervise the trainee in the performance of anesthesia services, would not the trainee then become an agent of the CRNA, in violation of Alabama law? And, when the [Board] rules provide that the anesthesiologist's supervision of an anesthesiologist assistant must be "direct," and that the anesthesiologist is responsible for pre-operative, intra-operative, and post-operative care of the anesthesiologist assistant's patient, would not the introduction of the CRNA as the person overseeing the provision of anesthesia services by the trainee interrupt the required "direct" nature of the supervision in Alabama and introduce the CRNA as someone other than the anesthesiologist who is responsible for the care? These questions are raised because of the very specific requirements of the Alabama statute and rules pertaining to the supervision of anesthesiologist assistant trainees.

Petitioner is Substantially Affected by the Law/Rule

There appears to be continuing confusion regarding the authority of an anesthesiologist to delegate to a CRNA some or all of the anesthesiologist's statutory and regulatory supervisory responsibilities for an AA trainee. [Petitioner] is tasked with determining if certain acts are within the scope of practice of a CRNA; yet, because a CRNA's scope of practice must be congruent with Alabama law, [Petitioner] cannot determine the limits of the scope of practice of a CRNA without the [Board] clarifying the applicability of the [Board's] governing statutes and rules related to anesthesiologist

supervision of AA trainees. As such, Petitioner is substantially affected by the law/rules in question and requests that the [Board] answer the following questions:

QUESTIONS PRESENTED

Considering the requirements of and limitations imposed on supervising anesthesiologists by Ala. Code § 34-24-292 and Ala. Admin. Code r. Chapter 540-X-7, may a supervising anesthesiologist who is supervising an AA trainee do either or both of the following:

(1) Delegate to a CRNA who is performing the functions and activities of a CRNA under the direction of or in coordination with that supervising anesthesiologist the task of verbally teaching, training, or educating the AA trainee who is observing the CRNA performing any of the functions and activities of a CRNA? If the answer is yes, regarding which functions and activities of a CRNA may the CRNA verbally teach, train, or educate the AA trainee pursuant to the delegation from the supervising anesthesiologist?

(2) Delegate to a CRNA who is acting under the direction of or in coordination with the anesthesiologist the task of training the AA trainee by permitting the CRNA to supervise the AA trainee's performance of any of the functions and activities of an AA, including but not limited to the AA trainee's provision of anesthesia services to a patient? If the answer is "yes," which functions and activities of an AA may the supervising anesthesiologist delegate to the CRNA to supervise the AA trainee in performing?

ANSWER

A supervising anesthesiologist who has undertaken to provide clinical training to an AA trainee may delegate to a CRNA acting under his or her direction tasks relating to the teaching, training, or education of an AA trainee so long as the supervising anesthesiologist directs the

CRNA to perform tasks that are commensurate with the CRNA's training and experience, are appropriate for the AA trainee's skill and training, and maintains supervision and responsibility for the AA trainee's education, acts, and performance.

DISCUSSION

As a threshold matter, the Board notes that the term or classification "anesthesiologist assistant trainee" does not appear in the Board's regulations or Alabama law. See Ala. Code § 34-24-290, *et seq*. In fact, "anesthesiologist assistant" ("AA") is a classification of physician assistant created by Board rule, rather than the Alabama Code. Ala. Admin. Code r. 540-X-7-.02(2).

In Petitioner's factual background, much uncertainty attaches to Ala. Code § 34-24-292, which governs the provision of medical services by licensed assistants to physicians. The heading for the statute, as published by Thomson Reuters reads: "Services performed by trainees and assistants." This is the only time the word "trainee" is used. Notably, this same code section, when published by Michie's Alabama Code, falls under the heading: "Performance of medical services – Prescribing and administering drugs." The word "trainee" is not used. The term "Trainee" appears in Ala. Code § 34-24-290 and is defined as "[a] person who is currently enrolled in an approved program in this state." However, the term is never used in the rest of the code section governing physician assistants. To answer Petitioner's questions, the Board must resolve whether this statute governs AA trainees. Petitioner, in correspondence with the managing partner of an Alabama-based anesthesiology group and medical director of anesthesia at a hospital in Alabama, appears to read the word "trainee" into Section 292 and apply it to AA trainees solely based on the use of the term "trainee" in the publisher's heading. The Board does not agree.

The Board declines to look to the heading of Ala. Code § 34-24-292 to resolve this question because the terms of the statute are clear.[3] Section 290, *et seq*., and the Board's rules exclusively govern the qualifications, registration, and practice of licensed AAs. All licensed AAs must be registered to a supervising anesthesiologist, and "independent, unsupervised practice" by AAs is expressly prohibited. However, the question here is not the practice of licensed AAs but the training of unlicensed trainees. An anesthesiologist routinely delegates duties to a CRNA during the usual course of practice, and nothing in the law or rules prohibits a physician from training students.

Under prior Board opinions, physicians can delegate many functions and responsibilities to unlicensed personnel. On March 23, 1999, the Board issued an opinion concerning whether physicians can delegate medication administration to unlicensed personnel. The Board opined that the physician's decision to provide medication cannot be delegated; however, the Board stated: "if unlicensed assistive personnel in a physician's office or clinic administer medication by injection to a patient pursuant to delegation by the physician and under the direct supervision of the physician, it is the Board's opinion that no violation of any [Board] rule has occurred; however, the physician remains responsible for the actions of the employee."[4] (emphasis added). Similarly, in May 2009, the Board adopted several opinions concerning the delegation of duties, such as the duty to obtain a history and physical, and to dictate a discharge summary. When delegation was permitted, the Board's opinion was that this delegation was permitted so long as the physician

[3] *See Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R.,* 331 U.S. 519, 528-29 (1947) ("[The] heading [of a statute] is but a short-hand reference to the general subject matter involved. … Readings and titles are not meant to take the place of the detailed provisions of the text. Nor are they necessarily designed to be a reference guide or a synopsis. … For interpretative purposes, they are of use only when they shed light on some ambiguous word or phrase. They are but tools available for the resolution of a doubt. But they cannot undo or limit that which the text makes plain.")

[4] Opinion of the Alabama State Board of Medical Examiners, March 23, 1999. A full copy is attached as Attachment C.

signed off on the discharge summary and "accept[ed] full responsibility."[5] Physician responsibility for the delegate's actions is, therefore, the cornerstone of this and similar declaratory rulings.

This principle of physician responsibility is codified in Ala. Code § 34-24-292(b). Petitioner misreads Ala. Code § 34-24-292(b) to prohibit AA trainees from working under the direction of a CRNA; in fact, this code section means that an anesthesiologist is presumptively responsible for the actions of an AA trainee who is being educated by a CRNA for medical liability purposes. This section shields the CRNA from liability for the actions of an AA trainee and directs liability to the anesthesiologist who has delegated the training activities to the CRNA and is directing or coordinating the activities of both the CRNA and AA trainee.

To ground these principles in fact, we must discuss the origin and putative application of this declaratory ruling request. A controversy arose when AA students sought to engage in clinical rotations at a local Alabama hospital. A CRNA sought a declaratory ruling from Petitioner regarding the scope of practice of CRNAs and whether they could participate in this training. When Petitioner issued a ruling, individuals connected with the training program asked for clarification of the ruling's statement: "It does not appear that it would be within the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologist of global responsibility for training of the anesthesiologist's supervisee AA Student." The Board agrees with Petitioner that a CRNA should not accept "global" or sole or all-encompassing responsibility for the training or actions of an AA student. This ruling accords with this statement, and the Board emphasizes that

[5] Opinions of the Alabama State Board of Medical Examiners, May 20, 2009, and September 16, 2009. A full copy is attached as Attachment D.

under this ruling, the supervising anesthesiologist, not the CRNA, is responsible for the AA student.[6]

Second, Petitioner was asked to explain portions of its ruling concerning what tasks a CRNA may perform. Petitioner poses this same question to the Board in its request for a declaratory ruling. Two specific questions posed to Petitioner were:

(1) "[C]an a CRNA, who is under the medical direction of an Anesthesiologist, have an AA student in the operating room with them, and assist in the teaching and training of said AA student?"; and

(2) "Can a CRNA teach an AA student about providing anesthesia care? In other words, if an AA student is 'observing' a CRNA, (which is specifically allowed in the declaratory ruling) can that CRNA explain what they are doing, and answer questions regarding anesthesia care?"

In the opinion of the Board, an anesthesiologist is not prohibited by law or regulation from coordinating with a CRNA to allow observation of a procedure or provide didactic training, provided all other relevant laws and regulations, such as those governing the patient's privacy and consent, are observed. The anesthesiologist who has undertaken to train an AA trainee is responsible for verifying the competence of the AA student, setting standards for his or her participation in a procedure, and delegating tasks to the CRNA or AA trainee that are commensurate with each person's skill and training. Further, the anesthesiologist is responsible

[6] It appears that the educational program presented by VCOM complies with both Petitioner's and this Board's declaratory rulings. The VCOM student manual states that "student involvement in patient care is permitted when authorized by the Program and the assigned clinical faculty member. Supervision by a physician anesthesiologist or authorized [CRNA] who [is] under the supervision of the faculty physician anesthesiologist is required." The Board does not agree that a CRNA can or should "supervise" an AA trainee in the formal or legal sense. A CRNA may assist in the training of an AA trainee, and those activities may encompass observation of the AA trainee performing tasks and providing guidance and training to the AA trainee; however, the Board does not endorse the existence of a legal supervisory relationship between the CRNA and the AA trainee.

for ensuring that the instruction provided by the CRNA meets the AA trainee's training criteria. So long as the anesthesiologist meets these conditions and complies with other program requirements, the Board's rules and regulations do not prevent the anesthesiologist from working with CRNAs to further an AA trainee's education. Indeed, the only deviation from the norm that the Board sees is to answer these questions in such a way as to deny AA trainees the same opportunities for program-appropriate clinical rotations as are offered to PA students, CRNP students, CRNA students, and medical students.[7]

The Board notes specially that this ruling accords with Ala. Code § 27-46-2, which permits a hospital to set out the scope of permissible activities of CRNAs in its bylaws, policies, rules, and regulations.[8] Because of the confusion surrounding this issue, and the potential for varying opinions on a CRNA's scope of practice, the Board advises hospitals wishing to utilize CRNAs in the training of AA trainees to specify in their bylaws, policies, rules, or regulations which, if any, training activities are permitted.

This ruling is based upon the precise facts presented and upon statutes and rules currently in existence. Should any relevant statutes or rules be amended or repealed, this ruling may no longer be valid.

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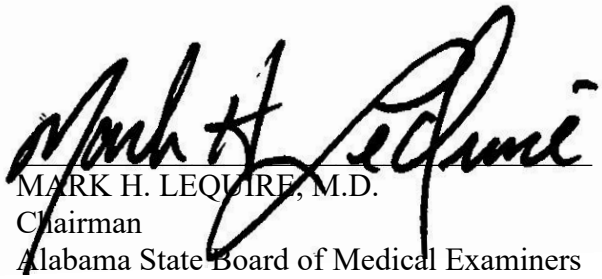
[7] The Board found this synthesis of the factual basis helpful in rendering its opinion: "We are specifically talking about the education of anesthesia students of an accredited learning institution in the state of Alabama. In an anesthesia teaching model as described by the COA of nurse anesthesia programs, the anesthesiologist and/or the crna [sic] are the ONLY individuals with responsibility for anesthesia care of the patient. If this applies to teaching CRNA students, it certainly would apply to AA students. And thus, there is no scope of practice implication in the teaching of AA students by CRNAs. The licensed anesthesia provider(s) is/are completely responsible for the care of the patient, regardless of the the [sic] presence of any student. The main point is that an AA student is no different than a CRNA student when it comes to who is responsible for the care of the patient. And care of the patient in this situation is the only parameter that falls within scope of practice. Teaching/learning has nothing to do with scope of practice."

[8] "Nothing in this chapter shall prohibit a licensed hospital from prescribing in its bylaws, policies, rules, or regulations, the qualifications, training, experience, scope of permissible activities, and level or degree of supervision required of any certified registered nurse anesthetist employed by or performing services in such hospital." Ala. Code § 27-46-2 (emphasis added).

DONE this 12th day of January, 2024.



MARK H. LEQUIRE, M.D.
Chairman
Alabama State Board of Medical Examiners

ATTACHMENT A

BEFORE THE ALABAMA BOARD OF MEDICAL EXAMINERS

IN RE:	)	
	)	
PEGGY S. BENSON	)	**PETITION FOR DECLARATORY**
EXECUTIVE OFFICER OF THE	)	**RULING**
ALABAMA BOARD OF NURSING	)	

PETITION FOR DECLARATORY RULING

Peggy Sellers Benson, Executive Officer of the Alabama Board of Nursing, pursuant to Code of Alabama (1975) § 41-22-11 and Alabama Administrative Code Rule 540-X-1-.10, hereby submits this Petition for Declaratory Ruling.

NAME AND ADDRESS OF PETITIONER

Petitioner: Peggy Sellers Benson
Executive Officer of the Alabama Board of Nursing
Address: Post Office Box 303900
Montgomery, Alabama 36130-3900

STATEMENT OF FACTS TO SHOW BENSON IS SUBSTANTIALLY AFFECTED BY THE RULE AND STATEMENT OF THE RULE, STATUTE, OR ORDER AND REASON FOR THE QUESTIONS

Statute/Rule that is the Subject of the Petition

The statute that is the subject of the petition is Code of Alabama (1975) § 34-24-292 Services performed by trainees and assistants. The rules that are the subject of the petition are Alabama Administrative Code rules 540-X-7-.55 (Anesthesiologist Assistants (A.A.) not Employed by Supervising Anesthesiologist/ Anesthesiologist Not in Full-Time Practice); 540-X-7-.56 (Requirements for Supervised Practice – Anesthesiologist Assistants (A.A.)); 540-X-7-.57 (Covering Anesthesiologists for Anesthesiologist Assistants (A.A.)); 540-X-7-.58 (Functions and Activities of An Anesthesiologist Assistant (A.A.)); 540-X-7-.60 (Prohibited Activities and Functions – Anesthesiologist Assistants (A.A.)); 540-X-7-.61 (Medication Orders – Anesthesiologist Assistants (A.A.)).

Statement of Facts, Reasons for the Question, and How Benson is Substantially Affected

CRNA Scope of Practice

Section 34-21-81(4)(c) of the Code of Alabama (1975) provides:

(4) ADVANCED PRACTICE NURSING. The delivery of health care services by registered nurses who have gained additional knowledge and skills through successful

completion of an organized program of nursing education that prepares nurses for advanced practice roles as certified registered nurse practitioners, certified nurse midwives, certified registered nurse anesthetists, and clinical nurse specialists:

(c) Practice as a certified registered nurse anesthetist (CRNA) means the performance of or the assistance in any act involving the determination, preparation, administration, procedural ordering, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures. The nurse anesthetist is qualified in accordance with Section 27-46-3 and is licensed by the Board of Nursing and functions under the direction of or in coordination with a physician licensed to practice medicine, a podiatrist, or a dentist, who is immediately available. Nothing in this paragraph shall be construed to restrict the authority of a health care facility to adopt policies relating to the provision of anesthesia and analgesia services.

The Alabama Board of Nursing has the statutory authority to adopt standards of nursing practice. Ala. Code (1975) § 34-21-2(j)(23). "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." Ala. Admin. Code r 610-X-9-.04 (emphasis added).

Recently the ABN answered a Declaratory Ruling regarding the following questions:

Pursuant to Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to train an anesthesiologist assistant or anesthesiologist assistant student?

Pursuant to Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to supervise an anesthesiologist assistant or anesthesiologist assistant student?

The ABN answered as follows:

Because Alabama law requires an Anesthesiologist Assistant to be supervised by an anesthesiologist who has a direct, continuing and close supervisory relationship with the AA, it is not within the scope of practice for a Certified Registered Nurse Anesthetist to supervise an Anesthesiologist Assistant or Anesthesiologist Assistant Student.

Because Anesthesiologist Assistants and Certified Registered Nurse Anesthetists have overlapping scopes of practice, and in the absence of a statutory or regulatory definition of the word "train," whether it is within the scope of practice for a Certified Registered Nurse Anesthetist to train an Anesthesiologist Assistant or Anesthesiologist Assistant Student would involve a task-specific analysis. There may well be situations in which it would be within the scope of practice of a CRNA to train an AA or AA Student on a specific task that does not by law require the anesthesiologist to directly supervise the AA or AA Student, but given the statutory and regulatory constraints regarding supervision of AAs and AA Students, and the lesser degree of autonomy under which AAs practice, a determination would have to be made on a task by task basis. It does not appear that it would be within the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologist of global responsibility for training of the anesthesiologist's supervisee AA/AA Student.

In reaching these conclusions, the ABN considered Alabama law affecting the supervision and oversight of anesthesiologist assistants and anesthesiologist assistant trainees because the scope of practice for a CRNA must be congruent with Alabama law. The ABN considered multiple legal requirements imposed by statute and rules of the Alabama Board of Medical Examiner.

Overview of Law Regarding Anesthesiologist Assistant and Trainee Supervision

In Alabama, the statutory authority for anesthesiologist assistants is the law regarding assistants to physicians. See Ala. Code (1975) § 34-24-290, et seq. Assistants to physicians may render medical services "when the services are rendered under the supervision of a licensed physician or physicians approved by the board." Ala. Code § 34-24-292(a). "In the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation, or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service." Ala. Code § 34-24-292(b). Note that § 34-24-292 is labelled: "Services performed by trainees and assistants." This was not the title of the Act, but rather was the heading of Section 3 within the body of the Act itself, as originally enacted by the Alabama Legislature. See Acts of Alabama 1971 at page 3148 ("Section 3: Services Performed by Trainees and Assistants."). Under this statutory authority, the Alabama Board of Medical Examiners has promulgated rules regarding the practice of anesthesiologist assistants in Alabama.

"Anesthesiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between an anesthesiologist assistant and the supervising anesthesiologist to whom the assistant is registered or an anesthesiologist who is acting in a Board-approved supervisory role to the anesthesiologist assistant." Ala. Admin. Code r 540-X-7-.56(1). Although supervision does not "require the constant physical presence of the supervising anesthesiologist[,]" "the anesthesiologist must remain readily available in the facility" and except in life-threatening situations, "the supervising anesthesiologist shall be readily available for personal supervision and shall be responsible for pre-operative, intra-operative and post-operative care." Ala. Admin. Code r 540-X-7-.56(2) and (3). Moreover, "[t]he supervising anesthesiologist shall insure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the anesthesiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising anesthesiologist. The supervising anesthesiologist's signature on the anesthetic record will fulfill this requirement for all written entries on the anesthetic record." "All of the above is to emphasize that there shall be no independent, unsupervised practice by anesthesiologist assistants." Ala. Admin. Code r 540-X-7-.56(4) and (5).

The Board of Medical Examiners further requires that "the supervising anesthesiologist shall, at all times, be responsible for the activities of the anesthesiologist assistant." Ala. Admin. Code r 540-X-7-.58(1). The medical services provided by the anesthesiologist assistant are "delegated by the supervising anesthesiologist." Ala. Admin. Code r 540-X-7-.58(2). The AA "administers anesthesia under the supervision of an anesthesiologist," performs CPR at the direction of a physician, "establishes multi-parameter monitoring of patients prior to, during and after anesthesia or in other acute care situation. This may include invasive/non-invasive monitoring under the direct supervision of an anesthesiologist. Also, other monitoring as may be developed for anesthesia and intensive care use may be incorporated." Ala. Admin. Code r 540-

X-7-.58(2)(a), (b), and (c). The AA "manages perioperative anesthetic care, including ventilatory support and other respiratory care parameters directed by an anesthesiologist," "instructs others in principles and practices of anesthesia, respiratory care and cardiopulmonary resuscitation as directed by the anesthesiologist," and "assists an anesthesiologist in gathering routine perioperative data." Ala. Admin. Code r 540-X-7-.58(2)(d), (e), and (f). "The choice of anesthesia and drugs to be employed are prescribed by anesthesiologist for each patient except: 1. where standard orders for the conduct of a specified anesthetic are prescribed; and 2. where life-threatening emergencies arise necessitating the utilization of standard therapeutic or resuscitation procedures. An anesthesiologist will be immediately available for consultation regarding changes from standard procedures." Ala. Admin. Code r 540-X-7-.58(2)(h). The anesthesiologist practices pursuant to a model job description promulgated by the Board of Medical Examiners, except that a supervising anesthesiologist can request changes and additional specialized duties and tasks for approval by the Board of Medical Examiners. Ala. Admin. Code r 540-X-7-.58(3), (4), (5), (6), and (7), and Appendix C to Chapter 7. "An anesthesiologist assistant may administer drugs commonly used in anesthesia practice, by protocol (i.e., routine or urgent/emergent) or as directed by the supervising anesthesiologist who formulates the anesthetic plan and maintains continual supervision." Ala. Admin. Code r 540-X-7-.61.

In cases where the AA will not be in the direct employ of the supervising anesthesiologist, the ALBME places on the applicant "the burden of satisfying the Board that there exists the supervisory relationship between the anesthesiologist and the anesthesiologist assistant contemplated by these rules." In determining whether to approve the registration, the ALBME considers the following factors: "The anesthesiologist's authority to terminate the employment of the anesthesiologist assistant"; "The anesthesiologist's authority to determine or recommend levels of compensation for the anesthesiologist assistant"; The anesthesiologist's authority to enforce compliance with orders and directives and to initiate suitable disciplinary action for violation of such orders and directives"; "The extent to which the anesthesiologist assistant may be subject to the direction and control in matters relating to patient care of a person other than the anesthesiologist to whom the assistant is registered"; and "The extent to which the anesthesiologist assistant is subject to the supervisory authority of a non-physician." Ala. Admin. Code r 540-X-7-.55.

Reason for the Question

Recently Benson received inquiries regarding the ability of CRNAs to train Anesthesiologist Assistant Trainees, and Benson needs clarification from the Alabama Board of Medical Examiners regarding its statute and rules to be able to answer these questions. Specifically, an ALBME-licensed physician/anesthesiologist has asked the following questions:

> I am the managing partner of [an Alabama-based anesthesiology group] and medical director of anesthesia at [a hospital in Alabama]. We employ CRNAs and one AA.
>
> As I am sure you are aware, VCOM in auburn has started an Anesthesiology Assistant program, and the first class is starting their clinical rotations.
>
> There is a question as to whether or not a CRNA under the direction and supervision of an anesthesiologist, can be involved in the teaching of an AA

> student. The declaratory ruling by the ABON dated May 19, 2023, is vague in its final statement: "It does not appear that it would be in the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologists of global responsibility for training of the anesthesiologist's supervisee AA/AA student." It would seem that a medically directed CRNA would not be in a situation that would meet the "global" part of that sentence, but clarification is needed. I have CRNAs that want to teach AA students, but this verbiage has them concerned about an enforcement action by ABON for a possible scope of practice violation.
>
> Can a CRNA participate in the training and teaching of an AA student while being medically directed by an Anesthesiologist? Note in section 14 the use of the word "direct", versus the question of "teach". "Direct" and "Supervise" are regulatory terms regarding CMS billing, Also the the same declaration is addressing AA's and AA students. Whereas AA's practice scope is well defined, and according to CMS under medical direction rules equate that of a CRNA, the education of an AA student by a qualified CRNA in this scenario should not be limited.
>
> To be specific, can a CRNA, who is under the medical direction of an Anesthesiologist, have an AA student in the operating room with them, and assist in the teaching and training of said AA student?

The second request from the same physician/anesthesiologist states:

> I am the medical director of the anesthesia department at [an Alabama hospital]. I know it seems like the same question keeps getting asked, but probably not in the same context, depending on who it is coming from.
>
> At any rate, I need clarification on one point, because the CRNAs I employee feel they are restricted from teaching an AA student.
>
> Can a CRNA teach an AA student about providing anesthesia care? In other words, if an AA student is "observing" a CRNA, (which is specifically allowed in the declaratory ruling) can that CRNA explain what they are doing, and answer questions regarding anesthesia care?
>
> Please provide some clarification on this matter. . . . We know that CRNAs in various institutions teach respiratory therapists, paramedics, medical students, anesthesia residents, and crna students. There is no certainly no reason they shouldn't be able to teach AA students as well.

In response to an email from Benson, the physician/anesthesiologist then wrote, in relevant part:

> . . . .
>
> That is why I was asking such specific questions. I am simply trying to provide students of an accredited institution in the state of Alabama an opportunity to get an education. . . .

One point that we need to be clear about is that we are not talking about AAs. AAs are licensed practitioners who work under the supervision and direction of Anesthesiologists, at a maximum ratio of 4:1.

We are specifically talking about the education of anesthesia students of an accredited learning institution in the state of Alabama. In an anesthesia teaching model as described by the COA of nurse anesthesia programs, the anesthesiologist and/or the crna are the ONLY individuals with responsibility for anesthesia care of the patient. If this applies to teaching CRNA students, it certainly would apply to AA students. And thus, there is no scope of practice implication in the teaching of AA students by CRNAs. The licensed anesthesia provider(s) is/are completely responsible for the care of the patient, regardless of the the presence of any student. The main point is that an AA student is no different than a CRNA student when it comes to who is responsible for the care of the patient. And care of the patient in this situation is the only parameter that falls within scope of practice. Teaching/learning has nothing to do with scope of practice.

Clinical supervision - Clinical supervision of students must not exceed (1) 2 students to 1 CRNA, or (2) 2 students to 1 physician anesthesiologist, if no CRNA is involved. The CRNA and/or physician anesthesiologist are the only individual(s) with responsibility for anesthesia care of the patient, and have responsibilities including, but not limited to: providing direct guidance to the student; evaluating student performance; and approving a student's plan of care.

Another consideration is that 34-24-292, in its entirety says nothing about students of any kind beyond the use of "trainee" in the heading. Furthermore, the only specific language is referring to addressing liability and responsibility for the assistant to a physician. But again, it gives no guidance and does not pertain to the teaching of students in any form or fashion. The same is true for 540-x-7 of the ABME administrative code. It does not pertain to students.

(b) In the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation, or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service.

The declaratory ruling states that a task specific analysis would be required to determine if a specific training activity is within the scope of practice of a CRNA. What would be involved in that process and how would it need to be initiated?

This is not an emergent matter. It does, however, have a huge impact on these students who have committed their lives and finances to getting an education.

My goal is to get specific guidance and verbiage from ABN, that CRNAs can be directly involved in the education of AA students (or medical students, nursing students, paramedics, etc. for that matter) in the same way that they can be with CRNA students, such that in any of those scenarios, the licensed anesthesia providers are the only individuals responsible for the care of the patient, which

makes the presence or absence of a student irrelevant as it pertains to scope of practice.

A CRNA also inquired whether the following situation would be within the scope of practice for a CRNA:

> . . . . the supervising Anesthesiologist leaving the AA student with the CRNA alone in the operating room to continue instruction on anesthesia modalities in the absence of the attending Anesthesiologist. The doctor is available in the facility, but not constantly present in the OR. . . .

Standards for Anesthesiologist Assistant Programs

In his requests to Benson, the physician/anesthesiologist referred to the "COA of nurse anesthesia programs," but, of course, the relevant accreditation standards are those for anesthesiologist assistant programs. The Commission on Accreditation of Allied Health Education Programs Standards and Guidelines for the Accreditation of Educational Programs for the Anesthesiologist Assistant (2016) state:

> Faculty for the supervised clinical practice portion of the educational program must include a physician alone or a physician with an Anesthesiologist Assistant or a physician with another non-physician anesthesia provider. Resident physicians may contribute to clinical or didactic instruction. However, the physician faculty roster should be composed predominantly of board-certified physician anesthesiologists.

Anesthesiologist Assistant 2016 at page 5. Further, the standards state:

> The intent of the students' patient management experience must always be focused on patient safety while maximizing the educational experience. Students must undertake patient care duties commensurate with their level of competency. The students must at no time be considered the anesthesia provider of record. When students are assigned to any patient care duty, a physician anesthesiologist must be immediately available to provide hands-on care that can affect the patient outcome. As students approach graduation, the supervising physician anesthesiologist may assign to them an increased level of responsibility for the delivery of anesthesia care to patients commensurate with their demonstrated knowledge, skills, and clinical judgment.

Anesthesiologist Assistant 2016 at page 7.

Anesthesiologist Assistant Program Handbook

The VCOM student handbook describes the clinical supervision as follows:

Supervision of Students.

A student on clinical rotations must be supervised in patient care situations. Supervision involves a responsible licensed physician anesthesiologist to:

- Be physically located in the facility where patient treatment is rendered;
- Grant authorization of services provided by the student anesthetist;
- Examine all patients seen by the student anesthetist;
- Witness procedures when performed by the student anesthetist;
- Be physically present during any invasive procedure; and
- Assure the documentation in the patient's medical record is appropriate.

VCOM/Bluefield Master of Health Science in Anesthesia Program, 2023-2024 Student Handbook at Page 130. Yet the same manual also states:

> Performing Patient Care Activities
>
> Student involvement in patient care is permitted when authorized by the Program and the assigned clinical faculty member. Supervision by a physician anesthesiologist or authorized anesthesia/medical professional (i.e., CAA, CRNA, resident in training, etc.) who are under the supervision of the faculty physician anesthesiologist is required. In certain cases, such as PACU or ICU, a nurse, or Advanced Practice Provider (APP) is an appropriate supervisor. The student's supervising faculty/preceptor is the faculty member that is responsible for the patient's care. The Director of Clinical Rotations and the Assistant Program Director for Clinical Affairs assure all core clinical faculty have the appropriate credentialing for student supervision. Students may not perform any patient treatment or procedures without appropriate supervision and that is not appropriate for his or her level of training. The faculty member/preceptor should be present for any treatment or invasive procedure. **Students are not to take the place of qualified anesthesia staff.**
>
> Students may not write patient care orders independently and all such orders must be reviewed and approved by the faculty member/preceptor. Students may not accept payment or remuneration for services.

VCOM/Bluefield Master of Health Science in Anesthesia Program, 2023-2024 Student Handbook at Page 130.

> Considering Accreditation Requirements and Handbook Policies in the Light of Alabama Law

Alabama law requires that "[i]n the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation, or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service." Ala. Code § 34-24-292(b). As noted above, the heading for this statutory provision makes clear that it applies to "Services performed by trainees and assistants." If a CRNA were assigned to supervise the trainee in the performance of anesthesia services, would not the trainee then become an agent of the CRNA, in violation of Alabama law? And, when the ALBME

rules provide that the anesthesiologist's supervision of an anesthesiologist assistant must be "direct," and that the anesthesiologist is responsible for pre-operative, intra-operative, and post-operative care of the anesthesiologist assistant's patient, would not the introduction of the CRNA as the person overseeing the provision of anesthesia services by the trainee interrupt the required "direct" nature of the supervision in Alabama and introduce the CRNA as someone other than the anesthesiologist who is responsible for the care? These questions are raised because of the very specific requirements of the Alabama statute and rules pertaining to the supervision of anesthesiologist assistant trainees.

Benson is Substantially Affected by the Law/Rule

There appears to be continuing confusion regarding the authority of an anesthesiologist to delegate to a CRNA some or all of the anesthesiologist's statutory and regulatory supervisory responsibilities for an anesthesiologist assistant trainee. The ABN is tasked with determining if certain acts are within the scope of practice of a CRNA; yet, because a CRNA's scope of practice must be congruent with Alabama law, the ABN and Benson cannot determine the limits of the scope of practice of a CRNA without the Alabama Board of Medical Examiners clarifying the applicability of the Alabama Board of Medical Examiner's statute and rules related to anesthesiologist supervision of anesthesiologist assistant trainees, and Benson cannot effectively answer the questions already posed to her and questions that may be received in the future. As such, Benson is substantially affected by the law/rules in question. Thus, Benson petitions the Alabama Board of Medical Examiners to answer the following questions:

QUESTION PRESENTED

Considering the requirements of and limitations imposed by Code of Alabama (1975) § 34-24-292 and Alabama Administrative Code Chapter 540-X-7 on supervising anesthesiologists, may a supervising anesthesiologist who is supervising an anesthesiologist assistant trainee do either or both of the following:

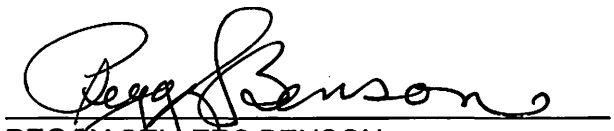
a. Delegate to a CRNA who is performing the functions and activities of a CRNA under the direction of or in coordination with that supervising anesthesiologist the task of verbally teaching, training, or educating the anesthesiologist assistant trainee who is observing the CRNA performing any of the functions and activities of a CRNA? If the answer is yes, regarding which functions and activities of a CRNA may the CRNA verbally teach, train, or educate the anesthesiologist assistant trainee pursuant to the delegation from the supervising anesthesiologist?

b. Delegate to a CRNA who is acting under the direction of or in coordination with the anesthesiologist the task of training the anesthesiologist assistant trainee by permitting the CRNA to supervise the anesthesiologist assistant trainee's performance of any of the functions and activities of an anesthesiologist assistant, including but not limited to the anesthesiologist assistant trainee's provision of anesthesia services to a patient? If the answer is "yes," which functions and activities of an anesthesiologist assistant may the supervising anesthesiologist delegate to the CRNA to supervise the anesthesiologist assistant trainee in performing?

CONCLUSION

For all of these reasons Alabama Board of Nursing Executive Officer Peggy Sellers Benson respectfully petitions the Alabama Board of Medical Examiners to issue a declaratory ruling which answers the Questions Presented.

Respectfully submitted this the 28th day of November, 2023.



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CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of November, 2023, a copy of the foregoing Petition for Declaratory Ruling was served on the Alabama Board of Medical Examiners by placing a copy of same in Certified Mail, Return Receipt Requested, and properly addressed as follows:

Executive Director
Alabama Board of Medical Examiners
P. O. Box 946
Montgomery, Alabama 36104

Of Counsel

OF COUNSEL:
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ATTACHMENT B

BEFORE THE ALABAMA BOARD OF NURSING

IN THE MATTER OF:	)	**PETITION FOR**
	)	**DECLARATORY RULING**
LLOYD RAY DUNN II, ABN LICENSE NO. 1-095285 MSL (Active); CRNA	)	
	)	
Petitioner.	)	

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 Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to train an anesthesiologist assistant or anesthesiologist assistant student?

Pursuant to Alabama Board of Nursing Administrative Code § 610-X-9-.04, is it within the scope of practice for a CRNA to supervise an anesthesiologist assistant or anesthesiologist assistant student?

FINDINGS OF FACT

1. By petition dated May 4, 2023, Lloyd Ray Dunn II submitted a petition for declaratory ruling. Included with this petition were the AANA Position on CRNAs Teaching AA Students in the Clinical Setting, A Final Order of the State of Florida Board of Nursing in re the Petition for Declaratory Statement of Paul Dow, CRNA, and minutes of the Nebraska Board of Nursing from October 13, 2022.

2. Dunn seeks a declaratory ruling regarding whether it is within the scope of practice for CRNAs in Alabama to train or supervise Anesthesiologist Assistants or Anesthesiologist Assistant Students. Dunn, a CRNA, states that "many CRNAs are employees of an anesthesia group or hospital that may choose to employ AAs. Knowing this reality, CRNAs are forced to orient new AAs to practice when CRNAs are unaware of the training or skill level of this provider type." Dunn further notes that "the AA student is not equal to the CRNA student (SRNA). AAs are not required to have any patient experience prior to entry to the program. This has the potential to place a CRNA at a tremendous liability if required to train the AA student."

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. Dunn is substantially affected by the Board's rule regarding scope of practice for CRNA's because he possesses a Certificate of Qualification to engage in advanced practice nursing as a CRNA and is seeking guidance regarding the scope of his practice. Although the petition for declaratory ruling also seeks a determination regarding Alabama Board of Medical Examiners Administrative Code § 540-X-7-.49, and although the ABN's answering of this petition necessarily involves an analysis of the ALBME regulations, the ABN only has jurisdiction to issue a declaratory ruling with respect to a rule enforceable by the ABN. In the absence of any guidance from the ALBME regarding the meaning of its laws and regulations, the ABN must answer the question regarding its own licensees' scope of practice by incorporating a plain reading of the ALBME law and regulations. Should the ALBME in the future amend or offer different guidance regarding its law and/or regulations, the ABN could certainly revisit the questions answered in this declaratory ruling.

CONCLUSIONS OF LAW

1. A petition for declaratory ruling to the Alabama Board of Nursing should state the name and address of the petitioner, a statement of facts sufficient to show that the petitioner is substantially affected by the rule, and identification of the rule, statute or order and the reasons for the questions. Alabama Board of Nursing Administrative Code § 610-X-1-.09. Petitioner has satisfied these requirements.

2. Section 34-21-81(4)(c) of the Code of Alabama (1975) provides:

> (4) ADVANCED PRACTICE NURSING. The delivery of health care services by registered nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that prepares nurses for advanced practice roles as certified registered nurse practitioners, certified nurse midwives, certified nurse anesthetists, and clinical nurse specialists:
>
> (c) Practice as a certified registered nurse anesthetist (CRNA) means the performance of or the assistance in any act involving the determination, preparation, administration, procedural ordering, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures. The nurse anesthetist is qualified in accordance with Section 27-46-3 and is licensed by the Board of Nursing and functions under the direction of or in coordination with a physician licensed to practice medicine, a podiatrist, or a dentist, who is immediately available. Nothing in this paragraph shall be construed to restrict the authority of a health care facility to adopt policies relating to the provision of anesthesia and analgesia services.

The Alabama Board of Nursing has the statutory authority to adopt standards of nursing practice. Ala. Code (1975) § 34-21-2(j)(23). "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." ABN Admin. Code § 610-X-9-.04.

3. The American Association of Nurse Anesthetists Scope of Nurse Anesthesia Practice states: "The scope of an individual CRNA's practice is determined by education, experience, local, state and federal law, and organization policy."

4. The American Society of Anesthesiologists most recently amended its Statement Comparing Certified Anesthesiologist Assistant and Certified Registered Nurse Anesthetist Education and Practice on October 26, 2022. The statement says: "differences do exist between anesthesiologist assistants and nurse anesthetists with regard to the educational program prerequisites, instruction, and requirements for supervision in practice as well as maintenance of certification. These are the result of the different backgrounds associated with the two professions related to development, and the stated preference of anesthesiologist assistants to work exclusively on teams with physician anesthesiologists. The committee found no evidence that any of these differences result in disparity in knowledge base, technical skills, or quality of care when supervised by a physician anesthesiologist."

5. The American Association of Nurse Anesthesiology has issued a statement titled "AANA Position on CRNAs Teaching AA Students in the Clinical Setting." The AANA concludes: "While CRNAs may be able to train other professional in specific clinical skills, CRNAs cannot educate other professionals in the entire practice of anesthesia if they are a dependent healthcare provider or their scope of practice is more limited than that of CRNAs. Therefore, the AANA's position and advice is that CRNAs not participate in teaching anesthesiologist assistant (AA) students in any setting." The AANA based this position on four factors: (1) the fact that AAs work under the direct supervision of anesthesiologists, whereas CRNAs may practice as autonomous providers; (2) tasks are delegated to AAs by an anesthesiologist, whereas a CRNA may "formulate and implement anesthesia care plans autonomously based on critical thinking and in-depth knowledge"; (3) differences in education and clinical background, and (4) CRNAs can train other providers on "specific technical skills" but "cannot educate and evaluate students" who are not "training to be independent/autonomous anesthesia providers."

6. In 2006, the State of Florida Board of Nursing determined that a CRNA in Florida "is not authorized by statute, and is not qualified by licensure, education or experience, to supervise an AA trainee engaged in the practice of anesthesia assistance during an approved training program." The bases for this ruling appears to have been Florida laws prohibiting a CRNA from "aiding, assisting, procuring, employing or advising any unlicensed person to practice a profession contrary to the chapter regulating the profession" and the Florida law which prohibits "anyone other than a physician to supervise an AA, much less an unlicensed AA intern or trainee." In Re: The Petition for Declaratory Statement of Paul Dow, CRNA, DOH-06-1351.

7. In October 2022, the Nebraska Board of Nursing adopted the AANA Position on CRNAs Teaching AA Students in the Clinical Setting. The Nebraska Board's minutes note that "having CRNAs teach AA students was not appropriate because the two professions use different models" and that "the practice would be akin to making nurse practitioners responsible for teaching physician assistants."

8. In Alabama, the statutory authority for anesthesiologist assistants is the law regarding assistants to physicians. See Ala. Code (1975) § 34-24-290, et seq. Assistants to physicians may render medical services "when the services are rendered under the supervision of a licensed physician or physicians approved by the board." Ala. Code § 34-24-292(a). "In the performance of any medical service contemplated by this article, an assistant to a physician shall be conclusively presumed to be the agent, servant, or employee solely of the licensed physician or physicians under whose supervision he or she performs the service, and no other person, firm, corporation, or other organization shall be held liable or responsible for any act or omission of the assistant arising out of the performance of the medical service." Ala. Code § 34-24-292(b). Under this statutory authority, the Alabama Board of Medical Examiners has promulgated rules regarding the practice of anesthesiologist assistants in Alabama.

A. "Anesthesiologist supervision requires, at all times, a direct, continuing and close supervisory relationship between an anesthesiologist assistant and the supervising anesthesiologist to whom the assistant is registered or an anesthesiologist who is acting in a Board-approved supervisory role to the anesthesiologist assistant." ALBME Admin. Code § 540-X-7-.56(1). Although supervision does not "require the constant physical presence of the supervising anesthesiologist[,]" "the anesthesiologist must remain readily available in the facility" and except in life-threatening situations, "the supervising anesthesiologist shall be readily available for personal supervision and shall be responsible for pre-operative, intra-operative and post-operative care." ALBME Admin. Code § 540-X-7-.56(2) and (3). Moreover, "[t]he supervising anesthesiologist shall insure that, with respect to each patient, all activities, functions, services and treatment measures are immediately and properly documented in written form by the anesthesiologist assistant. All written entries shall be reviewed, countersigned, and dated by the supervising anesthesiologist. The supervising anesthesiologist's signature on the anesthetic record will fulfill this requirement for all written entries on the anesthetic record." "All of the above is to emphasize that there shall be no independent, unsupervised practice by anesthesiologist assistants." ALBME Admin. Code § 540-X-7-.56(4) and (5).

B. The Board of Medical Examiners further requires that "the supervising anesthesiologist shall, at all times, be responsible for the activities of the anesthesiologist assistant." ALBME Admin. Code § 540-X-7-.58(1). The medical services provided by the anesthesiologist assistant are "delegated by the supervising anesthesiologist." ALBME Admin. Code § 540-X-7-.58(2). The AA "administers anesthesia under the supervision of an anesthesiologist," performs CPR at the direction of a physician, "establishes multi-parameter monitoring of patients prior to, during and after anesthesia or in other acute care situation. This may include invasive/non-invasive monitoring under the direct supervision of an anesthesiologist. Also, other monitoring as may be developed for anesthesia and intensive care use may be incorporated." ALBME Admin. Code § 540-X-7-.58(2)(a), (b), and (c). The AA "manages perioperative anesthetic care, including ventilatory support and other respiratory care parameters directed by an anesthesiologist," "instructs others in principles and practices of anesthesia, respiratory care and cardiopulmonary resuscitation as directed by the anesthesiologist," and "assists an anesthesiologist in gathering routine perioperative data." ALBME Admin. Code § 540-X-7-.58(2)(d), (e), and (f). "The choice of anesthesia and drugs to be employed are prescribed by anesthesiologist for each patient except: 1. where standard orders for the conduct of a specified anesthetic are prescribed; and 2. where life-threatening emergencies arise necessitating the utilization of standard therapeutic or resuscitation procedures. An anesthesiologist will be immediately available for consultation regarding changes from standard procedures." ALBME Admin. Code § 540-X-7-.58(2)(h). The anesthesiologist practices pursuant to a model job description promulgated by the Board of Medical Examiners, except that a supervising anesthesiologist can request changes and additional specialized duties and tasks for approval by the Board of Medical Examiners. ALBME Admin. Code § 540-X-7-.58(3), (4), (5), (6), and (7), and Appendix C to Chapter 7. "An anesthesiologist assistant may administer drugs commonly used in anesthesia practice, by protocol (i.e., routine or urgent/emergent) or as directed by the supervising anesthesiologist who formulates the anesthetic plan and maintains continual supervision." ALBME Admin. Code § 540-X-7-.61.

C. The ALBME rules do allow for the reality that different models of health care organizations may result in an AA not being in the direct employ of the anesthesiologist. In those cases, the ALBME places on the applicant "the burden of satisfying the Board that there exists the supervisory relationship between the anesthesiologist and the anesthesiologist assistant contemplated by these rules." In determining whether to approve the registration, the ALBME considers the following factors: "The anesthesiologist's authority to terminate the employment of the anesthesiologist assistant"; "The anesthesiologist's authority to determine or recommend levels of compensation for the anesthesiologist assistant"; The anesthesiologist's authority to enforce compliance with orders and directives and to initiate suitable disciplinary action for violation of such orders and directives"; "The extent to which the anesthesiologist assistant may be subject to the direction and control in matters relating to patient care of a person other than the anesthesiologist to whom the assistant is registered"; and "The extent to which the anesthesiologist assistant is subject to the supervisory authority of a non-physician." ALBME Admin. Code § 540-X-7-.55. A plain reading of these factors suggests that the ALBME considers the supervision by an anesthesiologist to be more than just supervision of the medical services provided by the AA.

9. CRNAs and AAs may both provide anesthesia services in the context of the anesthesia care team model. CRNAs may also provide anesthesia services at the direction of or in coordination with a physician, podiatrist, or dentist, meaning that the CRNA may be the sole anesthesia provider in a facility, unlike an AA, for whom the supervising anesthesiologist must be on the premises. The scopes of practice for CRNAs and AAs overlap, and there is no reason why CRNAs and AAs cannot work alongside one another in anesthesiology practices in Alabama. Nevertheless, the law and regulations pertaining to AAs clearly require that AAs be supervised by anesthesiologists, and that supervision is described as "direct, continuing, and close." The scope of practice for a CRNA in Alabama must be congruent with Alabama law. Thus, because Alabama law requires an anesthesiologist to "supervise" an AA, it is not within the scope of practice of a CRNA in Alabama to supervise an AA or, by implication, an AA Student (may also be referred to as "trainee"). This does not mean that a CRNA cannot perform management activities that indirectly affect AAs but do not touch upon the medical services provided by AAs. By way of example but not exclusion, a CRNA may be charged with managing scheduling for an anesthesia practice that utilizes both CRNAs and AAs without exceeding his/her scope of practice.

10. The question of whether it is within the scope of practice of a CRNA to "train" an AA or AA Student is a more difficult question. The ABN's law and rules do not provide a definition of "train." Training could mean allowing another person, licensed or unlicensed, to observe the CRNA performing a procedure. Training could mean a CRNA reviewing facility policies or providing instruction regarding use of equipment in the operating room. Training could also include a CRNA observing and instructing an AA or AA Student who is performing an anesthesia-related skill and/or instructing an AA or AA Student regarding the independent judgments made in providing anesthesia care. There are endless examples of actions that could constitute training, some of which would overlap with supervision or would involve the AA being trained to practice beyond the scope of his/her own license and registration.

11. The ABN's standards of practice speak to assignment, supervision, and delegation. "Supervision, Direct" requires that "the licensed nurse is physically present in the facility and readily accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. Direct supervision by a registered nurse is required for new

graduates practicing on a temporary permit." ABN Admin. Code § 610-X-6-.01(20). "Supervision, Indirect" requires the licensed nurse to be "available for periodic inspection and evaluation through physical presence, electronic or telephonic communication for direction, consultation, and collaboration." ABN Admin. Code § 610-X-6-.01(21). "[A]ssignment of tasks from one licensed nurse to another" "transfer[s] . . . responsibility and accountability for nursing activities." ABN Admin. Code § 610-X-6-.01(4). In assignment of tasks to "unlicensed assistive personnel", the "licensed nurse making the assignment retains accountability for accurate and timely completion and outcome of the tasks." ABN Admin. Code § 610-X-6-.01(3). Delegation is "[t]he act of authorizing a competent individual to perform selected nursing activities supportive to registered nurses or licensed practical nurses in selected situations, while retaining accountability for the outcome, if the delegation is to an unlicensed individual." ABN Admin. Code § 610-X-6-.01(7). "Supervision shall be provided to individuals to whom nursing functions or responsibilities are delegated or assigned." ABN Admin. Code § 610-X-6-.11(5). "Tasks delegated to unlicensed assistive personnel may not include tasks that require: . . . Invasive or sterile procedures" and "assistance with medications, except as provided in Chapter 610-X-7". ABN Admin. Code § 610-X-6-.011(4)(b) and (c). ABN's rules do not appear to directly address assignment or delegation to persons who are licensed in some healthcare profession other than nursing.

12. Nursing students are required to engaged in clinical learning experiences, which in Alabama nursing programs must be supervised by a clinical supervisor who holds a RN license and is "readily accessible to assign or prescribe a course of action, provide procedural guidance, direction, and evaluation for students engaged in the clinical learning experience." ABN Admin. Code § 610-X-3-.02(14). When student nurses are in clinical settings, they often perform nursing functions that have been assigned to the licensed nurse employed at the facility, and this does not constitute an unlawful delegation to unlicensed assistive personnel. The reason for this exception is founded in the Alabama Nurse Practice Act, which exempts from the practice of nursing "the practice of nursing by students enrolled in approved schools of nursing, as may be incidental to their course of study." Ala. Code (1975) § 34-21-6. But this statute also exempts "nursing aides, orderlies, and attendants, carrying out duties necessary for the support of nursing services, including those duties which involve supportive nursing services performed in hospitals and elsewhere under the direction of licensed physicians or dentists." Id.

13. The Standards and Guidelines for the Accreditation of Educational Programs for the Anesthesiologist Assistant, Adopted by the American Academy of Anesthesiologist Assistants, American Society of Anesthesiologists Accreditation Review Committee for the Anesthesiologist Assistant and Commission on Accreditation of Allied Health Education Programs, provide that "Faculty for the supervised clinical practice portion of the educational program must include a physician alone or a physician with an Anesthesiologist Assistant or a physician with another non-physician anesthesia provider." (2016 Guidelines, page 5).

14. Without interrupting the direct, continuing and close supervision of an AA or AA Student by the supervising anesthesiologist, an AA or AA Student could certainly observe the provision of anesthesia care by a CRNA. A CRNA could certainly orient an AA to facility equipment and policies (e.g. use of automated dispensing cabinet, location of equipment, review of policy manuals, etc.). Given the statutory requirement that the AA is "conclusively presumed to be the agent . . . solely of the licensed physician [in the case of an AA, it would be an anesthesiologist] under whose supervision he or she performs the [medical] service," and the regulatory requirements for direct, continuing, and close supervision of the AA by the supervising anesthesiologist and delegation of the medical services from the supervising anesthesiologist to the AA, it is difficult to conceive how a CRNA could direct an AA or AA Student in the AA or AA

Student's provision of a medical service that must be directly supervised by an anesthesiologist, and it is difficult to conceive how an anesthesiologist who is required to directly supervise and delegate to an AA could institute a global delegation of the AA's training to a CRNA. In any case, determining whether it is within the CRNA's scope of practice to perform a training function with regard to an AA or AA Student would require a task-specific analysis conducted while taking into consideration the limitations imposed by the Alabama laws governing AA's.

RULING

The Petition for a Declaratory Ruling is hereby granted, and the Alabama Board of Nursing hereby rules as follows:

1. Because Alabama law requires an Anesthesiologist Assistant to be supervised by an anesthesiologist who has a direct, continuing and close supervisory relationship with the AA, it is not within the scope of practice for a Certified Registered Nurse Anesthetist to supervise an Anesthesiologist Assistant or Anesthesiologist Assistant Student.

2. Because Anesthesiologist Assistants and Certified Registered Nurse Anesthetists have overlapping scopes of practice, and in the absence of a statutory or regulatory definition of the word "train," whether it is within the scope of practice for a Certified Registered Nurse Anesthetist to train an Anesthesiologist Assistant or Anesthesiologist Assistant Student would involve a task-specific analysis. There may well be situations in which it would be within the scope of practice of a CRNA to train an AA or AA Student on a specific task that does not by law require the anesthesiologist to directly supervise the AA or AA Student, but given the statutory and regulatory constraints regarding supervision of AAs and AA Students, and the lesser degree of autonomy under which AAs practice, a determination would have to be made on a task by task basis. It does not appear that it would be within the scope of practice of a CRNA in Alabama to accept delegation from an anesthesiologist of global responsibility for training of the anesthesiologist's supervisee AA/AA Student.

DONE and **ORDERED** on this the 19th day of May, 2023.

ALABAMA BOARD OF NURSING

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

CERTIFICATE OF SERVICE

I hereby certify that this the 22nd day of May, 2023, 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:

LLOYD RAY DUNN II
14810 HIGHWAY 171
NORTHPORT, ALABAMA 35475

ALABAMA BOARD OF NURSING

Peggy S Benson

PEGGY S. BENSON, 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)

ATTACHMENT C

ALABAMA STATE BOARD OF MEDICAL EXAMINERS
Larry D. Dixon, Executive Director

March 23, 1999

Dear :

The Alabama State Board of Medical Examiners has received and reviewed your January 14, 199, letter concerning unlicensed assistive personnel giving injections. You have asked for an Alabama State Board of Medical Examiners opinion on "physicians delegating medication administration, especially administration by injection, to unlicensed assistive personnel."

In your letter, you state that unlicensed assistive personnel in physicians' offices or clinics may be administering medications, including administering medications by injection. According to your information, the administering of medications by unlicensed personnel is occurring without the involvement of a licensed nurse. A practice consultant at the Alabama Board of Nursing has told you that the Alabama Board of Nursing has no jurisdiction over unlicensed personnel, and, therefore, could not comment on unlicensed assistive personnel giving injections when a licensed nurse is not involved. We understand that you have also requested an opinion from the Board of Nursing on the issue of whether the act of administering a mediation by injection is considered the practice of nursing and, therefore, an act which requires a license to practice as a nurse.

After reviewing applicable law, including state and Federal statutes and Alabama State Board of Medical Examiners' Rules, it is clear, concerning physicians and unlicensed personnel, that only the physician has the authority to make the decision to provide medication, by injection or otherwise, to a patient. This decision-making authority should never be delegated to unlicensed assistive personnel.

There exists no Alabama State Board of Medical Examiners' Rule which addresses the act or task of injecting patients with medication by unlicensed assistive personnel. Consequently, if unlicensed assistive personnel in a physician's office or clinic administer medication by injection to a patient pursuant to delegation by the physician and under the direct supervision of the physician, it is the Board's opinion that no violation of any Board of Medical Examiners Rule has occurred; however, the physician remains responsible for the actions of the employee.

This opinion by the Board is limited to the facts and circumstances set forth in your letter dated January 14, 1999, and is issued on reliance of the correctness of those facts.

I hope that the foregoing information has been responsive to your requests.

Sincerely,
Alabama Board of Medical Examiners

/s/ William M. Lightfoot, M. D.

William M. Lightfoot, M. D.
Chairman

WML:cjh

ATTACHMENT D

Alabama Board of Medical Examiners
Minute Entry Extracts
May 20, 2009

Board Opinion: Regarding the Physician's Duty to Obtain a History and Physical, Delegation of History and Physical to RN The Board adopted the opinion that a physician may delegate to an RN the duty of assisting with obtaining a patient's medical history and vital signs; however, the physician is responsible for reviewing and completing the history and physical examination as part of the physician's responsibility to perform, document and authenticate a complete history and physical examination on a patient. (amended June 24, 2009)

Board Opinion Re: Responsibility of Physician for History and Physical Dictation, Delegation of Dictation Duty to RN or CRRN After consideration of a request for an opinion from the Board, the Board adopted the opinion that a physician shall not delegate his/her duty of dictating a patient's history and physical to a Registered Nurse or a Certified Registered Rehabilitation Nurse.

Board Opinion Re: Responsibility of Physician for History and Physical Dictation, Delegation of Dictation of History and Physicals to RN The Board voted to notify Ms. Kaufman that it is the Board's adopted opinion that a physician shall not delegate his/her duty of dictating a patient's history and physical to an RN.

Board Opinion Re: Responsibility of Physician for Discharge Summary, Delegation of Dictation Duty to RN - The Board adopted the opinion that a physician may delegate to an RN the duty of dictating a discharge summary from information already documented in the record. The expectation of the Board is that the discharge summary will include all pertinent information which would be required by physicians providing subsequent care, including admitting diagnosis, discharge diagnosis, discharge medications, follow-up plans and an appropriately detailed narrative of the patient's hospital course. The dictated discharge summary shall be reviewed and signed by the physician who shall accept full responsibility for the summary.

Board Opinions Re: Responsibility of Physician for Discharge Summary, Delegation of Dictation Duty to LPN The Board adopted the opinion that a physician shall not delegate to an LPN the physician's duty of dictating discharge summaries.

Alabama Board of Medical Examiners
Minute Entry Extract
September 16, 2009

Board Opinion Re: Responsibility of Physician for Discharge Summary, Delegation of Dictation Duty to Registered Health Information Technician - The Credentials Committee recommended that the Board adopt the opinion that a physician may delegate to a Registered Health Information Technician the duty of dictating a discharge summary from information already documented in the record. The expectation of the Board is that the discharge summary will include all pertinent information which would be required by physicians providing subsequent care, including: admitting diagnosis, discharge diagnosis, discharge medications, follow-up plans and an appropriately detailed narrative of the patient's hospital course. The dictated discharge summary shall be reviewed and signed by the physician who shall accept full responsibility for the summary.