Tab 1	**CS/HB 7049** by **SAC, JDC, Grall, Fine (CO-INTRODUCERS) Fischer**; Legal Notices

Tab 2	**CS/CS/HB 861** by **HHS, PPH, Massullo**; (Similar to S 01192) Medical Specialty Designations

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The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, March 8, 2022
TIME: 2:00—5:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Boyd, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/HB 7049** State Affairs Committee / Judiciary Committee / Grall / Fine	Legal Notices; Revises requirements for newspapers publishing legal notices; removes option for publication on newspaper's website; provides for publication of legal notices on publicly accessible websites; authorizes governmental agency to publish legal notices on publicly accessible website; authorizes governmental agency with certain percentage of its population located within county meeting population threshold to use publicly accessible website; requires governmental agency to provide specified notice to residents & property owners relating to alternative methods of receiving notices; provides requirement for public bid advertisements made by governmental agencies on publicly accessible websites. RC 03/08/2022 Favorable	Favorable Yeas 9 Nays 6
2	**CS/CS/HB 861** Health and Human Services Committee / Professions and Public Health Subcommittee / Massullo (Similar S 1192)	Medical Specialty Designations; Provides that using term designating certain medical specialty is grounds for disciplinary action; provides enforcement authority; authorizes DOH to adopt rules. RC 03/08/2022 Fav/1 Amendment	Fav/1 Amendment (Yeas 12 Nays 3

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/HB 7049
INTRODUCER:	State Affairs Committee; Judiciary Committee; and Representatives Grall, Fine, and Fischer
SUBJECT:	Legal Notices
DATE:	March 7, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Phelps	RC	**Favorable**

I. Summary:

CS/HB 7049 allows a governmental agency the option to publish legal notices on a publicly accessible website owned by the county instead of in a print newspaper under specified conditions. The bill reverts the criteria a newspaper must satisfy to be qualified to publish legal notices back to the criteria in place before the passage of chapter 2021-17, Laws of Fla., with the exception of the requirement that a newspaper be for sale. It requires a governmental agency located in a county that has a population of fewer than 160,000 to first hold a public hearing and determine that its residents have sufficient access to the Internet before publishing legally required advertisements and public notices on a publicly accessible website. Finally, the bill eliminates the obligations of the Florida Press Association relating to equitable legal notice access by minority populations.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments.

The bill is effective January 1, 2023.

II. Present Situation:

The Florida Constitution requires all meetings of a county, municipality, school board, or special district at which official acts are to be taken or at which public business is to be discussed or transacted be open to the public and notice be given of such meetings.[1] While this constitutional requirement is self-executing, the Legislature may enact general laws enforcing the provision. Further, certain statutory provisions require that public notices and advertisements be given for certain other local government and judicial actions.[2] Collectively, these notices and advertisements are referred to as "legal notices."

[1] Art. I, s. 24(b), FLA. CONST.

[2] *See, e.g.*, s. 45.031, F.S. (requiring publication of notice of judicial sales) and s. 125.66, F.S. (requiring publication of the tax impact of a value adjustment board's decisions regarding petitions to adjust property taxes).

Legal Notice Publication Requirements Before January 1, 2022

Before January 1, 2022, Florida law required a legal notice to be published in a newspaper that:

- Was published at least once a week;
- Had at least 25 percent of its words in English;
- Was considered a periodical by a post office in its county of publication;
- Was available to the public generally for the publication of legal and other notices;
- Was for sale to the general public; and
- Contained information of interest or value to the general public in the affected area.[3]

If no newspaper was published in the county, at least three copies of the legal notice had to be posted in the county, with one posted on the front door of the county courthouse and two at other locations in the county. In addition, the notice had to be published in a newspaper in the nearest county in which a newspaper was published.[4]

A legal notice published in a newspaper had to appear on the newspaper's website the same day it appeared in the print edition at no additional charge, on a separate web page with a specific title.[5] The website had to have a search function, and the newspaper publisher could not charge a fee or require registration to view or search legal notices.[6] The newspaper also had to place a copy of the notice on the Florida Press Association's ("FPA") free repository website, where it had to be maintained in a searchable archive for 18 months after the first day of posting.[7] The public also had to be permitted to sign up to receive e-mailed notifications of notice publication.[8]

Legal notice publication was not considered effective unless:

- The notice was published for the period prescribed for such a notice;
- The newspaper had existed for at least 1 year at the time of notice publication; and
- A post office in the county of notice publication entered the newspaper as a periodical.[9]

A uniform affidavit established proof of legal notice publication,[10] the form of which was required to:

- Be notarized on paper formatted in a specific manner or in an electronic format that complied with the electronic notarization requirements of s. 117.021, F.S.;
- Contain specified information, including the newspaper's name, publication frequency, and city and county of publication; and
- Include a copy of the legal notice.[11]

[3] Section 50.011, F.S. (2020).
[4] Section 50.021, F.S. (2020).
[5] Section 50.0211(2), F.S. (2020).
[6] *Id.*
[7] Sections 50.0211(3)(a)-(c), F.S. (2020); The Florida Press Association's repository is available at www.floridapublicnotices.com.
[8] Section 50.0211(4), F.S. (2020).
[9] Legal notices could also be published in a newspaper which was a direct successor of a newspaper so published. Section 50.031, F.S. (2020).
[10] Section 50.041(1), F.S. (2020).
[11] Sections 50.041(2) and 50.051, F.S. (2020).

Legal notice publication fees were set by statute and could not be rebated, commissioned, or refunded.[12] The legal notice publication fee was 70 cents per square inch of newspaper for the first insertion and 40 cents per square inch of newspaper for each subsequent insertion.[13] However, if the regular established minimum commercial rate per square inch of newspaper was greater than the rate stipulated in statute, the publisher could charge the minimum commercial rate for each insertion, except that second and successive insertions of legal notices required to be published more than once and paid for by a governmental agency could not cost more than 85 percent of the original rate.[14] All legal notice charges were based on 6-point type on 6-point body, unless otherwise specified by statute.[15]

2021 Legislative Changes

In 2021, the Legislature passed chapter 2021-17, Laws of Fla., which became effective January 1, 2022.[16] The act modified the criteria a newspaper must satisfy to publish legal notices, requiring that a newspaper publishing legal notices in print:

- Be printed and published periodically at least once a week.
- Contain at least 25 percent of its words in English.
- Satisfy one of the following criteria:
  - Be sold, or otherwise be available to the public, at no less than 10 publicly accessible outlets and have an audience consisting of at least 10 percent of the households in the county or municipality, as determined by the most recent decennial census, where the legal notice is being published or posted, by calculating the:
    - Combination of the total number of print copies reflecting the day of highest print circulation, of which at least 25 percent of such print copies must be delivered to home and business addresses; and
    - Total number of online unique monthly visitors to the newspaper's website from within the state.
  - Hold a periodicals permit as of March 1, 2021, and accept legal notices for publication as of that date; however, any such newspaper could only publish legal notices through December 31, 2023, if the newspaper continued to meet the requirements in s. 21, ch. 99-2, Laws of Fla., and continued to hold a periodicals permit.
  - For newspapers publishing legal notices in a fiscally constrained county, hold a periodicals permit and meet all other requirements of the legal notices chapter.
- Be available to the public generally for legal notice publication with no more than 75 percent of its content dedicated to advertising, as measured in half of the newspaper's issues published during any 12-month period, and customarily containing information of interest or value to the general public in the affected area.
- Continually publish in a prominent manner within the first five pages of the print addition and at the bottom portion of the homepage of the newspaper's website:
  - The name, street address, phone number, and website URL of the newspaper's approved print auditor;
  - The newspaper's most recent statement of ownership; and

[12] Section 50.061(1), F.S. (2020).
[13] Section 50.061(2), F.S. (2020).
[14] Section 50.061(3), F.S. (2020).
[15] Section 50.061(6), F.S. (2020).
[16] Chapter 2021-17, Laws of Fla.

- A statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper website's monthly unique visitors, or the newspaper's periodicals permit, if applicable.[17]

Chapter 2021-17, Laws of Fla., also authorized a governmental agency[18] to publish legal notices on the website of any newspaper in the county to which the legal notice pertained[19] and on the FPA's repository website in lieu of publishing the notice in the print edition of a newspaper if the governmental agency, after holding a public hearing noticed in a print edition of a newspaper of general circulation in the affected governmental agency's jurisdiction,[20] makes a determination by a majority of its governing board members that:

- Internet publication of legal notices is in the public interest; and
- Residents within the governmental agency's jurisdiction have sufficient internet access such that Internet-only legal notices publication would not unreasonably restrict public access.[21]

All requirements regarding format and accessibility for legal notices published in a printed newspaper also apply to legal notices published only online.[22]

Chapter 2021-17, Laws of Fla., also requires:

- The legal notices section of a printed newspaper include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the FPA's repository website; and that legal notices published in print are also published on the FPA's repository website.[23]
- A newspaper may charge for Internet-only legal notice publication up to the amount authorized for publication of legal notices in print, without rebate, commission, or refund.[24]
- A governmental agency publishing legal notices only online has to:
  - Give notice, at least once a week in a printed newspaper of general circulation within the region in which the governmental agency is located, that:
    - Legal notices pertaining to the agency do not all appear in a printed newspaper;
    - Additional legal notices may be accessed on the newspaper's website; and
    - A full listing of legal notices may be accessed on the FPA's repository website.
  - Post a link on its website homepage to a webpage listing all the newspapers in which it published legal notices.[25]

Further, Chapter 2021-17, Laws of Fla., required the FPA to seek to ensure that minority populations in the state have equitable access to legal notices posted on the FPA's repository website and required it to publish a report:

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[17] Chapter 2021-17, s. 1, Laws of Fla.
[18] "Governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state. Chapter 2021-17, s. 3(1)(a), Laws of Fla.
[19] A newspaper was deemed to be a newspaper in the county to which the legal notice pertains if it satisfied the criteria to publish legal notices in print. Chapter 2021-17, s. 1(2), Laws of Fla.
[20] A newspaper deemed to be a newspaper of general circulation within the jurisdiction of the affected governmental agency if it satisfied the criteria to public legal notices in print.
[21] Chapter 2021-17, s. 5(a), Laws of Fla.
[22] The bill did not change format and accessibility requirements for legal notices published in a printed newspaper.
[23] Chapter 2021-17, s. 5(b), Laws of Fla.
[24] Chapter 2021-17, s. 5(c), Laws of Fla. The bill did not modify the charges authorized or the size and placement requirements for publication in a printed newspaper.
[25] Chapter 2021-17, s. 3(5)(d), Laws of Fla.

- Listing all newspapers that have placed notices on the repository website in the preceding calendar quarter.
- Identifying which criteria each newspaper satisfied to become qualified to publish legal notices.
- Including the number of unique visitors to the repository website during the quarter and the number of legal notices that were published during that quarter by Internet-only publication or by publication in a printed newspaper and on the repository website.[26]

Additionally, a newspaper or newspaper's website must have been in existence for 2 years prior to publication in order for publication to be completed in accordance with the statutes.[27]

III. Effect of Proposed Changes:

The bill gives a governmental agency the option to publish its legal notices on the publicly accessible website[28] of the county in which it lies instead of in a printed newspaper if doing so would cost less than publishing legal notices in a newspaper. A governmental agency that has at least 75 percent of its population located in a county with a population of fewer than 160,000 must first hold a public hearing and determine the residents of the governmental agency have sufficient access to the Internet before it may publish legally required advertisements and public notices on a publicly accessible website. The bill also requires a special district[29] spanning the geographic boundaries of more than one county and opting to publish legal notices on a publicly accessible website to publish its legal notices on the publicly accessible website of each county it spans. Each legal notice so published must be in searchable form and indicate the date of first publication, and a public bid advertisement made by a governmental agency on a publicly accessible website must include a method for accepting electronic bids.

The bill requires that a link to legal notices published on a publicly accessible website be conspicuously placed on or accessible through a direct link from the:

- Publicly accessible website's homepage; and
- Homepage of the website of each governmental agency publishing legal notices online.

Further, a governmental agency:

- With an authorized governmental access channel[30] may include on such channel a summary of all legal notices posted on its publicly accessible website.
- Publishing legal notices on a publicly accessible website must give notice, at least annually, that property owners and residents may receive legal notices from the governmental agency by first-class mail or e-mail upon registering with the agency.[31]

[26] Chapter 2021-17, s. 3(4)(d), Laws of Fla.
[27] Chapter 2021-17, s. 4, Laws of Fla.
[28] "Publicly accessible website" means a county's official website or other private website designated by the county for the posting of legal notices and advertisements that is accessible via the Internet.
[29] "Special district" means a unit of local government created for a particular purpose with jurisdiction to operate within a limited geographic boundary. A special district is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019)*; see also* ss. 189.02(1), 189.031(3), and 190.005(1), F.S.; *see generally* s. 189.012(6), F.S.
[30] A government access channel is authorized under s. 610.109, F.S.
[31] Such notice must be made in a newspaper of general circulation or another publication that is mailed or delivered to all residents and property owners in the government's jurisdiction.

- Must maintain a registry of property owners and residents who request in writing to receive legal notices from the governmental agency by mail or e-mail.

The bill also reverts the criteria a newspaper must satisfy to publish legal notices back to the criteria in place before January 1, 2022, with the exception of the requirement that a newspaper be for sale. Thus, under the bill, publication may be made in a free newspaper that:

- Is published at least once a week;
- Has at least 25 percent of its words in English;
- Is considered a periodical by a post office in its county of publication;
- Is available to the public generally for the publication of legal and other notices; and
- Contains information of interest or value to the general public in the affected area.

Each legal notice published in a newspaper must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge,[32] on a separate webpage with a specific title. A link to the legal notices webpage must be on the front page of the newspaper's website, and if there is a specified size and placement required for a printed legal notice,[33] the size and placement of the online notice must optimize its online visibility in keeping with the print requirements. The newspaper's website must have a search function and a fee may not be charged, and registration may not be required, for viewing and searching legal notices on the website. The newspaper must also place the notice on the FPA's free repository website, where it must be maintained in a searchable archive for 18 months after the first day of posting. However, the bill eliminates the FPA's reporting obligations relating to minority populations established in chapter 2021-17, Laws of Fla.

The bill is effective January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[32] The bill does not modify the charges authorized in statute for publication in printed newspaper.
[33] The bill does not modify size and placement requirements for legal notices published in a printed newspaper.

D. State Tax or Fee Increases:

Article VII, s. 19(a) of the State Constitution prohibits the Legislature from imposing a new fee except through legislation approved by supermajority vote of each house of the Legislature. Because the bill preserves the option of publishing legal notices in a newspaper, the supermajority vote requirements do not appear to apply.

E. Other Constitutional Issues:

The bill may raise procedural due process concerns to the extent that it hinders actual notice of legal proceedings. Procedural due process requires fair notice "to apprise interested parties of the pendency of" an action that may affect life, liberty, or property.[34] For example, notice is required for termination of parent rights proceedings,[35] certain local county initiatives,[36] and civil judgements based on litigation.[37] On the other hand, the publication of a notice on a website instead of a newspaper may, in some cases, be more effective than publishing a notice solely in a newspaper. Courts have accepted various alternatives to actual service of process over the years.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will likely reduce revenue for certain newspapers to the extent that the bill allows for more publications to qualify as publications for the purpose of publishing a legal notice.

C. Government Sector Impact:

The bill authorizes a governmental agency to publish legal notices on a county's publicly accessible website under specified conditions, which may reduce a governmental agency's costs related to legal notice publication. However, a governmental agency publishing legal notices online must also provide annual notice in a newspaper or another publication mailed or delivered in a specified manner that residents and property owners

[34] *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).
[35] *J.B. v. Florida Dept. of Children & Family Services*, 768 So. 2d 1060, 1066 (Fla. 2000) (finding that 24-hour notice of a hearing regarding termination of parent rights was insufficient notice).
[36] *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (finding that the city failed to place express or de facto notice in an eminent domain proceeding) and *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth*., 795 So. 2d 940, 949 (Fla. 2001) (The Court found in dictum that "constructive notice by publication is appropriate in bond validation proceedings.").
[37] "To give such proceedings any validity, there must be a competent tribunal to pass on their subject-matter; and, if that involves merely a determination of the personal liability of defendant, he must be brought within its jurisdiction by service of process within the state, or by his voluntary appearance." *Pennoyer v. Neff*, 95 U.S. 714, 719 (1877), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186 (1977).

may receive legal notices from the governmental agency by first-class mail or e-mail. The cost of such requirement is indeterminate.

Further, the bill requires a county to publish on its publicly accessible website those legal notices of a governmental agency within its jurisdiction that opts to publish legal notices online; however, a county may be able to absorb the costs associated with this requirement within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 50.011, 50.021, 50.0211, 50.031, 50.051, 50.061, 50.0711, 11.02, 45.031, 90.902, 120.81, 121.055, 162.12, 189.015, 190.005, 200.065, 348.0308, 348.635, 348.7605, 849.38, and 932.704.
This bill creates section 50.0311 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

A bill to be entitled

An act relating to legal notices; amending s. 50.011, F.S.; revising the requirements for newspapers publishing legal notices; deleting an option for publication on a newspaper's website; providing for the publication of legal notices on certain publicly accessible websites; amending ss. 50.021, 50.0211, and 50.031, F.S.; conforming provisions to changes made by the act; creating s. 50.0311, F.S.; providing definitions; authorizing a governmental agency to publish legal notices on a publicly accessible website under certain circumstances; providing criteria for website publication; authorizing a governmental agency with a certain percentage of its population located within a county meeting a certain population threshold to use a publicly accessible website to publish legally required advertisements and public notices only if certain requirements are met; requiring a governmental agency to provide specified notice to certain residents and property owners relating to alternative methods of receiving legal notices; authorizing a governmental agency to publish certain public notices and advertisements on its governmental access channels; providing a requirement for public bid advertisements made by governmental agencies on publicly accessible websites; amending s. 50.051, F.S.; revising a form for affidavits of publication; amending s. 50.061, F.S.; correcting a cross-reference; amending s. 50.0711, F.S.; revising provisions relating to the use of court docket funds; amending ss. 11.02, 45.031, 90.902, 120.81, 121.055, 162.12, 189.015, 190.005, 200.065, 348.0308, 348.635, 348.7605, 849.38, and 932.704, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 50.011, Florida Statutes, is amended to read:

50.011 Publication of legal notices.—Whenever by statute an official or legal advertisement or a publication~~,~~ or notice in a newspaper or on a governmental agency website has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising, or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, such legislation, whether existing or repealed, means ~~the contemporaneous and continuous intent and meaning of such legislation all and singular,~~

~~existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been~~ the following:

(1) A publication in a newspaper printed and published periodically at least once a week, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodical class mail at a post office in the county where published, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public; or ~~A publication in a newspaper that meets all of the following:~~

~~(a) Is printed and published periodically at least once a week.~~

~~(b) Contains at least 25 percent of its words in the English language.~~

~~(c) Satisfies one of the following criteria:~~

~~1. Has an audience consisting of at least 10 percent of the households in the county or municipality, as determined by the most recent decennial census, where the legal or public notice is being published or posted, by calculating the combination of the total of the number of print copies reflecting the day of highest print circulation, of which at~~

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~~least 25 percent of such print copies must be delivered to individuals' home or business addresses, as certified biennially by a certified independent third-party auditor, and the total number of online unique monthly visitors to the newspaper's website from within the state, as measured by industry-accepted website analytics software. The newspaper must also be sold, or otherwise available to the public, at no less than 10 publicly accessible outlets. For legal and public notices published by nongovernmental entities, the newspaper's audience in the county or municipality where the project, property, or other primary subject of the notice is located must meet the 10 percent threshold.~~

~~2. Holds a periodicals permit as of March 1, 2021, and accepts legal notices for publication as of that date. Any such newspaper may continue to publish legal notices through December 31, 2023, so long as the newspaper continues to meet the requirements set forth in s. 21, chapter 99-2, Laws of Florida, and continues to hold a periodicals permit. Beginning January 1, 2024, and thereafter, any such newspaper must meet the criteria under subparagraph 1.~~

~~3. For newspapers publishing legal notices in a fiscally constrained county, holds a periodicals permit and meets all other requirements of this chapter. A newspaper qualified under this subparagraph does not need to meet the criteria under subparagraph 1. so long as the newspaper continues to hold a~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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~~periodicals permit. For purposes of this subparagraph, the term "fiscally constrained county" means a county within a rural area of opportunity designated by the Governor pursuant to s. 288.0656 or a county for which the value of a mill will raise no more than $5 million in revenue, based on the certified taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.~~

~~(d) Is available to the public generally for the publication of official or other notices with no more than 75 percent of its content dedicated toward advertising, as measured in half of the newspaper's issues that are published during any 12-month period, and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.~~

~~(e) Continually publishes in a prominent manner the name, street address, phone number, website URL of the newspaper's approved print auditor, the newspaper's most recent statement of ownership, and a statement of the auditor certifying the veracity of the newspaper's print distribution and the number of the newspaper's website's monthly unique visitors, or the newspaper's periodicals permit, if applicable, within the first five pages of the print edition and the bottom portion of the homepage of the newspaper's website.~~

(2) A publication on a publicly accessible website under

s. 50.0311 ~~Internet publication for governmental agency notices under s. 50.0211(1)(b) on the website of any newspaper in the county to which the legal notice pertains and on the statewide legal notice website as provided in s. 50.0211(5). A newspaper is deemed to be a newspaper in the county to which the legal notice pertains if it satisfies the criteria in subsection (1).~~

Section 2. Section 50.021, Florida Statutes, is amended to read:

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, directs advertisements to be made in a county and there is no newspaper published in the county, the advertisement may be published on a publicly accessible website as provided in s. 50.0311 ~~made by publication in any newspaper qualified under this chapter in an adjoining county or on the website of any such newspaper for governmental agency notices under s. 50.0211(1)(b), and on the statewide legal notice website as provided in s. 50.0211(5)~~ or made by posting three copies thereof in three different places in the county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper qualified under this chapter is published.

Section 3. Section 50.0211, Florida Statutes, is amended to read:

50.0211 Internet website publication.—

~~(1) As used in this section, the term:~~

~~(a) "Governmental agency" means a county, a municipality, a district school board, or any other unit of local government or political subdivision in this state.~~

~~(b) "Governmental agency notice" includes any of the following notices required by law to be published in a newspaper:~~

~~1. Notices related to special or legal legislation pursuant to s. 11.02.~~

~~2. Educational unit notices pursuant to s. 120.81.~~

~~3. Retirement system notices pursuant to s. 121.0511.~~

~~4. Notices related to inclusion of positions in the Senior Management Service Class of the Florida Retirement System pursuant to s. 121.055.~~

~~5. Notices proposing the enactment of county ordinances pursuant to s. 125.66.~~

~~6. Code enforcement notices published pursuant to s. 162.12.~~

~~7. Notices proposing the enactment of municipal ordinances pursuant to s. 166.041.~~

~~8. Special district meeting notices pursuant to s. 189.015.~~

~~9. Establishment and termination notices for community development districts pursuant to ss. 190.005 and 190.046, respectively.~~

~~10. Disclosures of tax impact by value adjustment boards pursuant to s. 194.037.~~

~~11. Advertisements of real or personal property with delinquent taxes pursuant to s. 197.402.~~

~~12. Advertisements of hearing notices, millage rates, and budgets pursuant to s. 200.065.~~

~~13. Turnpike project notices pursuant to s. 338.223.~~

~~14. Public-private partnership notices pursuant to ss. 348.0308 and 348.7605.~~

~~15. Notices of prime recharge area designations for the Floridan and Biscayne aquifers pursuant to s. 373.0397.~~

~~16. Water management district notices pursuant to s. 373.146.~~

~~17. Hazardous waste disposal notices pursuant to s. 403.722.~~

~~18. Forfeiture notices pursuant to ss. 849.38 and 932.704.~~

(1)~~(2)~~ This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2)~~(3)~~ If a governmental agency publishes a legal notice in the print edition of a newspaper, each legal notice must be published ~~posted~~ on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of

the newspaper's website that provides access to the legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper.

(3)(a)~~(4)(a)~~ If a legal notice is published in the print edition of a newspaper ~~or on a newspaper's website~~, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.

2. Published ~~Posted~~ for a period of at least 90 consecutive days after the first day of publication ~~posting~~.

(c) The statewide website created under this subsection

shall maintain a searchable archive of all legal notices published ~~posted~~ on the publicly accessible website for 18 months after the first day of publication ~~posting~~. Such searchable archive shall be provided and accessible to the general public without charge.

~~(d) The Florida Press Association shall seek to ensure that minority populations throughout the state have equitable access to legal notices posted on the statewide legal notice website located at: www.floridapublicnotices.com. The Florida Press Association shall publish a report listing all newspapers that have placed notices on www.floridapublicnotices.com in the preceding calendar quarter. The report must specifically identify which criteria under s. 50.011(1)(c)1.-3. each newspaper satisfied. Each quarterly report must also include the number of unique visitors to the statewide legal notice website during that quarter and the number of legal notices that were published during that quarter by Internet-only publication or by publication in a print newspaper and on the statewide website. At a minimum, the reports for the 4 preceding calendar quarters shall be available on the website.~~

~~(5)(a) In lieu of publishing a legal notice in the print edition of a newspaper of general circulation, a governmental agency may opt for Internet only publication of governmental agency notices with any newspaper of general circulation within the jurisdiction of the affected governmental agency so long as~~

~~the governmental agency, after a public hearing noticed in a print edition of a newspaper in accordance with this chapter, makes a determination by a majority of the members of the governing body of the governmental agency that the Internet publication of such governmental agency notices is in the public interest and that the residents within the jurisdiction of the governmental agency have sufficient access to the Internet by broadband service as defined in s. 364.02 or through other means such that Internet-only publication of governmental agency notices would not unreasonably restrict public access. Any such Internet only publication published in accordance with this subsection must be placed in the legal notices section of the newspaper's website and the statewide legal notice website established under subsection (4). All requirements regarding the format and accessibility of legal notices placed on the newspaper's website and the statewide legal notice website in subsections (3) and (4) also apply to Internet-only publication of legal notices published in accordance with this subsection. A newspaper is deemed to be a newspaper of general circulation within the jurisdiction of the affected governmental agency if it satisfies the criteria in s. 50.011(1).~~

~~(b) The legal notices section of the print edition of a newspaper must include a disclaimer stating that additional legal notices may be accessed on the newspaper's website and the statewide legal notice website. The legal notices section of the~~

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~~newspaper's website must also include a disclaimer stating that legal notices are also published in the print edition of the newspaper and on the statewide legal notice website.~~

~~(c) A newspaper may charge for the publication of any governmental agency notice that is published only on the newspaper's website, without rebate, commission, or refund; however, the newspaper may not charge any higher rate for publication than the amount that would be authorized under s. 50.061 if the governmental agency notice had been printed in the newspaper. The penalties prescribed in s. 50.061(7) for allowing or accepting any rebate, commission, or refund in connection to the amounts charged for publication also apply to any governmental agency notices that are published only on the Internet in accordance with this subsection.~~

~~(d) If a governmental agency exercises the option to publish Internet-only governmental agency notices in accordance with this subsection, such agency must provide notice at least once per week in the print edition of a newspaper of general circulation within the region in which the governmental agency is located which states that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that additional legal notices may be accessed on the newspaper's website and that a full listing of any legal notices may be accessed on the statewide legal notice website located at www.floridapublicnotices.com. Additionally, any such~~

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~~governmental agency must post a link on its website homepage to a webpage that lists all of the newspapers in which the governmental agency publishes legal notices. A newspaper is deemed to be a newspaper of general circulation within the region in which the governmental agency is located if it satisfies the criteria in s. 50.011(1).~~

~~(6) Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are published in the newspaper or on the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.~~

~~(7) Notwithstanding the authorization of Internet-only publication for certain governmental agency notices in accordance with subsection (5), any other statute requiring the publication of an official legal notice in the print edition of a newspaper may not be construed to be superseded.~~

Section 4. Section 50.031, Florida Statutes, is amended to read:

50.031 Newspapers in which legal notices and process may be published.—If a governmental agency publishes a legal notice in a newspaper, no notice or publication required to be published ~~in the print edition of a newspaper or on a newspaper's website, if authorized,~~ in the nature of or in lieu

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of process of any kind, nature, character, or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising, or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county, or municipal, or sheriff's, guardian's, or administrator's or any sale made pursuant to any judicial order, decree, or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality, or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper ~~or on a newspaper's website~~ which at the time of such publication shall have been in existence for 2 years and meets the requirements set forth in s. 50.011, or in a newspaper which is a direct successor of a newspaper which has been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature, or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in

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accordance with ~~the provisions of~~ this section or s. 50.0311 ~~s. 50.0211(5)~~. Proof of such publication shall be made by uniform affidavit.

Section 5. Section 50.0311, Florida Statutes, is created to read:

50.0311 Publication of advertisements and public notices on a publicly accessible website and governmental access channels.—

(1) For purposes of this chapter, the term "governmental agency" means a county, municipality, school board, or other unit of local government or political subdivision in this state.

(2) For purposes of notices and advertisements required under s. 50.011, the term "publicly accessible website" means a county's official website or other private website designated by the county for the publication of legal notices and advertisements that is accessible via the Internet. All advertisements and public notices published on a website as provided in this chapter must be in searchable form and indicate the date on which the advertisement or public notice was first published on the website.

(3) A governmental agency may use the publicly accessible website of the county in which it lies to publish legally required advertisements and public notices if the cost of publishing advertisements and public notices on such website is less than the cost of publishing advertisements and public

notices in a newspaper.

(4) A governmental agency with at least 75 percent of its population located within a county with a population of fewer than 160,000 may use a publicly accessible website to publish legally required advertisements and public notices only if the governing body of the governmental agency, at a public hearing that has been noticed in a newspaper as provided in this chapter, determines that the residents of the governmental agency have sufficient access to the Internet by broadband service, as defined in s. 364.02, or by any other means, such that publishing advertisements and public notices on a publicly accessible website will not unreasonably restrict public access.

(5) A special district spanning the geographic boundaries of more than one county that satisfies the criteria for publishing and chooses to publish legally required advertisements and public notices on a publicly accessible website must publish such advertisements and public notices on the publicly accessible website of each county it spans. For purposes of this subsection, the term "special district" has the same meaning as in s. 189.012.

(6) A governmental agency that uses a publicly accessible website to publish legally required advertisements and public notices shall provide notice at least once per year in a newspaper of general circulation or another publication that is mailed or delivered to all residents and property owners

throughout the government's jurisdiction, indicating that property owners and residents may receive legally required advertisements and public notices from the governmental agency by first-class mail or e-mail upon registering their name and address or e-mail address with the governmental agency. The governmental agency shall maintain a registry of names, addresses, and e-mail addresses of property owners and residents who have requested in writing that they receive legally required advertisements and public notices from the governmental agency by first-class mail or e-mail.

(7) A link to advertisements and public notices published on a publicly accessible website shall be conspicuously placed:

(a) On the website's homepage or on a page accessible through a direct link from the homepage.

(b) On the homepage of the website of each governmental agency publishing notices on the publicly accessible website or on a page accessible through a direct link from the homepage.

(8) A governmental agency that has a governmental access channel authorized under s. 610.109 may also include on its governmental access channel a summary of all advertisements and public notices that are published on a publicly accessible website.

(9) A public bid advertisement made by a governmental agency on a publicly accessible website must include a method to accept electronic bids.

Section 6. Section 50.051, Florida Statutes, is amended to read:

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF COUNTY

STATE OF FLORIDA

COUNTY OF ....:

Before the undersigned authority personally appeared ...., who on oath says that he or she is .... of ~~the ...., a .... newspaper published at .... in~~ .... County, Florida; that the attached copy of advertisement, being a .... in the matter of .... in the .... Court, was published on the publicly accessible website of .... County, Florida, or in a ~~said~~ newspaper by print in the issues of .... ~~or by publication on the newspaper's website, if authorized,~~ on ...(date)....

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Sworn to and subscribed before me this .... day of ...., ...(year)..., by ...., who is personally known to me or who has produced (type of identification) as identification.

...(Signature of Notary Public)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

...(Notary Public)...

Section 7. Subsection (5) of section 50.061, Florida Statutes, is amended to read:

50.061 Amounts chargeable.—

(5) If the public notice is published in the print edition of a newspaper, the publishing ~~posting~~ of the notice on the newspaper's website pursuant to s. 50.0211(2) ~~s. 50.0211(3)~~ must be done at no additional charge.

Section 8. Section 50.0711, Florida Statutes, is amended to read:

50.0711 Court docket fund; service charges; publications.—

(1) The clerk of the court in each county may establish a court docket fund for the purpose of paying the cost of publication of the fact of the filing of any civil case in the circuit court of the county by the style and of the calendar relating to such cases. This court docket fund shall be funded by $1 mandatory court cost for all civil actions, suits, or proceedings filed in the circuit court of the county. The clerk shall maintain such funds separate and apart, and the proceeds from this court cost shall not be diverted to any other fund or for any purpose other than that established in this section. The clerk of the court shall dispense the fund to the designated publicly accessible website publisher or record newspaper in the county on a quarterly basis.

(2) If a judicial circuit publishes legal notices in a

newspaper, a newspaper qualified under the terms of s. 50.011 shall be designated as the record newspaper for such publication by an order of the majority of the judges in the judicial circuit in which such county is located, and such order shall be filed and recorded with the clerk of the circuit court for such county. The designated record newspaper may be changed at the end of any fiscal year of the county by a majority vote of the judges of the judicial circuit of the county ordering such change 30 days prior to the end of the fiscal year, notice of which order shall be given to the previously designated record newspaper.

(3) The publicly accessible website publisher or publishers of any designated record newspapers receiving payment from this court docket fund shall publish, without additional charge, the fact of the filing of any civil case, suit, or action filed in such county in the circuit. Such publication shall be in accordance with a schedule agreed upon between the website publisher or record newspaper and the clerk of the court in such county.

(4) The publicly accessible website publisher or publishers of any designated record newspapers receiving revenues from the court docket fund established in subsection (1) shall, without charge, accept legal advertisements for the purpose of service of process by publication under s. 49.011(4), (10), and (11) when such publication is required of persons

authorized to proceed as indigent persons under s. 57.081.

Section 9. Section 11.02, Florida Statutes, is amended to read:

11.02 Notice of special or local legislation or certain relief acts.—The notice required to obtain special or local legislation or any relief act specified in s. 11.065 shall be by publishing the identical notice as provided in chapter 50 or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not published on a publicly accessible website as provided in s. 50.0311 ~~made by Internet publication as provided in s. 50.0211(5)~~ and there is ~~being~~ no newspaper circulated throughout or published in the county, by posting for at least 30 days at not fewer ~~less~~ than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065 shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund.

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Section 10. Subsection (2) of section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the procedures provided in this section and ss. 45.0315-45.035 may be followed as an alternative to any other sale procedure if so ordered by the court.

(2) PUBLICATION OF SALE.—Notice of sale shall be published on a publicly accessible website as provided in s. 50.0311 for at least 2 consecutive weeks before the sale or once a week for 2 consecutive weeks in a newspaper of general circulation, as provided ~~defined~~ in chapter 50, published in the county where the sale is to be held. The second publication by newspaper shall be at least 5 days before the sale. The notice shall contain:

(a) A description of the property to be sold.

(b) The time and place of sale.

(c) A statement that the sale will be made pursuant to the order or final judgment.

(d) The caption of the action.

(e) The name of the clerk making the sale.

(f) A statement that any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim before the clerk reports the surplus as unclaimed.

The court, in its discretion, may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

Section 11. Subsection (12) of section 90.902, Florida Statutes, is amended to read:

90.902 Self-authentication.—Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for:

(12) A legal notice published in accordance with the requirements of chapter 50 in the print edition of a qualified newspaper or on a publicly accessible website as provided in s. 50.0311 ~~the website of a qualified newspaper~~.

Section 12. Paragraph (d) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Register, but notice shall be made:

1. By publication in a newspaper qualified under chapter 50 in the affected area or on a publicly accessible website as

provided in s. 50.0311;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Section 13. Paragraph (b) of subsection (1) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(b)1. Except as provided in subparagraph 2., effective January 1, 1990, participation in the Senior Management Service Class is compulsory for the president of each community college, the manager of each participating municipality or county, and all appointed district school superintendents. Effective January 1, 1994, additional positions may be designated for inclusion in the Senior Management Service Class if:

a. Positions to be included in the class are designated by the local agency employer. Notice of intent to designate positions for inclusion in the class must be published for at

least 2 consecutive weeks if published on a publicly accessible website as provided in s. 50.0311 ~~by Internet publication as provided in s. 50.0211(5)~~ or, if published in print, once a week for 2 consecutive weeks in a newspaper qualified under chapter 50 that is published in the county or counties affected.

b. Up to 10 nonelective full-time positions may be designated for each local agency employer reporting to the department; for local agencies with 100 or more regularly established positions, additional nonelective full-time positions may be designated, not to exceed 1 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who is not subject to continuing contract and serves at the pleasure of the local agency employer without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. In lieu of participation in the Senior Management Service Class, members of the Senior Management Service Class, pursuant to subparagraph 1., may withdraw from the Florida Retirement System altogether. The decision to withdraw from the system is irrevocable as long as the employee holds the position. Any service creditable under the Senior Management

Service Class shall be retained after the member withdraws from the system; however, additional service credit in the Senior Management Service Class may not be earned after such withdrawal. Such members are not eligible to participate in the Senior Management Service Optional Annuity Program.

3. Effective January 1, 2006, through June 30, 2006, an employee who has withdrawn from the Florida Retirement System under subparagraph 2. has one opportunity to elect to participate in the pension plan or the investment plan.

a. If the employee elects to participate in the investment plan, membership shall be prospective, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee elects to participate in the pension plan, the employee shall, upon payment to the system trust fund of the amount calculated under sub-sub-subparagraph (I), receive service credit for prior service based upon the time during which the employee had withdrawn from the system.

(I) The cost for such credit shall be an amount representing the actuarial accrued liability for the affected period of service. The cost shall be calculated using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under the pension plan in addition to the period of withdrawal. The actuarial accrued liability

attributable to any service already maintained under the pension plan shall be applied as a credit to the total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an actuary.

(II) The employee must transfer a sum representing the net cost owed for the actuarial accrued liability in sub-sub-subparagraph (I) immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and the period of withdrawal.

(h)1. Except as provided in subparagraph 3., effective January 1, 1994, participation in the Senior Management Service Class shall be compulsory for the State Courts Administrator and the Deputy State Courts Administrators, the Clerk of the Supreme Court, the Marshal of the Supreme Court, the Executive Director of the Justice Administrative Commission, the capital collateral regional counsel, the clerks of the district courts of appeals, the marshals of the district courts of appeals, and the trial court administrator and the Chief Deputy Court Administrator in each judicial circuit. Effective January 1, 1994, additional positions in the offices of the state attorney and public defender in each judicial circuit may be designated for inclusion in the Senior Management Service Class of the Florida Retirement System, provided that:

a. Positions to be included in the class shall be

designated by the state attorney or public defender, as appropriate. Notice of intent to designate positions for inclusion in the class shall be published for at least 2 consecutive weeks on a publicly accessible website as provided in s. 50.0311 ~~by Internet publication as provided in s. 50.0211(5)~~ or, if published in print, once a week for 2 consecutive weeks in a newspaper qualified under chapter 50 in the county or counties affected.

b. One nonelective full-time position may be designated for each state attorney and public defender reporting to the Department of Management Services; for agencies with 200 or more regularly established positions under the state attorney or public defender, additional nonelective full-time positions may be designated, not to exceed 0.5 percent of the regularly established positions within the agency.

c. Each position added to the class must be a managerial or policymaking position filled by an employee who serves at the pleasure of the state attorney or public defender without civil service protection, and who:

(I) Heads an organizational unit; or

(II) Has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

2. Participation in this class shall be compulsory, except as provided in subparagraph 3., for any judicial employee who

holds a position designated for coverage in the Senior Management Service Class, and such participation shall continue until the employee terminates employment in a covered position. Effective January 1, 2001, participation in this class is compulsory for assistant state attorneys, assistant statewide prosecutors, assistant public defenders, and assistant capital collateral regional counsel. Effective January 1, 2002, participation in this class is compulsory for assistant attorneys general.

3. In lieu of participation in the Senior Management Service Class, such members, excluding assistant state attorneys, assistant public defenders, assistant statewide prosecutors, assistant attorneys general, and assistant capital collateral regional counsel, may participate in the Senior Management Service Optional Annuity Program as established in subsection (6).

Section 14. Paragraph (a) of subsection (2) of section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published in print in a newspaper or on a publicly accessible website as provided in s.

50.0311 ~~newspaper's website and the statewide legal notice website as provided in s. 50.0211(5)~~ for 4 consecutive weeks. If published in print, the notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

Section 15. Subsection (1) of section 189.015, Florida Statutes, is amended to read:

189.015 Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting as provided in chapter 50 in the county or counties in which the special district is located, unless a bona fide

emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body. No approval of the annual budget shall be granted at an emergency meeting. The notice shall be posted as provided in chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, as provided in chapter 50 by publication on a publicly accessible website ~~Internet publication~~ or by publication in a newspaper in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no fewer ~~less~~ than 7 days before such meeting.

Section 16. Paragraph (d) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 2,500 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(d) A local public hearing on the petition shall be

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conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e). The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published for 4 successive weeks on a publicly accessible website as provided in s. 50.0311 ~~newspaper's website and the statewide legal notice website provided in s. 50.0211(5)~~ or, if published in print, in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing as provided in chapter 50. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. If published in the print edition of a newspaper, the advertisement may not be placed in the portion of the newspaper where legal notices and classified advertisements appear. The advertisement must be published in a newspaper in the county and of general interest and readership in the community pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least weekly, unless the only newspaper in

the community is published less than weekly. If the notice is published in the print edition of the newspaper, the map must also be included in any online advertisement pursuant to s. 50.0211. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

Section 17. Paragraph (h) of subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be published as provided in chapter 50. If the advertisement is published in the print edition of a newspaper, the advertisement must be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least weekly unless the only newspaper in the county is published less than weekly, or that the

advertisement appear in a geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community pursuant to chapter 50.

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. In addition, if published in the print edition of the newspaper ~~or only published on the Internet in accordance with s. 50.0211(5)~~, the map must be included in the online advertisement required by s. 50.0211. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

Section 18. Subsection (3) of section 348.0308, Florida Statutes, is amended to read:

348.0308 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling

within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The agency may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, on a publicly accessible website ~~by Internet publication~~ or by print in a newspaper qualified to publish legal notices in the county in which the project is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the agency shall rank the proposals in order of preference. In ranking the proposals, the agency shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the agency is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the agency may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal

is received, the agency may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The agency may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 19. Subsection (3) of section 348.635, Florida Statutes, is amended to read:

348.635 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, on a publicly accessible website ~~by either Internet publication~~ or by print in a newspaper in the county in which the project is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has

expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 20. Subsection (3) of section 348.7605, Florida Statutes, is amended to read:

348.7605 Public-private partnership.—The Legislature declares that there is a public need for the rapid construction of safe and efficient transportation facilities for traveling within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(3) The authority may request proposals for public-private

transportation projects or, if it receives an unsolicited proposal, it must publish a notice in the Florida Administrative Register and, as provided in chapter 50, on a publicly accessible website ~~by either Internet publication~~ or by print in a newspaper in the county in which the project is located at least once a week for 2 weeks stating that it has received the proposal and will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to each local government in the affected areas. After the public notification period has expired, the authority shall rank the proposals in order of preference. In ranking the proposals, the authority shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal. If the authority is not satisfied with the results of the negotiations, it may, at its sole discretion, terminate negotiations with the proposer. If these negotiations are unsuccessful, the authority may go to the second and lower-ranked firms, in order, using the same procedure. If only one proposal is received, the authority may negotiate in good faith, and if it is not satisfied with the results, it may, at its sole discretion, terminate negotiations with the proposer. The authority may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer.

Section 21. Subsection (5) of section 849.38, Florida Statutes, is amended to read:

849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of $1,000 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than $1,000, the citation shall be published by print or posted for at least 2 consecutive weeks on a publicly accessible website as provided in s. 50.0311 ~~newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5)~~. If published in print, the citation shall appear at least once each week for 2 consecutive weeks in a newspaper qualified to publish legal notices under chapter 50 that is published in the county, if there is such a newspaper published in the county. If there is no such newspaper, the notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication as provided in chapter 50, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause

unless it shall affirmatively appear that no such publication was made.

Section 22. Paragraph (a) of subsection (6) of section 932.704, Florida Statutes, is amended to read:

932.704 Forfeiture proceedings.—

(6)(a) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the seizing agency, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the attorney for the seizing agency shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The seizing agency shall also publish, in accordance with chapter 50, notice of the forfeiture complaint for 2 consecutive weeks on a publicly accessible website ~~newspaper's website and the statewide legal notice website in accordance with s. 50.0211(5)~~ or, if published in print, once each week for 2 consecutive weeks in a newspaper qualified to publish legal notices under chapter 50 in the county where the seizure occurred.

Section 23. This act shall take effect January 1, 2023.

The Florida Senate

APPEARANCE RECORD

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03/08/22
Meeting Date

Rules
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Murphy

Phone 352-563-3255

Address 1624 N Meadowcrest Blvd
Street

Email jmurphy@chronicleonline.com

Crystal River | Fl | 34429
City | *State* | *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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March 8, 2022
Meeting Date

Rules
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jeff Kottkamp

Phone

Address
Street

Email JeffKottkamp@gmail.com

Tallahassee FL
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
American Lawyer Media (ALM)

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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3/8/22
Meeting Date

Rules
Committee

7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Adam Basford

Phone 224-7173

Address 516 N Adams St
Street

Email abasford@aif.com

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Associated Industries of Florida

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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3/8/22
Meeting Date

RULES
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name WILLIAM SNOWDEN

Phone (850) 566-2232

Address 12 ARRAN RD.
Street

Email editor@thewakullasun.com

CRAWFORDVILLE FL 32327
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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March 8th 2022
Meeting Date

Rules
Committee

HB 7049 Legal nex
Bill Number or Topic

Amendment Barcode (if applicable)

Name David Dunn-Rankin Phone 941-206-1003

Address 300 South Tamiami Trail Email David@D-R.Medra
Street

Venice FL 34285
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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3/8/22
Meeting Date

Rules
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Emerald Greene

Phone 850-464-0865

Address [redacted] 1695 SR 53 South
Street

Email emerald@greenepublishing.com

Madison FL 32340
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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3/8/2022
Meeting Date

Senate Rules
Committee

HB7049
Public Notice
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pamela Marsh

Phone 850-224-4555

Address 1700 N. Monroe St., Suite 11-140
Street

Email pmarsh@floridafaf.org

Tallahassee, FL 32303
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
First Amendment Foundation, Inc.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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3/8/22
Meeting Date

Rules
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jim Fogler / President Florida Press Association

Phone 845-219-9400

Address 336 College Ave Suite 304
Street

Email Jfogler@flpress.com

Tallahassee FL
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: The Florida Press Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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March 8, 2022
Meeting Date

Rules
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Todd Wilson

Phone 386-752-1293

Address 180 E. Duval St.
Street

Email twilson@lakecityreporter.com

Lake City | FL | 32055
City | *State* | *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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03/08/22
Meeting Date

Rules
Committee

7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Leo Heatschker

Phone (973) 900-2959

Address 331 NW 26th St
Street

Email leo@column.us

Miami FL 33127
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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03/08	7049
Meeting Date	Bill Number or Topic
Rules	
Committee	Amendment Barcode (if applicable)

Name Jake Seaton

Phone 785-313-2445

Address 331 NW 26th St
Street

Email Seaton@column.us

Miami FL 33127
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/16/22
Meeting Date

Rules
Committee

CS HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bryan Boukari

Phone 386-462-7529

Address 14801 main St.
Street

Email bryan@Boukarilaw.com

Alachua FL 32615
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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MARCH 8, 2022
Meeting Date

S RULES
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name WILLIAM HATFIELD

Phone 850-228-6463

Address 4743 STONEY TRACE
Street

Email WHATFIELD@TALLAHASSEE.COM

TALLAHASSEE FL 32309
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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March 8
Meeting Date

Rules
Committee

HB 7049
Bill Number or Topic

Amendment Barcode (if applicable)

Name Samuel Morley Fla. Press Association

Phone 8502124395

Address 336 E. College Ave.
Street

Email smorley@flpress.com

Tallahassee FL 32312
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Fla. Press Assoc.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/HB 861
INTRODUCER:	Health and Human Services Committee; Professions and Public Health Subcommittee; and Representative Massullo
SUBJECT:	Medical Specialty Designations
DATE:	March 7, 2022 REVISED: 03/08/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Phelps	RC	**Fav/1 amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/CS/HB 861 creates s. 456.072(1)(tt), F.S., to provide a new behavior that, if carried out by a licensed health care practitioner, constitutes grounds for which the disciplinary actions contained in s. 456.072(2), F.S., may be imposed on the practitioner.

The specific behavior created under the bill as new grounds for discipline is the act of using a term designating a medical specialty for which the Accreditation Council for Graduate Medical Education or the American Osteopathic Association accredits or recognizes as a residency or fellowship program, unless one of three exceptions applies.

The bill provides that the Department of Health (DOH) must enforce the bill's provisions and has the same enforcement authority as an applicable board.

The bill authorizes the DOH to adopt rules to implement the bill's provisions.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Licensure and Regulation of Health Care Practitioners

The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care practitioners.[1] The MQA works in conjunction with 22 regulatory boards and four councils to license and regulate seven types of health care facilities and more than 40 health care professions.[2] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. The MQA is statutorily responsible for the following boards and professions established within the division:[3]

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;
- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part I of ch. 483, F.S.;
- Medical physicists, as provided under part II of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;

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[1] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

[2] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, p. 5, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/2019-2020-annual-report.pdf (last visited Mar. 7, 2022).

[3] Section 456.001(4), F.S.

- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.

The DOH and the practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to statutory authority and directives. The DOH receives and investigates complaints about practitioners, and prosecutes cases for disciplinary action against practitioners.

The DOH, on behalf of the professional boards, investigates complaints against practitioners.[4] Once an investigation is complete, the DOH presents the investigatory findings to the boards. The DOH recommends a course of action to the appropriate board's probable cause panel which may include:[5]

- Having the file reviewed by an expert;
- Issuing a closing order; or
- Filing an administrative complaint.

The boards determine the course of action and any disciplinary action to take against a practitioner.[6] For professions in which there is no board, the DOH determines the action and discipline to take against a practitioner and issues the final orders.[7] The DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.[8] If a case is appealed, DOH attorneys defend the final actions of the boards before the appropriate appellate court.[9]

The different DOH and board roles apply to all statutory grounds for discipline against a practitioner. Under current law, the DOH takes on the disciplinary functions of a board only for practitioner types that do not have a board. Currently, the DOH itself takes no final disciplinary action against practitioners for which there is a board.

Board Certification and Florida Licensure

The DOH does not license health care practitioners by specialty or subspecialty; rather, practitioners become board-certified in specialties by private, national specialty boards, such as

[4] Department of Health, *Investigative Services*, http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html (last visited Mar. 7, 2022).
[5] Department of Health, *Prosecution Services*, http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html (last visited Mar. 7, 2022).
[6] Section 456.072(2), F.S.
[7] Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, and school psychologists.
[8] *Supra*, note 5.
[9] *Id.*

the American Board of Medical Specialties (ABMS), the Accreditation Board for Specialty Nursing Certification, and the American Board of Dental Specialties.[10]

Prohibitions

Current law limits which health care practitioners may hold themselves out as board-certified specialists. An allopathic physician may not hold himself or herself out as a board-certified specialist unless he or she has received formal recognition as a specialist from a specialty board of the ABMS or other recognizing agency[11] approved by the Board of Medicine.[12] Additionally, an allopathic physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the Board of Medicine.[13]

Similarly, an osteopathic physician may not hold himself or herself out as a board-certified specialist unless he or she has successfully completed the requirements for certification by the American Osteopathic Association (AOA) or the Accreditation Council on Graduate Medical Education (ACGME) and is certified as a specialist by a certifying agency[14] approved by the board.[15]

A dentist may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the dentist has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and the dentist is:[16]

- Eligible for examination by a national specialty board recognized by the American Dental Association; or
- Is a diplomate of a national specialty board recognized by the American Dental Association.

If a dentist announces or advertises a specialty practice for which there is not an approved accrediting organization, the dentist must clearly state that the specialty is not recognized or that the accrediting organization has not been approved by the American Dental Association or the Florida Board of Dentistry.[17]

Additionally, an advanced practice registered nurse (APRN) may not advertise or hold himself or herself out as a specialist for which he or she has not received certification.[18]

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[10] Examples of specialties include dermatology, emergency medicine, ophthalmology, pediatric medicine, certified registered nurse anesthetist, clinical nurse specialist, cardiac nurse, nurse practitioner, endodontics, orthodontics, and pediatric dentistry.
[11] The Board of Medicine has approved the specialty boards of the ABMS as recognizing agencies. See Rule 64B8-11.001(1)(f), F.A.C.
[12] Section 458.3312, F.S.
[13] *Id.*
[14] The osteopathic board has approved the specialty boards of the ABMS and AOA as recognizing agencies. Rule 64B15-14.001(h), F.A.C.
[15] Section 459.0152, F.S.
[16] Section 466.0282, F.S. A dentist may also hold himself or herself out as a specialist if the dentist has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association.
[17] Section 466.0282(3), F.S.
[18] Section 464.018(1)(s), F.S.

By rule, the Board of Chiropractic Medicine (BCM) prohibits chiropractors from using deceptive, fraudulent, and misleading advertising. However, the BCM permits chiropractors to advertise that he or she has attained Diplomate status in a chiropractic specialty area recognized by the BCM. BCM recognized specialties include those which are recognized by the Councils of the American Chiropractic Association, the International Chiropractic Association, the International Academy of Clinical Neurology, or the International Chiropractic Pediatric Association.[19]

Disciplinary Proceedings under Chapter 456, F.S.

Section 456.072, F.S., sets out grounds for discipline and due process that are applicable to all licensed health care practitioners, in addition to the grounds set out in each practice act, and includes:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession;
- Intentionally violating any board or DOH rule;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, and failing to report the violation within 30 days, including a crime:
  - Relating to practice, or ability to practice, a profession;
  - Relating to Medicaid fraud; and
  - Relating to health care fraud.
- Using a Class III or Class IV laser device without having complied with registration rules for the devices;
- Failing to comply with the continuing education (CE) requirements for:
  - HIV/AIDS;
  - Domestic violence.
- Having a license revoked, suspended, or acted against, including denial, or by relinquishment, stipulation, consent order, or settlement, in any jurisdiction;
- Having been found civilly liable for knowingly filing a false report or complaint with the DOH against another licensee;
- Attempting to obtain, or renewing a license by bribery, fraudulent misrepresentation, or through DOH error;
- Failing to report to the DOH any person who the licensee knows is in violation of ch. 456, F.S., or the chapter and rules regulating the practitioner;
- Aiding, assisting, procuring, employing, or advising a person to practice a profession without a license;
- Failing to perform a statutory or legal obligation;
- Knowingly making or filing a false report;
- Making deceptive, untrue, or fraudulent representations in the licensee's practice;
- Exercising undue influence on the patient for financial gain;
- Knowingly practicing beyond his or her scope of practice or is not competent to perform;
- Delegating professional responsibilities to person licensee knows is not qualified to perform;

[19] Rule 64B2-15.001(2)(e), F.A.C. Examples of chiropractic specialties include chiropractic acupuncture, chiropractic internist, chiropractic and clinical nutrition, radiology chiropractic, and pediatric chiropractors.

- Violating a lawful order of the DOH or a board, or failing to comply a DOH subpoena;
- Improperly interfering with an investigation, inspection, or disciplinary proceeding;
- Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient, the type of license under which the practitioner is practicing, including in advertisements;[20]
- Failing to provide patients information about their rights and how to file a complaint;
- Engaging or attempting to engage in sexual misconduct;
- Failing to comply with the requirements for profiling and credentialing;
- Failing to report within 30 days that the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction;
- Using information from police reports, newspapers, other publications, or through a radio or television, for commercial purposes or solicitation;
- Being unable to practice with reasonable skill and safety because of illness or use of alcohol, drugs, narcotics, chemicals, or as a result of a mental or physical condition;
- Testing positive for any illegal drug on any pre-employment or employer-ordered screening when the practitioner does not have a prescription;
- Performing or attempting to perform health care services on the wrong patient, wrong-site, or an unauthorized procedure or medically unnecessary procedure;
- Leaving a foreign body in a patient;
- Violating any provision of the applicable practice act or rules;
- Intentionally submitting a Personal Injury Protection (PIP) claim, that has been "upcoded;"
- Intentionally submitting a PIP claim for services not rendered;
- Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients;
- Being terminated from an impaired practitioner program for failing to comply;
- Failure to comply with controlled substance prescribing requirements;
- Intentionally entering any information concerning firearm ownership into the patient's medical record; and
- Willfully failing to authorize emergency care or services with such frequency as to indicate a general business practice.

The DOH, on behalf of the boards, investigates any complaint that is filed against a health care practitioner if the complaint is:[21]

- In writing;
- Signed by the complainant;[22] and
- Legally sufficient.

A complaint is legally sufficient if it contains allegations of ultimate facts that, if true, show that a regulated practitioner has violated:

[20] These grounds do not apply to a practitioner while the practitioner is providing services in a facility licensed under chs. 394, 395, 400, or 429, F.S.
[21] Section 456.073(1), F.S.
[22] *Id.* The DOH may also investigate an anonymous complaint, or that of a confidential informant, if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.

- Chapter 456, F.S.;
- His or her practice act; or
- A rule of his or her board or the DOH.[23]

The Consumer Services Unit receives the complaints and refers them to the closest Investigative Services Unit (ISU) office. The ISU investigates complaints against health care practitioners. Complaints that present an immediate threat to public safety are given priority; however, all complaints are investigated as timely as possible. When the complaint is assigned to an investigator, the complainant will be contacted and given the opportunity to provide additional information. A thorough investigation will be conducted. The steps taken in the investigation are determined by the specifics of the allegations, but generally include the following:

- Obtaining medical records, documents, and evidence;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses; and
- Drafting and serving subpoenas for necessary information.

The ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders for the DOH.[24]

The PSU is responsible for providing legal services to the DOH in the regulation of all health care boards and councils. The PSU will review the investigative file and report from ISU and recommend a course of action to the State Surgeon General (when an immediate threat to the health, safety, and welfare of the people of Florida exists), the appropriate board's probable cause panel, or the DOH, if there is no board, which may include:

- Having the file reviewed by an expert;
- Issuing a closing order (CO);
- Filing an administrative complaint (AC); or
- Issuing an emergency order (ERO or ESO).[25]

If the ISU investigative file received by PSU does not pose an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU attorneys review the file and determine, first, whether expert review is required and, then, whether to recommend to the board's probable cause panel:

- A CO;
- An AC; or
- A Letter of guidance.[26,27]

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[23] *Supra* note 21.
[24] Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Investigative Services, available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html (last visited Mar. 8, 2022).
[25] Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Prosecution Services, available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html (last visited Mar. 8, 2022).
[26] Section 456.073(2), F.S. The DOH may recommend a letter of guidance in lieu of finding probable cause if the subject has not previously been issued a letter of guidance for a related offense.
[27] *Id.*

A CO is recommended if the investigation and/or the expert opinion does not support the allegation(s). The subject and the complainant are notified of the results. The complainant may appeal the decision within 60 days of notification by providing additional information for consideration. Cases closed with no finding of probable cause are confidential and are not available through a public records request.[28]

An AC is recommended when the investigation and/or the expert opinion supports the allegation(s). The subject is entitled to a copy of the complete case file prior to the probable cause panel meeting. When an AC is filed with the agency clerk, the subject has the right to choose one of the following options:

- *An Administrative Hearing Involving Disputed Issues of Material Fact* – The subject disputes the facts in the AC and elects to have a hearing before the Division of Administrative Hearings (DOAH).[29] If this occurs, all parties may be asked to testify and the administrative law judge will issue a recommended order that will then go to the board, or the DOH if there is no board, for final agency action.
- *A Settlement/Stipulation/Consent Agreement* – The subject enters into an agreement to be presented before the board or the DOH if there is no board. Terms of this agreement may impose penalties negotiated between the subject or the subject's attorney and the DOH's attorney.
- *A Hearing Not Involving Disputed Issues of Material Fact* – The subject of the AC does not dispute the facts. The subject elects to be heard before the board or the DOH if there is no board. At that time, the subject will be permitted to give oral and/or written evidence in mitigation or in opposition to the recommended action by the DOH.
- *Voluntary Relinquishment of License* – The subject of the AC may elect to surrender his or her license and to cease practice.[30]

Final DOH action, including all of the above, as well as cases where the subject has failed to respond to an AC, are presented before the applicable board, or the DOH if there is no board. The subject may be required to appear. The complainant is notified of the date and location of the hearing and may attend. If the subject is entitled to, and does, appeal the final decision, PSU defends the final order before the appropriate appellate court.[31]

If the ISU investigative file received by the PSU presents evidence of an immediate threat to the health, safety, and welfare of the people of Florida, then PSU will present the file to the State Surgeon General and recommend one of two types of emergency orders – ESO or ERO – which are exclusively issued by the State Surgeon General against licensees who pose such a threat to the people of Florida.[32]

Whether the State Surgeon General issues an ERO or an ESO depends on the level of danger the licensee presents because the DOH is permitted to use only the "least restrictive means" to stop the danger.[33] The distinction between the two orders is:

[28] *Supra* note 26.
[29] *See* ss. 120.569 and 120.57, F.S.
[30] *Id.*
[31] *Supra* note 24.
[32] Section 456.073(8) and 120.60(6), F.S.
[33] Section 120.60(6)(b), F.S.

- ESOs – Licensees are deemed to be a threat to the public at large; or
- EROs – Licensees are considered a threat to a segment of the population.[34]

The emergency order process is carried out without a hearing, restricting someone's right to work, and when the order is served on the licensee, it must contain a notice to the licensee of his or her right to an immediate appeal of the emergency order.[35] An ESO or ERO is not considered final agency action, and the DOH must file an AC on the underlying facts supporting the ESO or ERO within 20 days of its issuance.[36] The appeal of the emergency order and the normal disciplinary process under the AC, and regular prosecution can run simultaneously.[37]

Due Process Under Chapter 120, F.S.

Chapter 120, F.S., known as the Administrative Procedure Act, provides uniform procedures for the exercise of specified authority. Section 120.60, F.S., pertains to licensing and provides for due process for persons seeking government-issued licensure or who have been granted such licensure. Section 120.60(5), F.S., provides that:

- No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the governmental agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a hearing under ss. 120.569 and 120.57, F.S.
- When personal service cannot be made and the certified mail notice is returned undelivered, the agency must cause a short, plain notice to the licensee to be published once each week for four consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency, or, if no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county.

Section 120.60(6), F.S., provides a process for cases in which a governmental agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license. In such cases, the agency may take such action by any procedure that is fair under the circumstances if:

- The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the U.S. Constitution;
- The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation

[34] Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, Prosecution Services, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know, available at* http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/a-quick-guide-to-the-mqa-disciplinary-process-discrtionary-emergency-orders.pdf (last visited Mar. 8, 2022).
[35] *See* Fla. Admin. Code R. 28-106.501(3) (2020), and ss. 120.569(2)(n) or 120.60(6), F.S.
[36] Fla. Admin. Code R. 28-106.501(3) (2020).
[37] Section 120.60(6)(c), F.S.

proceeding pursuant to ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted upon.

Anesthesiology

Under chs. 458 and 459, F.S., "anesthesiology" is defined as the practice of medicine that specializes in the relief of pain during and after surgical procedures and childbirth, during certain chronic disease processes, and during resuscitation and critical care of patients in the operating room and intensive care environments.[38]

The term "anesthesiologist" is defined as an allopathic or osteopathic physician who holds an active, unrestricted license; who has successfully completed an anesthesiology training program approved by the Accreditation Council on Graduate Medical Education or its equivalent; and who is certified by the American Board of Anesthesiology, is eligible to take that board's examination, or is certified by the Board of Certification in Anesthesiology affiliated with the American Association of Physician Specialists.[39]

Nurse Anesthetists

A certified registered nurse anesthetist (CRNA) is an APRN, licensed by the Board of Nursing (BON), who specializes in anesthetic services.

APRNs are regulated under part I of ch. 464, F.S., the Nurse Practice Act. The BON provides, by rule, the eligibility criteria for applicants to be licensed as APRNs and the applicable regulatory standards for APRN nursing practices.[40] Additionally, the BON is responsible for administratively disciplining an APRN who commits prohibited acts.[41]

In Florida "advanced or specialized nursing practice" includes, in addition to practices of professional nursing that registered nurses are authorized to perform, advanced-level nursing acts approved by the BON as appropriate for APRNs to perform by virtue of their post-basic specialized education, training, and experience.[42] Advanced or specialized nursing acts may only be performed if authorized under a supervising physician's protocol.[43] In addition to advanced or specialized nursing practices, APRNs are authorized to practice certain medical acts, as opposed to nursing acts, as authorized within the framework of an established supervisory physician's protocol.[44]

A CRNA may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed, perform any or all of the following:

- Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.

[38] Sections 458.3475(1)(c) and 459.023(1)(c), F.S.
[39] Sections 458.3475(1)(a) and 459.023(1)(a), F.S.
[40] *See* s. 464.004, F.S., and Fla. Admin. Code R. 64B9-3 (2020).
[41] *See* ss. 464.018 and 456.072, F.S.
[42] Section 464.003(2), F.S.
[43] Section 464.012(3)-(4), F.S.
[44] *Id.*

- Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.
- Order pre-anesthetic medication under the protocol.
- Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. These procedures include ordering and administering regional, spinal, and general anesthesia; inhalation agents and techniques; intravenous agents and techniques; and techniques of hypnosis.
- Order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient.
- Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.
- Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.
- Recognize and treat a cardiac arrhythmia while the patient is under anesthetic care.
- Participate in management of the patient while in the post-anesthesia recovery area, including ordering the administration of fluids and drugs.
- Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.

"Nurse Anesthesiologist"

On August 8, 2019, at the general BON meeting, the BON considered requests for declaratory statements.[45] The second request for a declaratory statement was made by John P. McDonough, A.P.R.N., C.R.N.A., license number 3344982.[46]

For the meeting, McDonough's Petition for Declaratory Statement acknowledged that the type of Florida nursing license he held was as an *A.P.R.N.*, and that he was a certified registered nurse anesthetist (C.R.N.A.), but requested that he be permitted to use the phrase "nurse anesthesiologist" as a descriptor for him or his practice, and that the BON not subject him to discipline under ss. 456.072 and 464.018, F.S.,[47] based on the following grounds:

[45] Section 120.565, F.S. Provides that, "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the petitioner's particular set of circumstances. The agency must give notice of the filing of a petition in the Florida Administrative Register, provide copies of the petition to the board, and issue a declaratory statement or deny the petition within 90 days after the filing. The declaratory statement or denial of the petition is then noticed in the next Florida Administrative Register, and disposition of a petition is a final agency action."

[46] The Florida Board of Nursing, Meeting Minutes, Disciplinary Hearings & General Business, *Declaratory Statements*, No. 2, Aug. 8, 2019, *available at* https://floridasnursing.gov/meetings/minutes/2019/08-august/08072019-minutes.pdf p. 28 (last visited Mar. 7, 2022).

[47] *Petition for Declaratory Statement Before the Board of Nursing, In re: John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, July 10, 2019 (on file with the Senate Rules Committee).

- A New Hampshire Board of Nursing's Position Statement that the nomenclature, *Nurse Anesthesiologist* and *Certified Registered Nurse Anesthesiologist*, are not title changes or an expansion of scope of practice, but are optional, accurate descriptors;[48] and
- Florida law grants no title protection to the words *anesthesiologist* or *anesthetist.*[49]

The Florida Association of Nurse Anesthetists (FANA) and the Florida Medical Association, Inc. (FMA), Florida Society of Anesthesiologists, Inc. (FSA), and Florida Osteopathic Medical Association, Inc. (FOMA), filed timely and legally sufficient[50] motions to intervene[51] pursuant to Florida Administrative Code Rule 28-106.205.[52] The FANA's petition[53] was in support of petitioner's Declaratory Statement while the motion filed jointly by the FMA, FSA, and FOMA was in opposition.

The FMA, FSA, and FOMA argued they were entitled to participate in the proceedings, on behalf of their members, as the substantial interests of their members – some 32,300 – could be adversely affected by the proceeding.[54] Specifically, the FMA, FSA, and FOMA argued that the substantial interests of their respective members would be adversely affected by the issuance of a Declaratory Statement that petitioner could use the term "nurse anesthesiologist," without violating ss. 456.072 and 464.018, F.S., on the grounds that:

- A substantial number of their members use the term "anesthesiologist" with the intent and understanding that patients, and potential patients, would recognize the term to refer to them as physicians licensed under chs. 458 or 459, F.S., not "nurse anesthetists;"
- Sections 458.3475(1)(a) and 459.023(1)(a), F.S., both define the term "anesthesiologist" as a licensed allopathic or osteopathic physician and do not include in those definitions a "nurse anesthetist;"

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[48] New Hampshire Board of Nursing, *Position Statement Regarding the use of Nurse Anesthesiologist as a communication tool and optional descriptor for Certified Registered Nurse Anesthetists (CRNAs)*, Nov. 20, 2018, *available at* https://static1.squarespace.com/static/5bf069ef3e2d09d0f4e0a54f/t/5f6f8a708d2cb23bb10f50a0/1601145457231/NH+BON+NURSE+ANESTHESIOLOGIST.pdf (last visited Mar. 7, 2022).

[49] *Id.*

[50] Fla. Adm. Code R. 28-105.0027(2) and 28.106.205(2) (2019), both of which state that to be legally sufficient, a motion to intervene in a proceeding on a petition for a declaratory statement must contain the following information: (a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative;(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervener's attorney or qualified representative, if any; (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or *that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement;* (d) The signature of the intervener or intervener's attorney or qualified representative; and (e) The date.

[51] The Florida Medical Association, Inc., Florida Society of Anesthesiologists, Inc., and Florida Osteopathic Medical Association, Inc., *Motion to Intervene In Florida Board of Nursing's Consideration of the Petition for Declaratory Statement in Opposition of Petitioner John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, Aug. 1, 2019, (on file with the Senate Rules Committee).

[52] Fla. Adm. Code. R. 28-106.205 (2019), in pertinent part, provides, "Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene."

[53] *Florida Association of Nurse Anesthetists Motion to Intervene,* filed at the Department of Health, July 31, 2019, (on file with the Senate Rules Committee).

[54] *See Florida Home Builders Association, et al., Petitioners, v. Department of Labor And Employment Security, Respondent*, 412 S.2d 351 (Fla. 1982), holding that a trade association does have standing under s. 120.56(1), F.S., to challenge the validity of an agency ruling on behalf of its members when that association fairly represents members who have been substantially affected by the ruling.

- The Merriam-Webster Dictionary defines an "anesthesiologist" as a "physician specializing in anesthesiology," not as a nurse specializing in anesthesia; and
- The Legislature clearly intended a distinction between the titles to be used by physicians practicing anesthesiology and nurses delivering anesthesia, to avoid confusion, as s. 464.015(6), F.S., specifically states that:
  - Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title "Certified Registered Nurse Anesthetist" and the abbreviations "C.R.N.A." or "nurse anesthetist;" and
  - Petitioner is licensed as a "registered nurse anesthetist" under s. 464.012(1)(a), F.S., and the term "nurse anesthesiologist" is not found in statute.

At the hearing, the attorney for the BON advised the BON that, "[t]he first thing the Board need[ed] to do [was] determine whether or not the organizations that [had] filed petitions to intervene have standing in order to participate in the discussion of the Declaratory Statement"[55] and that:

> "Basically in order to make a determination of whether an organization has standing, they have to show that the members of their organization would have an actual injury in fact, or suffer an immediate harm of some sort of immediacy were the Board to issue this particular Declaratory Statement, and then the Board also has to make a determination of whether the nature of the injury would be within the zone of interest that the statute is addressing."[56]

However, the above special injury standard,[57] provided by board counsel to the BON to apply to determine the organizations' standing to intervene, based on their members' substantial interests being affected by the declaratory statement, was held inapplicable to trade associations in *Florida Home Builders Ass'n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982). The Florida Supreme Court, in *Florida Home Build*ers, *Ass'n.*, held that a trade or professional association is able to challenge an agency action on behalf of its members, even though each member could individually challenge the agency action, if the organization could demonstrate that:

- A substantial number of the association members, though not necessarily a majority, would be "substantially affected" by the challenged action;
- The subject matter of the challenged action is within the association's scope of interest and activity; and
- The relief requested is appropriate for the association's members.[58]

The FANA's motion to intervene was granted, based on the application of an incorrect standard, without the BON making the findings required by *Florida Home Build*ers, *Ass'n.* However, the

[55] Record at p. 3, ll. 13-17. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Rules Committee).
[56] *Id.* p. 3-4, ll. 22- 25, 1-6.
[57] *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So.2d 9 (Fla. 1974).
[58] *Florida Home Builders Ass'n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982), pp. 353-354.

motion to intervene filed by the FMA, FSA, and FOMA was denied, also based on the application of an incorrect standard, on the grounds that:

- Their members are regulated by the Board of Medicine, not the Board of Nursing;
- Nursing disciplinary guidelines were being discussed;
- Their members' licenses and discipline would not be affected by an interpretation of nursing discipline;[59] and
- Their members are not regulated by the Nurse Practice Act.

A motion was made to approve McDonough's Petition for Declaratory Statement, and it passed unanimously. According to the BON's approval, McDonough may use of the term "nurse anesthesiologist" as a descriptor, and such use is not grounds for discipline against his nursing license. The final order, DOH-19-1500-DS-MQA, was issued September 13, 2019.[60]

However, while s. 120.565, F.S., provides that any person may seek a declaratory statement regarding the potential impact of a statute, rule or agency opinion on a petitioner's particular situation, approval or denial of the petition only applies to the petitioner. It is not a method of obtaining a policy statement from a board of general applicability.[61] News media have reported that the BON's Declaratory Statement in favor of McDonough has created significant concern for patient safety and the potential for confusion in the use of the moniker "anesthesiologist" among Florida's medical professionals.[62, 63, 64]

III. Effect of Proposed Changes:

As described above, current law prohibits a physician from holding himself or herself out as a specialist unless he or she has received formal recognition as a specialist from a specialty board of the ABMS or other recognizing agency approved by the Board of Medicine or the Board of Osteopathic Medicine. Such law is applicable only to licensed physicians.

CS/CS/HB 861 creates s. 456.072(1)(tt), F.S., to make using a term that indicates a practitioner has completed a residency or fellowship program accredited by the ACGME or the AOA in a medical specialty grounds for discipline, unless the licensee:

- Completed a residency or fellowship program recognized by the ACGME or AOA in such specialty;

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[59] Record at p. 7, ll. 1-13. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Rules Committee).
[60] State of Florida Board of Nursing, *Final Order*, Sept. 13, 2019, *available at* https://www.floridahealth.gov/licensing-and-regulation/declaratory/_documents/nursing/DOH-19-1500-DS.pdf (last visited Mar. 7, 2022).
[61] Florida Department of Health, Board of Nursing, *What is a Declaratory Statement?*, *available at* https://floridasnursing.gov/help-center/what-is-a-declaratory-statement/ (last visited Mar. 7, 2022).
[62] Christine Sexton, The News Service of Florida, "*Nursing Board Signs Off On 'Anesthesiologist' Title,"* August 16, 2019, The Gainesville Sun, *available at*: https://www.gainesville.com/news/20190816/nursing-board-signs-off-on-anesthesiologist-title (last visited Mar. 7, 2022).
[63] Christine Sexton, The News Service of Florida, *"Florida Lawmaker Takes Aim At Health Care Titles*," October 10, 2019, Health News Florida, *available at* https://health.wusf.usf.edu/post/florida-lawmaker-takes-aim-health-care-titles (last visited Mar. 7, 2022).
[64] Christine Section, The News Service of Florida, "*What's In A Name? Health Panel Seeks Clarity on Health Care Providers,"* Nov. 14, 2019, *available at* https://health.wusf.usf.edu/post/what-s-name-health-panel-seeks-clarity-health-care-providers (last visited Mar. 7, 2022).

- Attained diplomate status in a chiropractic specialty; or
- Is otherwise expressly authorized by law to use such specialty terms.

Under the bill, any practitioner who is a not a physician and has not completed a residency or fellowship is prohibited from using terms such as "oncologist" or "dermatologist" to describe his or her practice. However, the bill allows a licensed chiropractor who has attained diplomate status, and any other licensed practitioner specifically authorized by law to use specialty terms, to use such ACGME-recognized or AOA-recognized specialty terms to describe his or her practice.

The bill also requires the DOH to enforce the bill's provisions and grants the DOH the same enforcement authority as an applicable board.

The bill authorizes the DOH to adopt rules for the bill's implementation.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DOH advises that:[65]

- The bill establishes a type of title protection that may restrict licensed health care practitioners from advising the public regarding the specialized nature of their practice. Some certifications issued by the ACGME use terms that are so common that practitioners could inadvertently violate this provision of law. Examples may include the psychologist or mental health counselor who limits his or her practice to child and adolescent psychology, a massage therapist who specializes in working with oncology patients, and a surgeon who performs orthopedic surgery but is not currently certified in that specialty.
- Certifications offered by other recognized professional organizations use the same terminology as the ACGME. It is unclear how a health care practitioner who earns a recognized certification or specialization in such an area could use that credential under the bill.
- The BON's final order DOH-19-1500-DS-MQA held that a particular CRNA could use the term "nurse anesthesiologist" to refer to himself and his duties. The bill's language will not prevent a nurse from using the term "nurse anesthesiologist."

C. Government Sector Impact:

The DOH advises that:[66]

- The bill provides enforcement authority to the DOH that is the same as the regulatory boards and requires the DOH to enforce the bill. However, the DOH does not currently have a process or the personnel to enforce the bill separate from the boards. Establishing such an office would require recurring financial resources and additional full-time equivalent positions, including additional professional legal staff, but the precise impact of the bill is unknown; therefore, the fiscal impact of creating a separate disciplinary office within the DOH, separate from the boards, cannot be calculated.
- While the bill does not specifically require licensed practitioners to report specialty designations to the DOH, the DOH would need to gather that information from each practitioner, then store and maintain it, in order to regulate disciplinary matters and associated penalties resulting from practitioners who violate the bill. The DOH would experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System (LEIDS), Online Service and Data Download Portals, Cognitive Virtual Agent, Continuing Education Tracking System, License Verification and other search sites, MQA Business Intelligence Portal, and the boards' websites to create and support detailed specialty information by practitioners. The MQA would experience recurring costs associated with establishing and maintaining additional transactions in LEIDS and Versa Online for providers updating their credentials. Updates to fully integrate these credentials are estimated to need six months.

[65] Department of Health, *2022 Agency Legislative Bill Analysis for HB 861,* Jan. 11, 2022, on file with the Senate Rules Committee.
[66] *Id.*

VI. Technical Deficiencies:

The DOH advises that the bill appears to create statutory conflicts.[67] To wit:

- The bill provides enforcement authority to the department that is the same as a regulatory board. This provision creates a situation where two entities have the same enforcement authority, which they are required to exercise, which in turn creates competing enforcement provisions within the Florida Statutes and will make implementation problematic.
- The DOH does not have the power to circumvent a board's authority to take disciplinary action against a licensed practitioner, except under emergency circumstances. According to s. 456.072(2), F.S., the DOH may impose penalties on disciplinary acts provided in s. 456.072(1), F.S., only for professions for which there is no regulatory board.
- Section 456.073, F.S., provides that the DOH investigates complaints and determines legal sufficiency, but the appropriate board determines whether or not probable cause exists to pursue disciplinary action. The statute further provides that the DOH must follow the direction of the probable cause panel regarding filing a formal administrative complaint. The bill's requirement for the DOH to enforce the bill in place of a regulatory board appears to conflict with the requirements of s. 456.073, F.S.

VII. Related Issues:

The DOH advises that line 18 of the bill provides that a practitioner may not use a term designating a medical specialty unless one or more of three exceptions is met. No context is provided for the term "using," and it is not defined in the bill or in any other statute. Terms may be "used" in any number of ways. This may subject the bill to challenge as being so vague as to be unenforceable. Any rules promulgated in response to the bill may also be subject to challenge as lacking sufficient statutory authority.

VIII. Statutes Affected:

This bill substantially amends section 456.072 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 175492 by Rules on March 8, 2022:
Senate amendment barcode 175492:

- Removes the bill's creation of s. 456.072(1)(tt), F.S., and instead amends s. 456.072(1)(t), F.S., relating to behaviors that, if carried out by a licensed health care practitioner, constitute grounds for which the disciplinary actions contained in s. 456.072(2), F.S., may be imposed on the practitioner.

[67] *Id.*

- Provides that any of the following constitute such grounds:
  - A practitioner's failure to identify his or her full name through the wearing of a name tag or embroidered identification that also includes the professional license and professional degree(s) issued to the practitioner.
  - The failure of any advertisement for health care services naming a practitioner to identify the practitioner's professional license and professional degree(s) the practitioner holds.
  - Running an advertisement naming a practitioner which contains deceptive or misleading information, including, but not limited to, any affirmative communication or representation that misstates, falsely describes, holds out, or falsely details the practitioner's skills, training, expertise, education, public or private board certification, or licensure.
- Eliminates the following provisions from s. 456.072(1)(t), F.S.:
  - The option for a practitioner to identify orally to a patient the type of license under which he or she is practicing or through written notice other than a name tag.
  - The statute's provision that paragraph (t) does not apply to a practitioner while the practitioner is providing services in a facility licensed under chs. 394, 395, 400, or 429, F.S.[68]
- Maintains the current-law provision that each regulatory board, or the DOH if there is no board, is authorized to determine by rule how its practitioners may comply with the paragraph's disclosure requirement.
- Requires the DOH to enforce paragraph (t) and provides that the DOH has the same enforcement authority as an applicable board.
- Authorizes the DOH to adopt rules to implement paragraph (t).

(WITH TITLE AMENDMENT)

[68] Those chapters of statute include the licensure of various health care facilities, including hospitals, ambulatory surgical centers, community mental health centers, long-term care facilities, and assisted living facilities.

175492

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2022	.	
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The Committee on Rules (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 11 - 34
and insert:
Section 1. Paragraph (t) of subsection (1) of section 456.072, Florida Statutes, is amended, and subsection (2) of that section is republished, to read:
456.072 Grounds for discipline; penalties; enforcement.—
(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

175492

(t) Failing to identify the full name of a health care practitioner through ~~written notice, which may include~~ the wearing of a name tag or embroidered identification that also includes the professional~~, or orally to a patient the type of~~ license and professional degree issued to the practitioner ~~under which the practitioner is practicing~~. Any advertisement for health care services naming the practitioner must identify the professional ~~type of~~ license and professional degree the practitioner holds and may not contain deceptive or misleading information, including, but not limited to, any affirmative communication or representation that misstates, falsely describes, holds out, or falsely details the health care practitioner's skills, training, expertise, education, public or private board certification, or licensure. ~~This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429.~~ Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement. The department shall enforce this paragraph and has the same enforcement authority as an applicable board. The department may adopt rules to implement this paragraph.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 3 - 6

and insert:

amending s. 456.072, F.S.; revising grounds for disciplinary action against health care practitioners;

175492

requiring the Department of Health to enforce certain requirements related to identification and advertising of practitioner licensure and qualifications; providing that the department has the same enforcement authority as applicable boards; authorizing the department to adopt rules;

175492

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2022	.	
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================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 3 - 6

and insert:

amending s. 456.072, F.S.; revising grounds for disciplinary action against health care practitioners;

175492

requiring the Department of Health to enforce certain requirements related to identification and advertising of practitioner licensure and qualifications; providing that the department has the same enforcement authority as applicable boards; authorizing the department to adopt rules;

A bill to be entitled

An act relating to medical specialty designations; amending s. 456.072, F.S.; providing that using a term designating a certain medical specialty is grounds for disciplinary action; providing enforcement authority; authorizing the Department of Health to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (tt) is added to subsection (1) of section 456.072, Florida Statutes, and subsection (2) of that section is republished, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(tt) Using a term designating a medical specialty for which the Accreditation Council for Graduate Medical Education or the American Osteopathic Association accredits or recognizes as a residency or fellowship program unless the licensee:

1. Has completed an Accreditation Council for Graduate Medical Education or the American Osteopathic Association residency or fellowship program;

2. Has attained diplomate status in a chiropractic specialty area recognized by the American Chiropractic Association, the International Chiropractic Association, or the International Academy of Chiropractic Neurology; or

3. Is otherwise expressly authorized by law to use such a term.

The department shall enforce this paragraph and has the same enforcement authority as an applicable board. The department may adopt rules to implement this paragraph.

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a

designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.

(d) Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of $10,000 per count or offense.

(e) Issuance of a reprimand or letter of concern.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(h) Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

(i) Refund of fees billed and collected from the patient or a third party on behalf of the patient.

(j) Requirement that the practitioner undergo remedial education.

FLORIDA HOUSE OF REPRESENTATIVES

CS/CS/HB 861 2022

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

Section 2. This act shall take effect July 1, 2022.

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF NURSING

IN RE: PETITION FOR DECLARATORY STATEMENT BY JOHN MCDONOUGH, CRNA, APRN, Ed.D, BEFORE THE BOARD OF NURSING

_____/

FLORIDA ASSOCIATION OF NURSE ANESTHETISTS' MOTION TO INTERVENE

The **Florida Association of Nurse Anesthetists**, by and through the undersigned counsel and pursuant to Section 120.565, Florida Statutes, and Rule 28-105.0027, Florida Administrative Code, respectfully moves the State of Florida Board of Nursing for leave to intervene as a party in the above-styled proceeding, and alleges:

The Intervenor - Florida Association of Nurse Anesthetists

1. The Intervenor's name, address and telephone number: Florida Association of Nurse Anesthetists (hereinafter "FANA"), 222 South Westmonte Drive, Suite 101, Altamonte Springs, Florida 32714, (407) 774-7880. For purposes of this proceeding, all contact information for FANA is that of the undersigned counsel.

2. The Petition for Declaratory Statement (hereinafter the "Petition") by John McDonough, CRNA, APRN, Ed.D (hereinafter the "Petitioner") was filed with the Department of Health on July 10, 2019, and noticed in the Florida Administrative Register on July 16, 2019.

3. Founded in 1936, FANA's membership consists of more than 3,700 Certified Registered Nurse Anesthetists ("CRNAs") and student registered nurse anesthetists currently licensed in Florida. CRNAs practice in every setting in which anesthesia is delivered: traditional hospital surgical suites and obstetrical delivery rooms; critical access hospitals;

ambulatory surgical centers; the offices of dentists, podiatrists, ophthalmologists, plastic surgeons, and pain management specialists; and U.S. military, Public Health Services, and Department of Veterans Affairs healthcare facilities. Nurse anesthetists have been the main providers of anesthesia care to U.S. military personnel on the front lines since WWI, including current conflicts in the Middle East. CRNAs provide comprehensive anesthesia care to patients before, during and after surgical and obstetrical procedures, and are the primary anesthesia professionals in rural and medically underserved areas.

Substantial Interests of Intervenor

4. Petitioner asks whether he may describe himself as, or his professional duties as those of, a "nurse anesthesiologist" without subjecting his Florida nursing licenses to discipline under Section 456.072, Florida Statutes, or Section 464.018, Florida Statutes.

5. One of FANA's primary functions is to represent the common interests of its members before various regulatory agencies in the State of Florida, including the Board of Nursing. The Declaratory Statement requested by Petitioner seeks an interpretation of statutes and rules which govern the practice of CRNAs in Florida.

6. The issue described by Petitioner would substantially affect FANA's members, many of whom also work in both clinical and academic settings. The outcome of the proceedings will impact future conduct of FANA members and will indicate the likelihood of disciplinary action against those members.

7. Any substantially affected party can intervene in a declaratory statement proceeding before an agency. *See e.g., Chiles v. Dep't of State, Div. of Elections*, 711 So. 2d 151, 155 (Fla. 1st DCA 1998).

8. Based on the foregoing, FANA has standing to intervene in this Petition for Declaratory Statement on behalf of its members.

The Petition is Legally Sufficient

9. FANA anticipates an argument in opposition to the Petition on the grounds that the question presented exceeds the proper scope of a declaratory statement because it would constitute a broad policy statement by the Board, which amounts to an unpromulgated rule. FANA urges the Board to reject such an argument.

10. The authority of an agency to issue a declaratory statement is limited by section 120.565 to a determination "as to the applicability of a statutory provision ... to the petitioner's particular set of circumstances." *Society for Clinical & Medical Hair Removal, Inc. v. Department of Health*, 183 So. 3d 1138, 1142–44 (Fla. 1st DCA 2015).

11. The Court in *Society for Clinical & Medical Hair Removal* pointed out that prior to 1996, the authority of an agency to issue a declaratory statement was limited to issues that applied only to the party seeking the declaration because section 120.565 required the declaratory statement to set out the agency's opinion as to the applicability of a statute or rule "to the petitioner in his or her particular set of circumstances **only**." *Id.* at 1143 (emphasis added). However, the word "only" has been deleted from section 120.565, and in *Chiles v. Department of State*, 711 So.2d 151 (Fla. 1st DCA 1998), this change was construed to mean that "a petition for declaratory statement need not raise an issue that is unique" and that "there is no longer a requirement that the issue apply only to the petitioner." *Chiles* at 154.

12. In *Florida Department of Business and Professional Regulation, Division of Pari–Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So.2d 374 (Fla.1999), the Florida Supreme Court explained that the 1996 amendments to section 120.565 were "meant to

dispel any confusion that only the most narrowly drawn declaratory statement having an absolutely unique application was permissible." *Id.* at 383. In short, an agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in the petitioner's particular circumstances even if the explanation would have a broader application than to the petitioner. *Society for Clinical and Medical Hair Removal, supra* at 1144.

13. In the present case, the Petitioner has set forth particular circumstances, which include his responsibilities related to the administration of the anesthesia program at the University of North Florida, his clinical practice and his involvement in multiple professional associations. He has not asked whether a CRNA in Florida, generally, may refer to themselves as a "nurse anesthesiologist"; he has asked whether *he* may refer to *himself* or *his* professional duties as those of a "nurse anesthesiologist."

14. As the Florida Supreme Court has stated, an agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in the petitioner's particular circumstances even if the explanation would have a broader application than to the petitioner.

15. For the forgoing reasons, the Petition does not exceed the proper scope of a declaratory statement and it is legally sufficient.

The Petition Should be Approved

16. Although still rarely used in Florida, the descriptors "nurse anesthesiologist" and "certified registered nurse anesthesiologist" are used synonymously with "nurse anesthetist" and "certified registered nurse anesthetist" throughout the United States, and the use of the terms is continuing to expand. The titles are used in both clinical and academic settings by CRNAs.

17. As Petitioner points out, in a 2018 position statement, the New Hampshire Board of Nursing officially recognized "Nurse Anesthesiologist" and "Certified Registered Nurse Anesthesiologist" as "optional, accurate descriptors." However, at its July 2019 meeting, the Arizona

State Board of Nursing also voted to support usage of the term "nurse anesthesiologist" and "certified registered nurse anesthesiologist" as appropriate descriptors for the profession.

18. The American Association of Nurse Anesthetists (AANA) also recognizes "nurse anesthesiologist" and "certified registered nurse anesthesiologist" as valid descriptors. (*See, e.g.* two AANA Statement and July 25, 2019 letter to the Board of Nursing (attached as Exhibits 1, 2 and 3)).

19. The term "nurse anesthesiologist" appears frequently in federal civil and administrative matters. For example, CMS State Plan Amendment #17-106, dated January 24, 2018 states in part,

> The supplemental payments exclude payments from vaccine administration codes. Anesthesiology codes payments are sometimes split between a physician and a **Certified Registered Nurse Anesthesiologist** (CRNA), therefore all anesthesiology codes will be combined and payments are estimated by using the reduced rate to be conservative.

See State Plan Amendment (SPA) #: 17-016, 2018 WL 3817313, at *1.

20. Department of Health and Human Services, Departmental Appeals Board, Medicare Appeals Council summarized a case before it thusly,

> At issue in these cases is coverage of HCPCS code 00740 QK (physician directed general anesthesia services for upper gastrointestinal endoscopic procedures), HCPCS code 00740 QX (medically directed **Certified Registered Nurse Anesthesiologist** services for upper gastrointestinal endoscopic procedures), each billed at $740.00, and/or coverage of HCPCS code 00810 QK (physician directed general anesthesia services for lower intestinal endoscopic procedure), and HCPCS code 00810 QX (medically directed **Certified Registered Nurse Anesthesiologist** services for lower intestinal endoscopic procedures), each billed at $792.00. Exh. 1 - 4, and 6.1. The carrier and carrier hearing officer denied the claims pursuant to a Local Medical Review Policy (LMRP) which stated that these services were not covered for the stated diagnosis.

In the Case of Claim for Atl. Anesthesia Assocs., P.C. (Appellant) Supplementary Med. Ins. Benefits F.B. & 14 Others Empire Medicare Servs. (Carrier), 2004 WL 5702358, at *1 (H.H.S. June 17, 2004).

21. The Internal Revenue Service issued a Technical Advice Memorandum in 1979 addressing whether certain payments were deductible as a business expense. The Service described the business model of the anesthesiology group as follows: "Corp. X is a professional corporation that has a contract with *** Hospital to provide services in the practice of anesthesiology. Corp. X employs

approximately nine doctor anesthesiologists and **twelve registered nurse anesthesiologists**." I.R.S. Tech. Adv. Mem. 8002007 (Sept. 24, 1979).

22. In 2017, HHS adopted Final Rules on CMS Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2018; Medicare Shared Savings Program Requirements. Federal agencies respond to input from interested parties during the rulemaking process. Several commenters stated that CMS should not 'crosswalk' non-physician specialties to the lowest physician risk factor specialty for which it has premium rates, which is Allergy Immunology. The commenters said this crosswalk would likely serve as an overestimate of professional liability for non-physician specialties. In response, CMS said,

> ...we did collect whatever data was available for non-physician specialties during our data collection process. This enabled us to find sufficient data for one major non-physician specialty—Nurse Practitioner, which received a blended risk factor of 1.95. Additionally, we note that not all non-physician specialties were mapped to Allergy/Immunology. For example, Certified Nurse Midwife was mapped to Obstetrics and Gynecology, **and Certified Registered Nurse Anesthesiologist** was mapped to Anesthesiology, which both reflect higher risk than Allergy/Immunology.

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2018; Medicare Shared Savings Program Requirements; and Medicare Diabetes Prevention Program, 82 FR 52976-01. Next, CMS states "Another commenter expressed support for crosswalking **Certified Registered Nurse Anesthesiologist** (CRNA) to Anesthesiology...." *Id.*

23. These are only a sample of the documented usage of the terms, intended to illustrate the universal acceptance of the descriptors.

24. CRNAs are not alone in incorporating the terms "anesthesiology" and "anesthesiologist" into their title. "Dental Anesthesiology" is a specialty recognized by the National Commission on Recognition of Dental Specialties and Certifying Boards, even though it applies to dentists who are not licensed physicians. The specialty was recognized in 2018 following an application by the American Society of Dental Anesthesiologists. In Florida, the Florida Dental Society of Anesthesiology routinely

appears before the Board of Dentistry and participates in rulemaking, while referring to its members as dental anesthesiologists, without any apparent confusion or controversy.

25. Florida Board of Dentistry Anesthesia Rules (64B5-14, Florida Administrative Code) use the term "physician anesthesiologist" when referring to an anesthesiologist who is licensed as an allopathic or osteopathic physician, to distinguish between physician anesthesiologists and dental anesthesiologists. FANA is aware of no attempts by medical associations to curtail the use of the term "anesthesiologist" by non-physician dentists.

Relevant Statutory and Regulatory Provisions

26. The statutory provisions on which the declaration is sought are Chapters 456 and 464, Florida Statutes. The provisions of the Florida Administrative Code upon which the declaration is sought are under Rule 64B9, Florida Administrative Code.

27. Health care practitioners in Florida are required to identify the license under which they practice. Section 456.072(1)(t) provides for disciplinary action against any licensed health care practitioner who fails to:

> ... identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds.

28. Petitioner acknowledges that the type of license under which he practices is a CRNA license and that he will use this title as required by law. (Petition, par. 4).

29. Various provisions of Chapters 456 and 464 prohibit false or misleading statements related to health care practices. The Nurse Practice Act prohibits misleading, or deceptive advertising. Section 464.018(1)(g), Florida Statutes. Section 456.072(1)(a) prohibits "misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession" and 456.072(1)(m) prohibits "deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession." All the above infractions are grounds for disciplinary action by the Board of Nursing, pursuant to Rule 64B9-8.006, Florida

Administrative Code. There is no provision of law expressly prohibiting the use of "anesthesiologist" in a descriptor.

30. While sections 458.3475 and 459.023 (anesthesiologist assistant practice act) include a definition of the term "anesthesiologist," both of these sections clearly state that the definitions only apply to those term as used in those sections. This means that the definition cannot be applied to other laws. To illustrate this point, the term "Direct supervision" is defined under sections 458.3475 and 459.023 as "the onsite, personal supervision by an anesthesiologist." It could hardly be argued that this definition is applicable to the direct supervision of say, a dental hygienist. Further, the term "board" is defined in both of those sections to mean "the Board of Medicine and the Board of Osteopathic Medicine." As with the definition of anesthesiologist and direct supervision, the definition of board has little logical applicability outside of these sections. These terms are narrowly defined by the legislature, because they are intended to apply in a very limited capacity. Moreover, if the term "anesthesiologist" was universally understood to mean a *physician* anesthesiologist, there would be no need to define the term within the anesthesiologist assistant practice act.

31. The definition of "anesthesiologist" in any rule, statute or dictionary would be irrelevant to a determination in this matter irrespective of the breadth of the application of that definition. Petitioner has not sought an opinion as to the use of the term "anesthesiologist"; he is seeking an opinion of the use of the term "nurse anesthesiologist," a term that clearly refers to a nurse who is highly trained in the field of anesthesiology. No health care consumer will confuse a "nurse anesthesiologist" with a physician, since the title begins with the word "nurse."

32. Section 464.015(6), Florida Statutes, states: "Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title "Certified Registered Nurse Anesthetist" and the abbreviations "C.R.N.A." or "nurse anesthetist." Section 464.015(10), Florida Statutes, makes it a crime for a person to use the protected CRNA titles in violation of the statute. But while the titles, "Certified Registered Nurse Anesthetist," "nurse anesthetist" and "C.R.N.A." are

expressly protected under Florida law, there is nothing under Chapters 456 or 464 to indicate those terms represent an exhaustive list of the acceptable descriptors for a CRNA.

33. Lacking an express statutory prohibition on the use of the term "nurse anesthesiologist," a finding that the term is deceptive or inherently misleading would be required in order to prohibit Petitioner's use of the term as a descriptor as described herein. As the term is already in use in other states and by the federal government, there are no reasonable grounds upon which such a finding could be based.

Constitutional Considerations in the Regulation of Commercial Speech

34. While FANA acknowledges that a regulatory Board will not generally consider or rule on Constitutional issues, any question concerning the regulation of speech necessarily invokes First Amendment principles, so an overview of relevant may be helpful.

35. The United States Constitution affords protection to both commercial and non-commercial speech, though somewhat different standards apply to each. As long as commercial speech describes a lawful activity and is truthful and not fraudulent or misleading, it is entitled to the protections of the first amendment. *See, e.g. Abramson v. Gonzalez*, 949 F.2d 1567, 1575 (11th Cir. 1992). A few cases in particular provide context as to how these Constitutional principles are applied to the regulation of professional titles.

36. An analysis of the constitutionality of commercial speech regulations consists of a threshold question followed by a three-prong test. The threshold question asks whether the expression is protected by the First Amendment at all, because speech concerning unlawful activity, or speech that is false, deceptive or inherently misleading is not protected. *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n. of New York*, 447 U.S. 557 (1980).

37. If the commercial speech does not concern an unlawful activity, and is not false or inherently misleading, the government cannot regulate the speech unless it can demonstrate a substantial governmental interest, which is directly advanced by the restriction, and that there is a reasonable fit

between the state's ends and the narrowly tailored means chosen to accomplish those ends. *Central Hudson, supra* at 566.

38. *Abramson v. Gonzalez, supra* involves an attempt by the state of Florida to restrict the use of the title "psychologist." Although the state regulated the educational and testing requirements for the *licensing* of psychologists, it had not explicitly barred unlicensed individuals from *practicing* psychology. As a result, an unlicensed person could *practice* psychology in Florida, they just could not use the title "psychologist." Several practicing but unlicensed psychologists challenged the laws restricting their ability to identify their profession.

39. The restrictions were initially upheld by a trial court and the licensees appealed. On appeal, the United States Court of Appeals for the 11th Circuit considered whether allowing the plaintiffs to call themselves psychologists would be "actually misleading" or "potentially misleading." *Id.* at 1576. If the speech was actually misleading, it was not protected by the first amendment, but if only *potentially* misleading, "the state must craft some narrow restriction on the speech—short of the current outright ban—which will directly advance its interest in protecting the public while encouraging a free flow of commercial information." *Id.* at 1576-77.

40. The Court found the speech only potentially, not inherently, misleading conceding the "plaintiffs clearly would enjoy no right falsely to hold themselves out as 'licensed psychologists.'" But, the Court said, "under the laws of Florida, they may practice psychology without licenses, and truthful advertising which conveys this message would be neither false nor inherently misleading." *Id.*

41. The reasoning of the Court in *Abramson* is sound, and applicable to the facts in this Petition. While the State could potentially prohibit CRNAs from calling themselves "physician anesthesiologists" or perhaps even "anesthesiologists," because CRNAs are nurses with advanced expertise in anesthesiology, use of an accurate descriptor "which conveys this message would be neither false nor inherently misleading."

42. The United States Supreme Court considered a similar case involving professional advertising and the first amendment in *Peel v. Attorney Registration and Disciplinary Comm'n. of Illinois*, 496 U.S. 91 (1990). In *Peel*, the State of Illinois challenged an attorney's advertising practice of listing himself as a "Certified Civil Trial Specialist" on his letterhead after he received certification of his trial skills from the National Board of Trial Advocacy (NBTA), a private organization. The Illinois definition of "specialists" included only attorneys with patent, trademark or admiralty practices.

43. The Court held a state could prohibit "misleading" advertising entirely, but it could not prohibit *potentially* misleading information entirely, if the information could be presented in a way that is not deceptive. *Peel*, 110 S.Ct. at 2289. A majority of the justices rejected the "paternalistic assumption" that the "public would automatically mistake a claim of specialization for a claim of formal recognition by the State." *Id.* at 2290. The Court found that the particular advertising at issue in *Peel* was potentially misleading, but the possibility that truthful advertising would be misleading to the public is not enough to justify a categorical ban on all such speech. *Id.*

44. The state officials presented an argument similar to that advanced by Florida in *Abramson* - that allowing the plaintiff to hold himself out as a specialist would mislead the public. The Supreme Court rejected this argument, holding the state's own definition of a specialist cannot bar those who truthfully hold themselves out as specialists from doing so. *Id.* at 2289–90.

45. As there is no current law or rule expressly prohibiting the use of the term "nurse anesthesiologist," an opinion on the constitutionality of such a provision is not required to resolve the question posed by this Petition. However, the Court's discussion of what is "inherently misleading" is instructive for purposes of interpreting provisions of Florida law that prohibit misleading statements by health care practitioners.

46. In order for the State to prohibit the use of the term "nurse anesthesiologist," it would have to prove the title was inherently misleading, and thus entitled to no constitutional protection. Even assuming that some members of the public might associate the term "anesthesiologist" with a physician,

the inclusion of the prefatory term "nurse" adequately dispels any such association. It unmistakably denotes an advanced practice registered nurse who is highly trained and certified in the field of anesthesiology.

47. Given that the descriptor is used in other states and by federal agencies, and that dentists in Florida who are trained in anesthesia freely and routinely refer to themselves as "dental anesthesiologists" with no apparent confusion or controversy, the use of the term "nurse anesthesiologist" by a CRNA cannot be described as inherently misleading. Therefore, any prohibition on the use of the term would constitute an infringement on constitutionally-protected commercial speech.

Conclusion

48. While "Certified Registered Nurse Anesthetist," "nurse anesthetist" and "C.R.N.A." are all protected titles under Florida law, CRNAs are not prohibited under Florida law from using another title, so long as it is not fraudulent, misleading or deceptive.

49. Use of the term "anesthesiologist" within a descriptor, by a practitioner who is not licensed as an allopathic or osteopathic physician is also not expressly prohibited under any Florida law. Indeed, there is no law expressly prohibiting the use of the actual title "anesthesiologist." And while it may be argued that identification simply as an "anesthesiologist" in Florida could potentially be misleading or deceptive, any purportedly deceptive or misleading characteristic is entirely remedied by inclusion of the modifying term "nurse." It could not seriously be argued that health care consumers in Florida would be deceived into thinking the term "*nurse* anesthesiologist" referred to a physician, particularly when the title is accepted for use in other states, apparently with no such confusion.

50. The titles "Nurse Anesthesiologist" and "Certified Registered Nurse Anesthesiologist" are not misleading, deceptive or fraudulent when used by a CRNA. The descriptors are acknowledged and used without confusion at both the state and federal level. It is the position of FANA, that as long as Petitioner indicates to patients that he is *licensed* as an CRNA (or APRN), it is not misleading for him to

accurately describe his specialty using terms that are generally accepted in the field, including "nurse anesthesiologist" and "certified registered nurse anesthesiologist."

WHEREFORE, the Florida Association of Nurse Anesthetists respectfully requests that this Motion to Intervene be granted, and that the Petition for Declaratory Statement be approved.

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been provided by U.S. Mail and electronic mail to Cynthia Mikos, Esq., counsel for Petitioner, John McDonough, 401 E. Jackson Street, Suite 3100, Tampa, FL 33602, (cynthiam@jpfirm.com); by U.S. Mail and electronic mail to Deborah Loucks, Senior Assistant Attorney General, Administrative Law Bureau, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 (deborah.loucks@myfloridalegal.com); and by U.S. Mail and facsimile to the Department of Health Agency Clerk, Office of the General Counsel, Florida Department of Health, 4052 Bald Cypress Way, Bin A02, Tallahassee, Florida 32399, (facsimile 850-413-8743), this 31st day of July 2019.

Glenn E. Thomas

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CRNAs: We are the Answer

As advanced practice nurses, Certified Registered Nurse Anesthetists (also recognized by the titles CRNA, nurse anesthetist, Certified Registered Nurse Anesthesiologist, and nurse anesthesiologist) are proud to be part of America's most trusted profession. Patients who require anesthesia for surgery, labor and delivery, emergency care, or pain management know they can count on a CRNA to stay with them throughout their procedure, advocate on their behalf, and provide high-quality, patient-centered care. Likewise, healthcare facilities depend on CRNAs to serve the most patients for the least cost; deliver quality care to rural and other medically underserved areas; and positively impact the nation's growing healthcare cost crisis. CRNAs are *the* answer to achieving a safer healthcare environment and more cost-efficient healthcare economy.

This document was prepared by the American Association of Nurse Anesthetists (AANA) on behalf of its 53,000 members and the patients they serve to define the increasing role and value of CRNAs and provide an accurate description of anesthesia practice in today's U.S. healthcare system.

Looking Back

Nurse anesthetists have been the backbone of anesthesia delivery in the United States since the American Civil War. The **first U.S. healthcare providers to specialize in anesthesiology**, these pioneering nurses introduced a grateful public to a world of previously unimagined healthcare possibilities. **Since the late 1800s, anesthesiology has been recognized as the practice of nursing;** it wasn't until nearly 50 years later that physicians entered the field and anesthesiology also gained recognition as the practice of medicine. Over the years, despite numerous legal challenges by organized medicine, the courts have consistently upheld the doctrine of anesthesiology as nursing practice. For a timeline of nurse anesthesia history, see https://www.aana.com/history.

Provider Types

CRNAs and physician anesthesiologists are the predominant anesthesia professionals in the United States. Another anesthesia provider type is anesthesiologist assistants (AAs). **These healthcare workers serve as assistants to physician anesthesiologists,** and by law can only practice under the direct supervision of a physician anesthesiologist.

Anesthesia services are provided the same way by nurses and physicians; in other words, **when anesthesia is provided by a CRNA or by a physician anesthesiologist, it is impossible to tell the difference between them.** Both CRNAs and physician anesthesiologists provide anesthesia for the same types of surgical and other procedures, in the same types of facilities, for patients young to old; one provider type is not required over the other in any given situation. In fact, ***most* of the hands-on anesthesia patient care in the United States is delivered by CRNAs.** Yet, while CRNAs are not required by federal or state law to work with physician anesthesiologists (except in New Jersey, which requires CRNAs to enter into a joint protocol with a physician anesthesiologist), in many healthcare settings CRNAs and physician anesthesiologists work together to provide quality patient care. Landmark research, however, has confirmed that anesthesia is equally safe regardless of whether it is provided by a CRNA working solo, a physician anesthesiologist

Exhibit 1

working solo, or a CRNA and physician anesthesiologist working together (see https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2008.0966).
The practice of anesthesiology for CRNAs and physician anesthesiologists includes, but is not limited to, the following:

- Patient care before, during and after surgery
- Patient care before, during and after labor and delivery
- Diagnostic and therapeutic procedures
- Trauma stabilization and critical care interventions
- Acute and chronic pain management
- Management of systems and personnel that support these activities

These skills and responsibilities fall within the scope of practice of both CRNAs and physician anesthesiologists, regardless of credentials (see https://www.aana.com/crnaqualifications).

Education

The preparation of CRNAs for practice enables them to provide every type of anesthesia-related service and anesthetic drug, practice in every type of setting and participate in every type of procedure where anesthesia is required, and handle emergency situations. Because of their extensive knowledge base and robust clinical experience prior to becoming a CRNA, these anesthesia experts are well-equipped to have an immediate impact as healthcare professionals upon graduation.

The nursing- and anesthesiology-focused education and training required to become a CRNA is extensive and in many ways similar to the education and training of a physician anesthesiologist. It takes **7-8 ½ years of coursework and clinical hours** for a student registered nurse anesthetist (also known as SRNA, nurse anesthesia resident, nurse anesthesiology resident) to attain a master's or doctoral degree in nurse anesthesia; during that time the SRNA will, on average, amass **nearly 9,400 hours of clinical experience.**

To be accepted into a nurse anesthesia educational program, an applicant must attain a minimum of one year of experience as a registered nurse in a critical care setting within the United States, its territories, or a U.S. military hospital outside of the United States. However, **the average experience of RNs entering nurse anesthesia educational programs is 2.9 years. CRNAs are the *only* anesthesia professionals required to attain clinical experience prior to entering an educational program.**

All CRNAs are board certified, while only 75 percent of physician anesthesiologists are board certified, according to the Anesthesia Quality Institute (AQI) report titled **Anesthesia in the United States 2013**.

The medical- and anesthesiology-focused education and training required to become a physician anesthesiologist is also extensive and not unlike the education and training of a CRNA. It takes approximately 8 years of medical- and anesthesiology-focused education and training to attain a degree as a physician specializing in anesthesiology prior to sitting for the medical board examination—**roughly the same amount of time it takes to become a CRNA.** Anesthesiology residents graduate with approximately **12,120 hours of clinical experience,** not significantly more than the number attained by CRNAs during their education and training.

However, the American Society of Anesthesiologists (ASA) inflates years of schooling to 12-14 by including a four-year bachelor's degree attained prior to entering medical school, and a post-residency fellowship in an anesthesiology subspecialty such as chronic pain management, which many physician anesthesiologists do not pursue. The bachelor's degree is typically not healthcare-focused. **The ASA also inflates the number of clinical hours** attained by residents to approximately 14,000-16,000, which is 2,000-4,000 hours more than the actual number of 12,120. An important difference between clinical education hours attributed to nurse

anesthesia students and anesthesiology residents is that the hours claimed by SRNAs are those actually spent providing patient care, while the hours claimed by anesthesiology residents are all hours spent in the facility, including those hours not involved in patient care. (See https://www.aana.com/journalonline for a comparison of CRNA and physician anesthesiologist education and training.)

The education and training of an AA lags far behind that of CRNAs and physician anesthesiologists, hence the "assistant" title. It only takes **two years of anesthesiology-focused education and approximately 2,500 hours of clinical training to attain a master's degree as an AA** prior to sitting for the certification examination. Unlike CRNAs, but exactly like physician anesthesiologists, AAs are *not* required to have any patient care experience before applying to an AA program. (For more information, see (https://www.aana.com/aa-toolkit.)

Barrier to SRNA Education

An increasingly common barrier to CRNA practice created by physician anesthesiologists is intended to impede SRNA preparation by limiting their access to clinical training sites and procedures. **Other restrictive measures that have specifically resulted from the ASA's 2018 publication of its amended Anesthesia Care Team (ACT) Statement include facilities requiring restrictive 1:1 CRNA-to-student-nurse anesthetist supervision ratios that prevent CRNAs from leaving the operating room to allow students the ability to develop independently.** The ASA's stated rationale is to protect employment opportunities for physician anesthesiologists. In the AANA's view, this sort of blatant protectionism is, at a minimum, unethical. **All anesthesia students should be afforded the required clinical training opportunities necessary to become fully prepared for entry into practice. Patients depend on this.**

Licensure

CRNAs are licensed by the states and authorized by law and regulation to practice nurse anesthesia in all 50 states and the District of Columbia; they are the only independently licensed practitioners required to be board certified to practice. Physician anesthesiologists are licensed by the states and authorized by law and regulation to practice anesthesiology in all 50 states and the District of Columbia; however, they are not required to be board certified. Unlike CRNAs or physician anesthesiologists, **AAs are not licensed to practice *independently* in any state.** Due to this limitation, **AAs do not help improve patient access to surgical, labor and delivery, and emergency care; however, they do increase costs for anesthesia services paid by facilities and patients due to two anesthesia providers needing to be involved in the care of a single patient.**

Anesthesia Delivery Models

There are four CRNA/physician anesthesiologist anesthesia delivery models commonly used by healthcare facilities in the United States: CRNA-only; physician anesthesiologist supervision of CRNAs; physician anesthesiologist direction of CRNAs; and physician anesthesiologist-only (see https://www.aana.com/PracticeModels). Despite the variety of anesthesia delivery models, **CRNAs are not required by federal or state laws (except in New Jersey as noted earlier) to be supervised or directed by, or even work with, a physician anesthesiologist.**

For AAs, there is only one anesthesia delivery model: medical direction by a physician anesthesiologist.

While a healthcare facility *cannot* employ an AA without also employing a costly physician anesthesiologist who earns nearly three times as much as an AA or CRNA, a facility *can* employ a CRNA in place of both, thereby ensuring quality patient care is delivered and the facility's bottom line is favorably impacted.

CRNA-only Model
In this model, the CRNA is the sole anesthesia provider. The CRNA-only model may vary by state. In some states, CRNAs work without physician supervision; in other states, they are required to be supervised by a physician. The physician could be, but is not required to be, a physician anesthesiologist. Often the supervising physician is a surgeon or other proceduralist.

Currently, **there are 17 states that have no physician supervision requirement for CRNAs whatsoever,** meaning these states have **opted out of the federal Medicare physician supervision requirement for CRNAs.** Without any burdensome supervision requirement for CRNAs, healthcare facilities in these states can structure and staff their anesthesia departments to function as efficiently, cost-effectively, and safely as possible. **Physician supervision of CRNAs is not and never has been a matter of patient safety.** Its requirement has always been tied to the ability of a facility to receive reimbursement from the Centers for Medicare & Medicaid Services (CMS) for anesthesia care provided to Medicare patients.

Physician Supervision of CRNAs
Medical supervision is a billing term under Medicare which pertains to when one physician anesthesiologist oversees more than four CRNAs (or AAs) concurrently administering anesthesia to patients undergoing surgical or other procedures. In this model, the physician anesthesiologist doesn't provide hands-on care, but is available in case he/she is needed to assist in any of the concurrent cases. **Research has confirmed that patient safety is not enhanced by this anesthesia delivery model, and that the cost of having a physician anesthesiologist available "just in case" is often greater than the cost of adding two additional CRNAs to the anesthesia department** (see http://www.lewin.com/content/dam/Lewin/Resources/AANA-CEA-May2016.pdf).

Physician Anesthesiologist Direction of CRNAs
Medical direction is a billing term under Medicare which pertains to when a physician anesthesiologist directs the anesthesia care of up to four CRNAs (or AAs) providing anesthesia for four different cases concurrently; however, for medical direction to be achieved legally and the physician anesthesiologist to be compensated, the physician anesthesiologist must meet seven requirements of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248 (TEFRA) for each case. For obvious reasons, **medical direction, with its TEFRA requirements, is the model in which physician anesthesiologist billing fraud occurs most frequently.** It is virtually impossible for a physician anesthesiologist to meet the seven TEFRA requirements in concurrent cases (regardless of whether there are two, three or four concurrent cases) without significant delays occurring in each of the cases as the physician anesthesiologist moves from room to room. In 2012, research by Epstein et al and published in the journal *Anesthesiology* examined this problem relative to delayed case starts (see https://www.ncbi.nlm.nih.gov/pubmed/22297567).

Aside from the potential for fraudulent billing practices, in most scenarios medical direction comes at an increased cost to the facility of at least one physician anesthesiologist for every four CRNAs. This translates to more than $1 million per year for an average-sized U.S. hospital with four operating rooms. The increased cost of the medical direction model is generally not sustainable, and **typically the hospital subsidizes the anesthesia department to cover the cost which is then passed on to consumers of the hospital's services.** (Massie, M. [2017]. *Determinants of Hospital Administrators' Choice of Anesthesia Practice Model* [Doctoral dissertation]. Retrieved from ProQuest Dissertation and Theses. [Accession Order No. 11669]. MB)

Physician Anesthesiologist-only Model
In this model, the physician anesthesiologist is the sole anesthesia provider. The physician anesthesiologist provides hands-on patient care and stays with the patient throughout the procedure—exactly the way a CRNA functions all the time whether working solo or with a physician anesthesiologist. **The physician anesthesiologist-only model is the least commonly used delivery model in the United States.** While it is more

economical than the medical-direction and medical-supervision models, **research has confirmed that it is far less cost-effective and no safer than the CRNA-only model** (see http://www.lewin.com/content/dam/Lewin/Resources/AANA-CEA-May2016.pdf).

Military

Nurses first gave anesthesia to wounded soldiers on the battlefields of the American Civil War; now, more than 150 years later, service members in all branches of the U.S Armed Forces rely on independently practicing CRNAs for anesthesia care, especially on the front lines of American military actions around the world. In these austere settings where physician anesthesiologists are rarely deployed, CRNAs typically are the sole anesthesia professionals caring for U.S. service men and women.

Research

Since 2000, numerous published research studies have confirmed the safety and quality of care provided by CRNAs and that CRNAs are the most cost-effective anesthesia providers by a wide margin. One such study, conducted by the Research Triangle Institute (RTI) and published in the August 2010 issue of *Health Affairs*, determined that anesthesia care is equally safe when delivered by a CRNA working solo, a CRNA supervised by a physician anesthesiologist, or a physician anesthesiologist working solo. In fact, **the RTI study showed that a CRNA working solo is actually the safest scenario,** although the data supporting that conclusion was not statistically significant. **Another study published in the May/June 2010 issue of *Nursing Economic$* and updated in May 2016 showed that a CRNA working solo is 25 percent more cost effective than the next most cost-effective anesthesia delivery model** (see http://www.future-of-anesthesia-care-today.com/research.php).

Liability and Compliance

For a multitude of reasons, facility administrators are wise to build their anesthesia departments around CRNAs. Peer-reviewed research has confirmed numerous times the safety record of these highly qualified anesthesia experts; other studies have demonstrated that a CRNA working solo is by far the most cost-effective anesthesia delivery model. Another CRNA value proposition is what they *don't* bring to the table, such as increased surgeon liability and Medicare fraud.

Surgeon Liability

The misconception that surgeons and other proceduralists assume increased liability when working with CRNAs persists to this day despite nearly four decades of court precedent to the contrary. In reality, surgeon liability is directly related to how much, if any, control they exert on the anesthesia process that may result in an adverse outcome, regardless of the degree or title held by the anesthesia providers they work with (see https://www.aana.com/surgeonliability.)

Physician Anesthesiologists, TEFRA Compliance, and Fraud

As noted earlier, for a physician anesthesiologist to be reimbursed for cases in which he/she does not personally perform the anesthesia but instead medically directs up to four CRNAs providing anesthesia in separate cases concurrently, the physician anesthesiologist must personally meet the seven requirements of the TEFRA Act for each case. As demonstrated by the research of Epstein et al (2012), **TEFRA compliance is exceedingly difficult for two or more concurrent cases.** This study strongly suggests that physician anesthesiologists **often commit Medicare billing fraud when medically directing multiple CRNAs** providing patient care concurrently (see https://www.ncbi.nlm.nih.gov/pubmed/22297567). **Facility administrators are wise to evaluate the risk/reward of running an anesthesia department based on the unrealistic, costly medical direction model, as it presents an easy target for regulators.**

Cost Containment

Overcompensation of Physician Anesthesiologists

The current trend toward transparency in healthcare delivery costs has created significant opportunity for facility administrators, anesthesia companies, billers, and other stakeholders to take a closer look at various anesthesia delivery options to identify cost savings. According to the 2016 Medical Group Management Association (MGMA) provider compensation report, physician anesthesiologists' median total compensation package nationally was $453,687 per year as opposed to CRNAs at $172,000. MGMA further determined that a cost savings of 62 percent can prevent facility closure and maintain community access to care. **By carefully examining overcompensation of physician anesthesiologists for services that can be provided as safely and more cost-effectively by CRNAs, a substantial portion of this percentage can be realized.**

Tearing Down Barriers to CRNA Practice

To assist in improving access to healthcare across the United States, the National Academy of Medicine (formerly known as the Institute of Medicine) stated in its 2010 landmark report The Future of Nursing that "advanced practice registered nurses (APRNs) should be able to practice to the full extent of their education and training" (see http://www.academicprogression.org/about/future-of-nursing.shtml). However, regulatory barriers continue to exist, preventing CRNAs from attaining full scope of practice and increased reimbursement. In 2018, **a report published by the U.S. Department of Health and Human Services (HHS) identified barriers to market competition at the federal and state levels that stifle innovation in healthcare cost containment delivery solutions.** These barriers create higher prices and disincentivize administrators and providers who might otherwise seek to enhance healthcare quality. One of the report's main recommendations is to **encourage policies that allow healthcare professionals to practice to their full scope to ensure workforce mobility and increase access to care while solving economic challenges without impacting value or safety** (see https://www.hhs.gov/about/news/2018/12/03/reforming-americas-healthcare-system-through-choice-and-competition.html).

The Federal Trade Commission (FTC) weighs in on cases where APRN scope of practice has been restricted and patients' ability to receive care from the providers of their choice has been limited. **Anticompetitive legislation and regulation proposed by the medical community, and especially physician anesthesiologists, to protect their turf and compensation at the expense of their patients' best interests is becoming commonplace.**

Conclusion

For more than 150 years, CRNAs have fulfilled a highly valued role in the U.S. healthcare system. Today, CRNAs help ensure patient access to proven safe, high-quality, cost-effective anesthesia and related services, meeting the needs of countless healthcare facilities and the communities they serve across the country. Going forward, CRNAs will continue to be *the* answer to achieving a safer healthcare environment and more cost-efficient healthcare economy.

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Safe and effective anesthesia
CARE
for every patient.

America's Anesthesia Workforce: Current Status and Emerging Trends

Certified Registered Nurse Anesthetists, also known by the titles CRNA, nurse anesthetist, Certified Registered Nurse Anesthesiologist, and nurse anesthesiologist, have been the backbone of anesthesia delivery in the United States since the American Civil War.

As healthcare spending in the 21st Century continues to grow, delivery systems struggle under the weight of increasing costs, declining reimbursement, and a continually changing legislative and regulatory environment. The specialty of anesthesiology has not been immune to this volatility; however, all current research and socio-economic evidence points to CRNAs as the answer to a more efficient and economical approach to providing patients access to safe, high-quality anesthesia care and pain management. This document, prepared by the American Association of Nurse Anesthetists (AANA), defines the increasing role and value of CRNAs in the U.S. healthcare system and explores barriers to CRNA practice and patient access to care by examining the past, present, and future of the profession. The following subject areas are covered:

- History of anesthesia delivery
- Provider types
- Anesthesia delivery models
- Compliance and medico-legal liability issues for anesthesia practice
- Emerging trends
- Barriers to anesthesia delivery: evolution and cost containment

History of Anesthesia Delivery

Not long after the first demonstration of anesthesia for surgery was conducted in 1846 by American dentist William Thomas Green Morton, nurses became the first healthcare providers to specialize in anesthesiology. The advent of anesthesia to mitigate the pain and improve the quality of surgery quickly resulted in increased demand for surgical intervention in the United States, but surgeons soon had a new problem to contend with: the lack of vigilance by physician anesthesia providers who were more interested in observing surgery than paying attention to the patients they rendered unconscious with powerful drugs. This led prominent surgeons to recruit responsible, dedicated nurses eager to learn the techniques required to safely administer anesthetic drugs and keep patients asleep and pain free on the operating table. By the late 1800s, respected nurses such as Alice Magaw, who was bestowed the title "Mother of Anesthesia" by Dr. Charles Mayo, and Agatha Hodgins, who founded the AANA, were being identified and trained by surgeons to be their exclusive anesthetists. It wasn't long before these nurses were actively advancing the specialty of nurse anesthesia through published research and formal instruction in anesthesiology.

Back in the profession's infancy, five requirements were viewed as essential to becoming a nurse anesthetist: satisfaction with a subordinate role, focus or interest solely on anesthesia, no intent to learn surgical techniques, acceptance of low wages, and possessing skills to provide "smooth relaxation anesthesia." By comparison, today's CRNA is a well-compensated, highly skilled anesthesia expert with graduate-level education and training who may work independent of physician supervision in a variety of specialized roles including clinician, researcher, educator, administrator, and business owner.

The beginning of World War I heightened the demand for nurse anesthetists. Nearly 100 years later, service members in all branches of the U.S. Armed Forces continue to rely on independently

practicing CRNAs for anesthesia care, especially on the front lines of American military actions around the world. In these austere settings, CRNAs are typically the sole anesthesia professionals caring for U.S. service men and women.

By the end of World War II, there were 17 nurse anesthetists to every one physician anesthesiologist, the medical counterpart to nurse anesthetists. Physicians had entered the field in the early 1900s and tried to claim it as their own to no avail. Because nurse anesthetists pioneered the specialty and became highly respected by surgeons and other proceduralists for the quality care they provided, anesthesiology was originally viewed as the practice of nursing, not medicine; today it is viewed as both the practice of nursing and the practice of medicine (see https://www.aana.com/practice/practice-manual?tab7). This has been upheld as law in the United States for decades by courts in multiple jurisdictions. Two primary examples are the cases *Frank v. South* and *Nelson v. Chalmers-Frances* which clearly defined anesthesiology as the practice of nursing or medicine depending on who is providing the service. Since 1970, various healthcare associations and government boards have corroborated this fact. For a timeline of nurse anesthesia history, see https://www.aana.com/history.

What makes the anesthesia profession unique is that the services provided do not fit into the cure model of medicine. Anesthesia facilitates the care and management of a patient's health issues. Its delivery is, principally, an ancillary service to surgery and diagnostic procedures in traditional perioperative settings, although anesthesia professionals also facilitate diagnosis and therapy in other care settings including, but not limited to, labor and delivery units, emergency rooms, critical care units, outpatient clinics, and office-based practices. The primary purpose of anesthesia in any care setting, whether provided by a CRNA or a physician anesthesiologist, is to render a patient insensitive to pain. The provision of these services requires an anesthesia professional who has undergone extensive specialized education and training.

The term "anesthesiologist" refers to an expert in the provision of anesthesia and related services, such as a physician anesthesiologist, nurse anesthesiologist (better known as a Certified Registered Nurse Anesthetist or CRNA), and dental anesthesiologist.

The practice of anesthesiology includes patient care before, during and after surgery; patient care before, during, and after labor and delivery; and diagnostic and therapeutic procedures. In addition, anesthesia experts oversee the management of systems and personnel that support these activities. The practice of anesthesiology also includes:

- The preanesthetic optimization of the patient through assessment and evaluation of health history, including the identification of new medical conditions,
- The perioperative management of wellbeing, hemodynamics, and pre-existing conditions,
- The administration of anesthesia and sedation and comprehensive management of discomfort,
- The management of postanesthetic recovery,
- The prevention and management of perioperative complications,
- The practice of acute and chronic pain management, and
- The practice of trauma stabilization and critical care interventions.

These skills and responsibilities fall within the scope of practice of all the anesthesia professionals listed above, regardless of credentials. For more information, see https://www.aana.com/practice.

Provider Types

This section discusses the various types of anesthesia providers with emphasis on CRNAs, physician anesthesiologists, and anesthesiologist assistants (AAs). Education, work roles, and responsibilities are covered.

General Terminology

Anesthesiologist: An expert in the provision of anesthesia and related services. Anesthesiologists (nurse, physician, dentist) are educated and trained to practice both independently and in collaboration with other healthcare providers. The standard of care is the same for all types of anesthesiologists, and these providers are legally responsible for the services they provide. (NOTE: Also known as "qualified anesthesia providers/professionals.")

Anesthetist: Broadly, one who administers anesthesia, including nurses, physicians, dentists, and AAs. In most countries other than the United States, a physician who provides anesthesia is known as an "anaesthetist" or "anesthetist." (NOTE: Also known as "qualified anesthesia providers/professionals.")

Fellow: A licensed anesthesiology professional (nurse, physician, dentist) who has obtained an additional year or more of education in a subdiscipline of anesthesiology. (NOTE: Also known as "qualified anesthesia providers/professionals.")

Resident: A registered nurse, dental student, or medical student who is in process of obtaining an advanced degree as a nurse anesthetist, physician anesthesiologist, or dental anesthesiologist. These specialists will exit their programs as fully prepared anesthesia professionals; nurse anesthesia program graduates will complete the National Certification Examination post-graduation to become CRNAs.

Independently Licensed Practitioners

Certified Registered Nurse Anesthetist (also CRNA, nurse anesthetist, Certified Registered Nurse Anesthesiologist, nurse anesthesiologist): A nurse educated and licensed to practice anesthesia in the United States. Overall, it takes 7-8 ½ years of nursing- and anesthesiology-focused education and training to attain a degree in nurse anesthesia prior to sitting for the National Certification Examination to become a CRNA. Graduates of nurse anesthesia educational programs have an average of 9,369 hours of clinical experience (see https://www.aana.com/journalonline). All CRNAs are board certified. The extensive education requirements to become a CRNA, and the title itself, are unique to the United States.

The minimum education and experience required to become a CRNA include the following:

- A baccalaureate or graduate degree in nursing or other appropriate major.
- An unencumbered license as a registered professional nurse and/or APRN in the United States or its territories and protectorates.
- A minimum one year of full-time work experience, or its part-time equivalent, as a registered nurse in a critical care setting within the United States, its territories, or a U.S. military hospital outside of the United States. The average experience of RNs entering nurse anesthesia educational programs is 2.9 years. Prior to entering a nurse anesthesia educational program, an applicant must have developed independent decision-making skills, the ability to manage critical patients who need continuous life-sustaining treatments, knowledge of invasive interventions, and a clear understanding of how to use and interpret advanced monitoring techniques based on knowledge of physiological and pharmacological principles.
- Graduation with a minimum of a master's degree from a nurse anesthesia educational program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs. Beginning Jan. 1, 2022, all students matriculating into an accredited program must be enrolled in a doctoral program.
- Nurse anesthesia educational programs range from 24-51 months, depending on university requirements. Programs include clinical settings and experiences. As noted, graduates of nurse anesthesia educational programs have attained 7-8 ½ years of nursing- and anesthesiology-focused education and training including 9,369 hours of clinical experience.
- CRNAs may go on to pursue a fellowship in a specialized area of anesthesiology such as chronic pain management.

- CRNAs follow a path of lifelong learning through the Continued Professional Certification (CPC) Program of the National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA).

CRNAs are licensed by the states and authorized by law and regulation to practice nurse anesthesia in all 50 states and the District of Columbia; they are the only independently licensed practitioners required to be board certified to practice. By comparison, nearly 25 percent of practicing physician anesthesiologists are not board certified, according to the Anesthesia Quality Institute (AQI) report titled Anesthesia in the United States 2013. In most states, CRNAs are licensed or recognized as advanced practice registered nurses (APRNs), advanced practice nurses (APNs), or advanced practice registered nurse practitioners (ARNPs). For more information, see https://www.aana.com/crnaqualifications.

Physician Anesthesiologist (also medical doctor, MD, doctor of osteopathy, DO): A physician educated and licensed to practice medicine and anesthesia in the United States. Overall, it takes approximately eight years of medical- and anesthesiology-focused education and training to attain a degree as a physician specializing in anesthesiology prior to sitting for the medical board examination. (NOTE: The American Society of Anesthesiologists [ASA] typically inflates years of schooling to 12-14, which includes a four-year bachelor's degree attained prior to entering medical school, and a post-residency fellowship in an anesthesiology subspecialty such as chronic pain management, which many anesthesiologists do not pursue. The bachelor's degree, while inclusive of some course and lab work in anatomy, physiology, and other related sciences, is typically not healthcare-focused. Therefore, a physician anesthesiologist legitimately can lay claim to attaining eight years of medical- and anesthesiology-focused education and training in the process of becoming an anesthesiologist, which is comparable to the amount of nursing- and anesthesiology-focused education and training attained by CRNAs. Additionally, the ASA typically inflates the number of clinical hours attained by physician anesthesiology residents to approximately 14,000-16,000; however, the actual number of hours is closer to 12,120 (see https://www.aana.com/journalonline). It is important to note that a singular difference between clinical education hours attributed to nurse anesthesia and physician anesthesiology residents is that the hours claimed by nurse anesthesia residents are those actually spent providing patient care, while the hours claimed by physician anesthesiology residents are all hours spent in the facility, including those hours not involved in patient care.

The minimum education and experience required to become a physician anesthesiologist include the following:

- Graduation with a bachelor's degree in an unspecified course of study prior to acceptance into medical school. (NOTE: Medical school applicants are not required to attain any healthcare experience prior to applying for admission. By comparison, nurse anesthesia residents are required to attain a minimum of one year of critical care nursing experience; most applicants attain an average of 2.9 years of critical care nursing experience CRNAs are the only anesthesia professionals in the United States who are required to attain related healthcare experience before entering an anesthesia program.) For more information see https://www.aana.com/journalonline.
- Completion of a four-year medical degree.
- Completion of a four-year anesthesiology residency.
- As noted, physician anesthesiologists attain approximately eight years of medical- and anesthesia-focused education and training including 12,120 hours of clinical experience.
- Some physician anesthesiologists go on to pursue a fellowship in a subspecialty of anesthesiology such as chronic pain management.
- Physician anesthesiologists follow a path of lifelong learning including various continuing education requirements; however, as previously noted, physician anesthesiologists are not required to be board certified, and approximately 25 percent of them are not.
- Physician anesthesiologists are licensed by the states and authorized by law and regulation to practice anesthesiology in all 50 states and the District of Columbia.

Dependent Anesthesia Providers

Anesthesiologist Assistant (AA, certified anesthesiologist assistant, CAA): An allied health professional educated and licensed to provide anesthesia in the United States exclusively under the medical direction of a physician anesthesiologist. As their title attests, AAs are assistants to physician anesthesiologists. Overall, it takes just two years of anesthesiology-focused education and training to attain a degree as an AA prior to sitting for the certification examination. Graduates of AA educational programs average more than 2,500 hours of clinical experience. All states that license AAs require that they are certified by the National Commission for Certification of Anesthesiologist Assistants.

The minimum education and experience required to become an AA include the following:

- Graduation with a bachelor's degree prior to admission to an AA program. (NOTE: According to the Commission on Accreditation of Allied Health Education Programs, no specific bachelor's degree is required for AAs to complete their graduate school training.)
- Unlike CRNAs, but exactly like physician anesthesiologists, AAs are not required to have any patient care experience before applying to an AA program.
- Attain a two-year master's degree to be able to assist physician anesthesiologists in providing anesthesia care to patients.

CRNAs are not permitted by law to oversee the work of AAs. Consistent with this, the AANA's Position Statement on AA Training advises CRNAs not to supervise the training of AAs.

Unlike other anesthesia professionals, AAs are not licensed to practice independently in any state. Currently, AAs are explicitly recognized under state law in only 13 states and the District of Columbia. In one additional state, Kentucky, AAs must also be certified physician assistants to practice, which significantly restricts the ability of AAs to practice in that state. These limitations do nothing to help improve patient access to surgical, labor and delivery, and emergency care; however, they do increase costs for anesthesia services paid by facilities and patients due to two anesthesia providers needing to be involved in the care of a single patient. For more information, see https://www.aana.com/aa-toolkit.

Other Providers of Anesthesia or Sedation

Dental Anesthesiologist (DA): A dentist educated and licensed to practice dental anesthesia in the United States. Similar to physician anesthesiologists, it takes approximately eight years of dental- and anesthesiology-focused education and training to attain a degree as a dentist specializing in anesthesiology prior to sitting for the dental board examination. Dental anesthesiologists are not required to have any healthcare experience prior to entering dental school, nor are they required to be board certified. For more information, see https://www.asdahq.org/about.

Oral and Maxillofacial Surgeons (OMS): A dentist who completes a 4-6 year residency after dental school that includes five months of dedicated anesthesia education and training. Typically, an OMS is allowed by state law to provide anesthesia services to adult and pediatric patients under dental or oral surgical care. For further information on OMS anesthesia care, see https://www.aaoms.org/docs/govt_affairs/advocacy_white_papers/advocacy_office_based_anesthesia_whitepaper.pdf.

Certified Registered Sedation Nurses (CRSNs): A registered nurse licensed in the United States who obtains additional training to provide moderate sedation under the supervision of an anesthesiologist (nurse, physician, dentist), other physician, dentist, or podiatrist. CRSNs take advanced curriculum in the areas of patient assessment, pharmacology, airway management, monitoring, equipment, managing emergencies, clinical judgment, and critical thinking in the provision of patient care.

Anesthesia Delivery Models

There are four CRNA/physician anesthesiologist anesthesia delivery models commonly used by healthcare facilities in the United States: CRNA-only; physician anesthesiologist supervision of CRNAs; physician anesthesiologist direction of CRNAs; and physician anesthesiologist-only (see https://www.aana.com/PracticeModels). It is important to note that despite the variety of anesthesia delivery models involving CRNAs and physician anesthesiologists, CRNAs are not required by federal or state laws to be supervised by, directed by, or even work with a physician anesthesiologist regardless of the delivery model. The exception is New Jersey, which requires CRNAs to enter into a joint protocol with an anesthesiologist.

For AAs, there is only one anesthesia delivery model: medical direction by a physician anesthesiologist.

CRNA-only Model

Due to its proven safety record and high degree of cost-effectiveness, the CRNA-only model is found throughout the United States. In this model, the CRNA is the sole anesthesia provider; more specifically, the CRNA works without any involvement by a physician anesthesiologist.

The CRNA-only model may vary by state. In some states, CRNAs work without physician supervision; in other states, they are required to be supervised by a physician. The physician *could* be, but is not *required* to be, a physician anesthesiologist. Often the supervising physician is a surgeon or other proceduralist.

Currently, there are 17 states that have no physician supervision requirement for CRNAs whatsoever: Iowa, Nebraska, Idaho, Minnesota, New Hampshire, New Mexico, Kansas, North Dakota, Washington, Alaska, Oregon, Montana, South Dakota, Wisconsin, California, Colorado, and Kentucky. What this means is that these states don't have a supervision requirement in state statutes, board of nursing or medicine rules and regulations, or any other state agency rules and regulations, plus they have opted out of the federal Medicare physician supervision requirement for CRNAs. Without any burdensome supervision requirement for CRNAs, healthcare facilities in these states can structure and staff their anesthesia departments to function as efficiently, cost-effectively, and safely as possible, to the benefit of their—and their patients'—bottom line.

Physician supervision of CRNAs is not and never has been a matter of patient safety. Its requirement has always been tied to the ability of a facility to receive reimbursement from the Centers for Medicare & Medicaid Services (CMS) for anesthesia care provided to Medicare patients.

Since 2000, numerous published research studies have confirmed the safety and quality of care provided by CRNAs and also that CRNAs are the most cost-effective providers by a wide margin (see http://www.future-of-anesthesia-care-today.com/research.php). For example, a study conducted by the Research Triangle Institute (RTI) and published in the August 2010 issue of *Health Affairs* determined that anesthesia care is equally safe when delivered by a CRNA working solo, a CRNA supervised by a physician anesthesiologist, or a physician anesthesiologist working solo. In fact, the RTI study showed that a CRNA working solo is actually the safest scenario, although the data supporting that conclusion was not statistically significant. Another study published in the May/June 2010 issue of *Nursing Economic$* and updated in May 2016 showed that a CRNA working solo is 25 percent more cost effective than the next most cost-effective anesthesia delivery model.

All statements about anesthesia safety, cost and access made by the AANA for patient education, advocacy, and interview purposes are supported by published scientific evidence, unlike the unsubstantiated claims made by the ASA that the highest level of anesthesia care always involves an anesthesiologist.

Physician Anesthesiologist Supervision of CRNAs

Medical supervision is a billing term under Medicare which pertains to when one physician anesthesiologist oversees more than four CRNAs concurrently administering anesthesia to patients undergoing surgical or other procedures. (NOTE: Physician anesthesiologists can also supervise up to four AAs concurrently administering anesthesia to patients.) In this model, the physician anesthesiologist doesn't provide hands-on care, but is available in case he/she is needed to assist in any of the concurrent cases. Even if the physician anesthesiologist never takes an active role in any of the cases being managed by the CRNAs, the anesthesiologist can still bill for "services provided" for each case. Research has confirmed that patient safety is not enhanced by this anesthesia delivery model, and that the cost of having a physician anesthesiologist available "just in case" is often greater than the cost of adding two additional CRNAs to the anesthesia department. In fact, due to billing regulations, most facilities where this model is used will, on average, experience a 23 percent reduction in overall revenue compared to facilities where CRNAs provide and bill for services without the physician anesthesiologist "supervision" component (see http://www.lewin.com/content/dam/Lewin/Resources/AANA-CEA-May2016.pdf).

Physician Anesthesiologist Direction of CRNAs

Medical direction is a billing term under Medicare which pertains to when a physician anesthesiologist directs the anesthesia care of up to four CRNAs (or AAs) providing anesthesia for four different cases concurrently; however, for medical direction to be achieved legally, the physician anesthesiologist must meet seven requirements of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248 (TEFRA) for each case, including: 1) Perform a pre-anesthetic examination and evaluation and document it in the medical record. 2) Prescribe the anesthesia plan. 3) Personally participate in the most demanding procedures in the anesthesia plan—including induction and emergence, if applicable—and document this. 4) Ensure that any procedures in the anesthesia plan are performed by a qualified anesthetist. 5) Monitor the course of anesthesia administration at frequent intervals and document that they were present during some portion of the anesthesia monitoring. 6) Remain physically present and available for immediate diagnosis and treatment of emergencies. 7) Provide indicated post-anesthesia care and document it. In other words, the physician anesthesiologist is required to personally perform certain aspects of each anesthetic procedure to be able to receive reimbursement for any portion of the case. If the seven requirements are met, the physician anesthesiologist is eligible to receive 50 percent of the total reimbursement for each case; the other 50 percent of the reimbursement for each case would be received by the CRNA or AA who is involved. As always, when a CRNA is the anesthesia professional being medically directed by a physician anesthesiologist, the CRNA provides most of the hands-on patient care and stays with the patient throughout the procedure.

For obvious reasons, medical direction, with its TEFRA requirements, is the model in which anesthesiologist billing fraud occurs most frequently. It is virtually impossible for an anesthesiologist to meet the seven TEFRA requirements in concurrent cases (regardless of whether there are two, three or four concurrent cases) without significant delays occurring in each of the cases as the anesthesiologist moves from room to room. In 2012, research by Epstein et al and published in the journal *Anesthesiology* examined this problem relative to delayed case starts (see https://www.ncbi.nlm.nih.gov/pubmed/22297567).

Aside from the potential for fraudulent billing practices, in most scenarios medical direction results in the same reimbursement per case as billing in the CRNA-only model, but it comes at an increased cost to the facility of at least one physician anesthesiologist for every four CRNAs. This translates to more than $1 million per year for an average-sized U.S. hospital with four operating rooms. The increased cost of the medical direction model is generally not sustainable, and typically the hospital subsidizes the anesthesia department to cover the cost which is then passed on to consumers of the hospital's services. Recent data shows that more than 80 percent of all hospitals currently subsidize anesthesia departments due to inefficient staffing models. (Massie, M. [2017]. *Determinants of Hospital Administrators' Choice of Anesthesia Practice Model* [Doctoral dissertation]. Retrieved from ProQuest Dissertation and Theses. [Accession Order No. 11669]. MB)

Additional information about the medical-direction model and billing fraud is provided in the Compliance and Medico-legal Liability Issues for Anesthesia Practice section later in this paper. A cost analysis of the different anesthesia staffing models can be found at https://www.aana.com/docs/default-source/research-aana.com-web-documents-(all)/nec_mj_10_hogan.pdf.

Physician Anesthesiologist-only Model

In this model, the physician anesthesiologist is the sole anesthesia provider. The anesthesiologist provides hands-on patient care and stays with the patient throughout the procedure—exactly the way a CRNA functions all the time whether working solo or with a physician anesthesiologist. In contrast to the other models in which a physician anesthesiologist is supervising or directing CRNAs and available on a limited basis or only "if needed," in this model the physician anesthesiologist actually performs the anesthesia. The physician anesthesiologist-only model is the least commonly used delivery model in the United States. While it is more economical than the medical-direction and medical-supervision models, research has confirmed that it is far less cost-effective and no safer than the CRNA-only model (see https://www.aana.com/docs/default-source/research-aana.com-web-documents-(all)/nec_mj_10_hogan.pdf).

Compliance and Medico-legal Liability Issues for Anesthesia Practice

Surgeon Liability

The misconception that surgeons, dentists, podiatrists, and other proceduralists assume increased liability when working with CRNAs persists to this day despite nearly four decades of court precedent to the contrary. In reality, the liability of these providers is directly related to how much, if any, control they exert on the anesthesia process that may result in an adverse outcome, regardless of the degree or title held by the anesthesia providers they work with. In other words, if a surgeon exerts control over the anesthesia care being provided by a CRNA *or* by a physician anesthesiologist, that surgeon's liability will increase according to the degree of control exerted regardless of the type of anesthesia professional involved with the case. Case law has repeatedly supported this doctrine. For additional information, see https://www.aana.com/surgeonliability.

Physician Anesthesiologists and TEFRA Compliance

In today's healthcare environment, the three main areas of risk for anesthesia professionals, particularly physician anesthesiologists, are: compliance with the TEFRA requirements for reimbursement, observance of the Anti-Kickback Statute, and failure to follow Stark Law conditions related to staffing models.

As noted earlier in this paper, for a physician anesthesiologist to be reimbursed for cases in which he/she does not personally perform the anesthesia but instead medically directs up to four CRNAs providing anesthesia in separate cases concurrently, the anesthesiologist must personally meet the seven requirements of the TEFRA Act for each case. As demonstrated by the research of Epstein et al (2012), TEFRA compliance is exceedingly difficult for two concurrent cases, and 99 percent impossible for three or four cases without incurring significant case delays.

The Epstein study suggests that physician anesthesiologists often commit Medicare billing fraud when medically directing multiple CRNAs providing patient care concurrently. Not surprisingly, Medicare claims compliance is routinely under scrutiny from auditors, relators, Qui Tam attorneys, and the CMS Office of the Inspector General (OIG). Facility administrators are wise to evaluate the risk/reward of running an anesthesia department based on the unrealistic, costly medical direction model, as it presents an easy target for regulators.

For more information on anesthesia billing fraud, see https://www.aana.com/publications/aana-journal/legal-briefs?tab3.

The "Company Model" and the Anti-Kickback Statute and Stark Law

Also under scrutiny by the OIG and Department of Justice (DOJ) is the "company model" for anesthesia care delivery and whether it violates the Anti-Kickback Statute and Stark Law. Under the company model, a physician-owned facility incorporates a separate anesthesia company under the same ownership as the facility to provide anesthesia services for the facility. Since the company is a separate corporation, it can bill for both facility and anesthesia service fees. After the anesthesia providers' salaries, billing expenses and other costs are extracted, the anesthesia company's profits are distributed back to the owners of the facility. Because the fees paid to the anesthesia providers are less than they could earn if they billed independently, it is estimated that these profits can equal 40 percent or more of the anesthesia fee (see https://www.beckershospitalreview.com/anesthesia/3-core-models-for-delivering-anesthesia-services-trends-legal-issues-and-observations.html).

The Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)) makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a federal healthcare program. Stark Law is a set of U.S. federal laws that prohibit physician self-referral—specifically referral by a physician of a Medicare or Medicaid patient to an entity providing designated health services if the physician (or an immediate family member) has a financial relationship with that entity.

The company model and related complex schemes are typically created by non-anesthesia physicians to gain profits from the referral of their patients to an anesthesia business they own, thus creating the potential for physician self-referral. These models are created to permit the referring physician such as a surgeon, gastroenterologist, ophthalmologist, et al, to *indirectly* gain profits from their referrals to anesthesia providers because it is fraudulent to do so *directly*. Physicians and CRNAs involved in a company model arrangement should evaluate their legal relationship relative to OIG and DOJ queries. For more information, see https://www.aana.com/companymodel.

Emerging Trends

The current trend toward transparency in healthcare delivery costs has created significant opportunity for facility administrators, anesthesia companies, billers, and other stakeholders to take a closer look at various anesthesia delivery options. Surgery has always been the main profit center for hospitals and ASCs, but without anesthesia services, surgical services do not exist. Therefore, finding cost savings in anesthesia delivery services is a growing priority across the country, particularly in rural and medically underserved facilities that are at greater risk for closure due to unmanageable overhead and provider costs. According to the 2016 Medical Group Management Association (MGMA) provider compensation report, physician anesthesiologists' median total compensation package nationally was $453,687 per year as opposed to CRNAs at $172,000. MGMA further determined that a cost savings of 62 percent can prevent facility closure and maintain community access to care. By carefully examining overcompensation of physician anesthesiologists for services that can be provided as safely and more cost-effectively by CRNAs, a substantial portion of this percentage can be realized.

Opioid Crisis

As anesthesia experts, CRNAs are uniquely qualified to help mitigate the opioid crisis by utilizing and promoting non-opioid and opioid-sparing pain management techniques for both acute and chronic pain. The AANA and its members strongly advocate for the use of enhanced recovery after surgery protocols to reduce opioid use during surgery and other procedures requiring anesthesia care to help

prevent post-surgical opioid dependency and abuse. Additionally, in October 2018, the SUPPORT Act added CRNAs to the list of providers permitted to prescribe medication-assisted treatment (MAT) to individuals already suffering from opioid dependence.

The AANA's commitment to rethinking pain management to reduce or eliminate the use of opioids while maintaining patient comfort and safety and helping to prevent post-surgical dependence on powerful narcotics is an ongoing initiative. Research has shown that approximately 3 million Americans become persistent opioid users after surgery, and 83 percent of heroin users began by using prescription pain medications.

The AANA believes that acute and chronic pain is best treated and managed by an interdisciplinary team that actively engages the patient to diagnose and manage their pain for improved well-being, functionality, and quality of life.

- As members of the interdisciplinary team, CRNAs provide holistic, patient-centered, multimodal pain treatment and management across the continuum of pain and in all clinical settings (e.g., hospitals, ambulatory surgical centers, offices, and pain management clinics).
- Patient-centric pain management offers patients greater transparency, understanding and engagement in their own care. Patients need to be encouraged to play an active role in their healthcare and pain management plan by talking to their healthcare team, informing the team of any concerns they have, and asking questions to ensure everyone has the information they need.
- CRNAs integrate multimodal pain management as an element of enhanced recovery after surgery protocols to manage pain. Enhanced recovery pathways use multimodal pain management to reduce the use of opioids and shorten overall hospital length of stay. Management occurs from pre-procedure to post discharge using opioid sparing techniques such as regional anesthesia, peripheral nerve blocks, non-pharmacologic approaches, and non-opioid based pharmacologic measures.
- Careful assessment and treatment of acute pain, which may include appropriate opioid prescribing, can decrease the risk of acute pain transitioning to chronic pain and the possible development of opioid dependency and abuse.

As the primary point of contact for pre- and post-operative patients, CRNAs are doing their part to end the opioid crisis by utilizing a holistic, patient-centric approach to pain management and opioid prescription, offering patients greater transparency, understanding and engagement in their care.

Barriers to Anesthesia Delivery: Evolution and Cost Containment

To assist in improving access to healthcare across the United States, the National Academy of Medicine (formerly known as the Institute of Medicine) stated in its 2010 landmark report *The Future of Nursing* that "advanced practice registered nurses (APRNs) should be able to practice to the full extent of their education and training" (see http://www.academicprogression.org/about/future-of-nursing.shtml). However, regulatory barriers continue to exist, preventing CRNAs from attaining full scope of practice and increased reimbursement. Recently, a 119-page report published in 2018 by the U.S. Department of Health and Human Services (HHS) identified barriers to market competition at the federal and state levels that stifle innovation in healthcare cost containment delivery solutions. These barriers create higher prices and disincentivize administrators and providers who might otherwise seek to enhance healthcare quality. One of the report's main recommendations is to encourage policies that allow healthcare professionals to practice to their full scope to ensure workforce mobility and increase access to care while solving economic challenges without impacting value or safety (see https://www.hhs.gov/about/news/2018/12/03/reforming-americas-healthcare-system-through-choice-and-competition.html).

The Federal Trade Commission (FTC) weighs in on cases where APRN scope of practice has been restricted and patients' ability to receive care from the providers of their choice has been limited. Anticompetitive legislation and regulation proposed by the medical community, and especially physician

anesthesiologists, to protect their turf and compensation at the expense of their patients' best interests is becoming commonplace.

Another barrier to CRNA practice created by physician anesthesiologists is intended to impede nurse anesthesia residents' preparation by limiting their access to clinical training sites and procedures. The ASA's stated rationale is to protect employment opportunities for anesthesiologists. In the AANA's view, this sort of blatant protectionism is, at a minimum, unethical. *All* anesthesiology residents should be afforded the required clinical training opportunities necessary to become fully prepared for entry into practice. Patients depend on this.

For more information on barriers to practice see https://www.aana.com/publications/aana-journal/legal-briefs?tab3 and https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf.

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Safe and effective anesthesia
CARE
for **every patient.**

July 25, 2019

Derrick C. Glymph, DNAP, CRNA, APRN
Chair, Florida Board of Nursing
4052 Bald Cypress Way Bin C-02
Tallahassee, FL 32399-3252

Re: Descriptor "nurse anesthesiologist"

Dear Members of the Florida Board of Nursing:

I am the President of the American Association of Nurse Anesthetists (AANA), which represents more than 54,000 nurse anesthetists (including Certified Registered Nurse Anesthetists (CRNAs) and student nurse anesthetists) nationwide. The AANA submits the following comments and information regarding the "nurse anesthesiologist" descriptor for CRNAs. In May of 2019 the AANA Board of Directors, after careful and thoughtful consideration, voted to recognize "nurse anesthesiologist" as a descriptor synonymous with "nurse anesthetist." The AANA now recognizes the following descriptors to identify nurse anesthetists: "Certified Registered Nurse Anesthetist," "Certified Registered Nurse Anesthesiologist," "CRNA," "nurse anesthetist," and "nurse anesthesiologist." Further, the AANA believes the term "nurse anesthesiologist" enhances public understanding of the nurse expert in anesthesiology consistent with the AANA's mission, since 1939, of advancing the art and science of anesthesiology.

"Nurse anesthesiologist" now appears in the following AANA documents:

- Certified Registered Nurse Anesthetists, Advance Practice Registered Nurses Position Statement;
- Corresponding AANA Fact Sheet;
- CRNAs at a Glance;
- "CRNAs - We are the Answer" position statement; and
- America's Anesthesia Workforce: Current Status and Emerging Trends

While the AANA recognizes "nurse anesthesiologist" as a proper descriptor for CRNAs, it remains the responsibility of each individual CRNA to remain aware of and comply with the legal requirements of any state or facility in which they practice.

Please do not hesitate to contact Anna Polyak, RN, JD, the AANA's Senior Director, State Government Affairs, at 847-655-1131 or apolyak@aana.com if you have any questions or require further information.

Sincerely,

Garry Brydges

Garry Brydges, DNP, MBA, ACNP-BC, CRNA, FAAN
AANA President

Exhibit 3

August 1, 2019

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

FLORIDA MEDICAL ASSOCIATION, INC. , FLORIDA SOCIETY OF ANESTHESIOLOGISTS, INC., AND FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION, INC. MOTION TO INTERVENE IN FLORIDA BOARD OF NURSING'S CONSIDERATION OF THE PETITION FOR DECLARATORY STATEMENT IN OPPOSITION OF PETITIONER JOHN P. MCDONOUGH, A.P.R.N., C.R.N.A., ED.D

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

1. The Florida Medical Association, Inc. is a Florida-based trade organization comprised of over 22,500 Florida physicians, many of whom are anesthesiologists. As a result, members of the FMA, as physicians, would be adversely affected if providers not licensed pursuant to Chapter 458 or 459 of the Florida Statutes were to employ the use of the term "anesthesiologist." The FMA routinely participates in advocacy efforts on

behalf of its members in matters concerning the rights and obligations of physicians, including efforts by other professions to dilute such rights.

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

1430 Piedmont Drive East, Tallahassee, FL 32308

(850) 224-6496

Facsimile: (850) 224-6667

Email: legal@flmedical.org

3. Petitioner FMA's counsel's name, address, phone number, facsimile number, and email are Jeffery Scott, Esq., 1430 Piedmont Drive East, Tallahassee, Florida 32308. (850) 224-6496. Facsimile (850) 224-6667. Email: JScott@flmedical.org.

4. The Florida Society of Anesthesiologists, Inc. ("FSA") is a Florida-based trade organization comprised of approximately 2,300 Florida physicians specializing in Anesthesiology and its subspecialties, each of whom is referred to as an "anesthesiologist. Members of the FSA, as physicians, would be adversely affected if providers not licensed pursuant to Chapter 458 or 459 of the Florida Statutes were to employ the use of the term "anesthesiologist." The FSA routinely participates in advocacy efforts on behalf of its members in matters concerning the rights and obligations of physicians, including issues regarding the differentiation between anesthesiologists and nurse anesthetists.

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

701 Brickell Avenue, Suite 550

Miami, FL 33131

(786) 300-3183

Facsimile: (310) 437-0585

Email: executiveoffice@fsahq.org

6. Petitioner FSA's counsel's name, address, phone number, facsimile number, and email are Christopher L. Nuland, Esq., 4427 Herschel Street, Jacksonville, FL 32204. (904) 355-1555. Facsimile (904) 355-1585. Email: nulandlaw@aol.com.

7. The Florida Osteopathic Medical Association (FOMA) is a Florida-based professional trade organization comprised of nearly 7,500 Florida physicians, each of whom practices medicine and would be entrusted with providing the direct supervision required by the Petition. Members of FOMA, as physicians, would be adversely affected if providers not licensed pursuant to Chapter 458 or 459 of the Florida Statutes were to employ the use of the term "anesthesiologist." FOMA routinely participates in advocacy efforts on behalf of its members in matters concerning the rights and obligations of physicians, including efforts by other professions to dilute such rights.

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

2544 Blairstone Pines Drive, Tallahassee, FL 32301

(850) 878-7363

Facsimile: (850) 942-7538

Email: admin@foma.org

9. Petitioner FOMA legal counsel's name, address, phone number, facsimile number, and email are Jason Winn, Esq., 2709 Killarney Way, Suite 4, Tallahassee FL 32309. (850) 222-7199. Facsimile (850) 222-1562. Email: jwinn@winnlaw.com.

10. A substantial number of the members of each of the Petitioners routinely use the term "anesthesiologist," with the understanding that patients and potential patients recognize the term to refer to a physician licensed pursuant to Chapter 458 or 459 of the Florida Statutes. Therefore, a substantial number of the members of each of the proposed Intervenors would be substantially affected by the Board's decision in this matter, as they have a unique and vested interest in the outcome of the subject Petition. Therefore, the substantial interests of the proposed Intervenors will be affected by the proceeding, and each of the proposed Intervenors therefore has standing to participate in these proceedings. *See Florida Home Builders Association v. Department of Labor and Employment Security,* 412 So.2d 351 (Fla. 1982).

11. The Petitioner is explicitly licensed as a "registered nurse anesthetist," pursuant to Florida Statute 464.012(1)(a). The use of the term "nurse anesthesiologist" is not found in statute and is therefore likely to mislead and/or confuse the public, in violation of Florida Statute 456.072(1)(a).

12. Contrary to the statements made in the Petition, Florida law does, in fact, make clear that the term "anesthesiologist" refers to physicians licensed

under Chapters 458 and 459. Florida Statute 458.3475(1)(a) defines an "anesthesiologist" thusly:

"Anesthesiologist" means an allopathic physician who holds an active, unrestricted license; who has successfully completed an anesthesiology training program approved by the Accreditation Council on Graduate Medical Education or its equivalent; and who is certified by the American Board of Anesthesiology, is eligible to take that board's examination, or is certified by the Board of Certification in Anesthesiology affiliated with the American Association of Physician Specialists.

13. Likewise, Florida Statute 459.023(1)(a) also defines "anesthesiologist" thusly:

"Anesthesiologist" means an osteopathic physician who holds an active, unrestricted license; who has successfully completed an anesthesiology training program approved by the Accreditation Council on Graduate Medical Education, or its equivalent, or the American Osteopathic Association; and who is certified by the American Osteopathic Board of Anesthesiology or is eligible to take that board's examination, is certified by the American Board of Anesthesiology or is eligible to take that board's examination, or is certified by the Board of Certification in Anesthesiology affiliated with the American Association of Physician Specialists.

14. Such definitions are consistent with the accepted definition of "anesthesiologist," as Merriam-Webster Dictionary defines an "anesthesiologist" as "a ***physician*** specializing in anesthesiology." (emphasis added).

15. Moreover, the Legislature has made clear its intention as to the acceptable terms by which CRNAs may refer to themselves, as Florida Statute 464.015(6) states that "Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title 'Certified Registered Nurse Anesthetist' and the abbreviations 'C.R.N.A.'" or 'nurse anesthetist.'"

16. Based upon the above, Petitioners aver that the intended conduct of Petitioner creates a term that is internally inconsistent, as an anesthesiologist is, by definition, a physician. As a result, any representation of Petitioner as a "nurse anesthesiologist" will necessarily confuse and mislead the public and thereby create a potential violation of Florida Statute 456.072 and/or Florida Statute 464.018.

17. Moreover, the Petition asks for a Statement that is likely to be interpreted as a general rule. Although an agency has an obligation to issue a declaratory statement explaining how a statute or rule applies in a petitioner's particular circumstances , even if the explanation would have a broader application than to the petitioner, if the statement has such a broad and general application that it meets the definition of a rule, the agency must initiate the rulemaking process. *International Society of Medical Hair Removal, Inc. v. Department of Health*, 183 So.2d 3d 1138, 1144 (Fla 1st DCA 2015).

18. The authority of an agency to issue a declaratory statement is limited by Florida Statute 120.565 to a determination "as to the applicability of a statutory provision...to the petitioner's particular set of circumstances. " *Lennar Homes, Inc. v. Department of Business and Professional Regulation, Division of Florida Land sales. Condominiums and Mobile Homes*, 888 So. 2d 50, 53 (Fla. 1st DCA 2004).

19. In the instant case, however, the Board is being asked to ascertain whether any certified registered nurse anesthetist who is appropriately

trained and licensed may use the term "nurse anesthesiologist." In essence, the Petitioner is requesting the Board to adopt a statutory interpretation that would be applicable to each and every certified registered nurse anesthetist in Florida to allow them to use the term "anesthesiologist."

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

21. The Petitioners have conferred with the Petitioner's counsel, who indicates that she will object to the proposed intervention.

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

Respectfully submitted this 1st day of August, 2019.

Christopher L. Nuland

Christopher L. Nuland, Esq.

FLORIDA BAR NO: 890332

LAW OFFICES OF CHRISTOPHER L. NULAND, P.A.

Counsel for Petitioner Florida Chapter, American College of Physicians, Services, Inc.

4427 Herschel Street

Jacksonville, FL 32210

(904) 355-1555

Facsimile: (904) 355-1585

nulandlaw@aol.com

Certificate of Service

I hereby certify that a copy of the foregoing was served upon the Petitioner, Joseph P. McDonough, APRN, CRNA, Ed.D, through his counsel, Cynthia A. Mikos, Esq., 401 East Jackson Street, Suite 3100, Tampa, FL 33602 by first-class mail and by email cyntham@jpfirm.com, to Deborah Loucks, Office of Attorney General, The Capitol, PL-01, Tallahassee 32399 by courier and via email to deborah.loucks@myfloridalegal.com, upon the Florida Department of Health, Agency Clerk, via U.S. Mail and courier to 4052 Bald Cypress Way, Bin A-02, Tallahassee, FL 32399, and upon the Board of Nursing by courier and email at 4052 Bald Cypress Way, Bin C-02, Tallahassee, FL 32399-3258, email Joe.Baker@flhealth.gov. on this 1st day of August, 2019.

Christopher L. Nuland

Christopher L. Nuland

DECLARATORY STATEMENT

DR. JOHN P. McDONOUGH

BEFORE THE

BOARD OF NURSES, STATE OF FLORIDA DEPARTMENT OF HEALTH

August 8, 2019

Sanibel Harbor Marriott

17620 Harbor Pointe Drive

Fort Myers, Florida 33908

Reported by: Gerard "Bo" Kriegshauser, RPR

MARTINA-MIKULICE REPORTING SERVICES
2069 First Street -- Suite 201
Fort Myers, Florida 33901
(239)334-6545

MS. SUTTON-JOHNSON: John P. McDonough, Bates 26056. 26056.

CHAIR WHITSON: Good afternoon.

DR. McDONOUGH: Good afternoon.

CHAIR WHITSON: If you all could state your name, please.

DR. McDONOUGH: I'm sorry, I didn't hear you.

CHAIR WHITSON: If you all could state your names for the record, please.

DR. McDONOUGH: Oh. I'm Dr. John McDonough, the Petitioner.

CHAIR WHITSON: Thank you.

MS. MIKOS: I'm Cynthia Mikos with the Law Firm of Johnson Pope on behalf of Dr. McDonough.

MR. WINN: Jason Winn on behalf of the Florida Osteopathic Medical Association, the Florida Medical Association, and the Florida Society of Anesthesiologists.

MR. THOMAS: Glen Thomas on behalf of the Florida Association of Nurse Anesthetists.

CHAIR WHITSON: Thank you. And Dr. McDonough needs to be sworn in.

DR. JOHN McDONOUGH ADMINISTERED OATH

MS. LOUCKS: Board members, this is a

Petition for a Declaratory Statement that you received that you did have two petitions to intervene, and Dr. McDonough or Ms. Mikos, if I misstate what the petition is, please let me know. But basically Dr. McDonough is submitting a petition to the Board asking if he would be subject to disciplinary action by the Board were he to identify himself as a nurse anesthesiologist. It's my understanding from the petition that you're going to refer to yourself with your CRNA nurse anesthetist designation in addition to calling yourself a nurse anesthesiologist.

DR. McDONOUGH: That is correct, Counselor.

MS. LOUCKS: The first thing that the Board needs to do is determine whether or not the organizations that have filed the petitions to intervene have standing in order to participate in the discussion of the Declaratory Statement, and since we have two intervenors, the first petition to intervene was received by the Florida Association of Nurse Anesthetists, so I guess we'll go by order in which they were received.

Basically in order to make a determination of whether an organization has standing, they have to show that they're the members of their organization, would have an actual injury in fact, or suffer an

immediate harm of some sort of immediacy were the Board to issue this particular Declaratory Statement, and then they to -- the Board also has to make a determination of whether the nature of the injury would be within the zone of interest that the statute is addressing.

I know that -- I don't believe, Ms. Mikos, that you've filed any sort of objection to the Florida Association of Nurse Anesthetists participating in this.

MS. MIKOS: That's correct, I did not.

MS. LOUCKS: So, Board members, the first thing you need to do is make the determination of whether you believe that the Florida Association of Nurse Anesthetists would have standing to serve as intervenors in this particular petition.

CHAIR WHITSON: Do we need to do that with a vote? Or how do we --

MS. LOUCKS: Yes, you would need to make that in a form of a motion. If you were to deny it, you would need to specify why you believe that they don't have standing because we're looking at the standing issue first.

DR. GLYMPH: I make motion that they meet the standing.

MS. FORST: Second.

CHAIR WHITSON: All those in favor. Seeing none in opposition, the motion passes.

MS. LOUCKS: And the next petition that was received was a Petition to Intervene on behalf of the Florida Medical Association, the Florida Society of Anesthesiologists, and the Florida Osteopathic Medicine -- I'm sorry, Medical Association. Mr. Winn, did you want to make a presentation? I'm sorry, Mr. Thomas, I didn't give you the opportunity to make a presentation if you had wanted to, but did you want to make a presentation?

MR. THOMAS: Not anymore.

MS. LOUCKS: Mr. Winn, did you want to make a presentation on the standing issue?

MR. WINN: We'll stand by our petition.

MS. LOUCKS: And, Ms. Mikos, did you file an objection to their Petition to Intervene?

MS. MIKOS: I did file an objection to their Petition to Intervene, and since all of this happened in the last seven to ten days I'm not sure if the Board members have copies of that objection.

CHAIR WHITSON: We do.

MS. MIKOS: Okay. So I think it would suffice to say that we would object on two grounds as

to their standing. No. 1, they are not -- physicians are not governed by the Board of Nursing, and the question that we're asking is on behalf -- we're asking the Board of Nursing to discuss its rules and its laws related to one of its licensees and how that licensee may describe himself.

And, secondly, I would point out that we're not asking to use the term anesthesiologist as a freestanding term. We are asking that Dr. McDonough be able to describe himself as a nurse anesthesiologist, and therefore we do not believe that that falls within the realm of the members of the FMA, the FSA or the FOMA. thank you.

CHAIR WHITSON: Thank you. Do we need a motion?

MS. LOUCKS: Yes, you would need a motion as to whether the FMA, FSA and FOMA, that's just easier, sorry, whether they have standing to participate in the Petition to Intervene.

CHAIR WHITSON: We need a motion.

MS. LOUCKS: Yes.

DR. GLYMPH: I make a motion that they don't.

MS. FORST: Second.

CHAIR WHITSON: All those in favor.

MS. LOUCKS: And -- I'm sorry, and just to clarify, Dr. Glymph, the reasons that they don't have standing are the reasons that were articulated by Ms. Mikos?

DR. GLYMPH: Yeah, they're Board of Medicine, not Board of Nursing.

MS. LOUCKS: And these are nursing disciplinary guidelines that are being discussed?

DR. GLYMPH: Yes.

MS. LOUCKS: So their licensees and members wouldn't be affected by nursing discipline?

DR. GLYMPH: Yes.

MS. LOUCKS: Okay. Thank you.

Mr. Winn, did you have any additional comments you would want to make at this point, or do you want to...

MR. WINN: Well, we would argue that we have standing based upon the term that they're looking to use -- or the question to you about nurse anesthesiologists, and how anesthesiologist is defined in Florida statute in 459 and in 458. Any individual, whether it's before this Board or any other Board, that wants to use a term that's already in statute and the M.D. and D.O. statute would be in violation of that statute, it would then confuse the public,

mislead the public, and affect our members that are anesthesiologists that are M.D.s and D.O.s. Thank You.

CHAIR WHITSON: Thank you.

MS. LOUCKS: And, Board members, if you want to reconsider your vote on the standing for the FMA, FOMA and the anesthesiologists, you can do that. If not, then we can proceed with the Petition for Declaratory Statement.

CHAIR WHITSON: Shall we proceed or would you all like to --

MS. FORST: No, I think we can proceed.

CHAIR WHITSON: Okay. Mr. McDonough -- Dr. McDonough, excuse me, would you like to address the Board.

DR. McDONOUGH: Thank you. Madam Chair, if it pleases the Board, I would like to present a very brief historical background why I consider this petition to be important. Contrary to what some people believe who are uninformed regarding anesthesia, people believe that the administration is the practice of medicine. It its absolutely not. Never has been. It's the practice of medicine only when it's done by physicians. It's a practice dentistry when it's done by dentists. It's done --

when it is done by nurses, it is the practice of nursing. There is a very long tradition. The first nurse recorded in the United States to administer anesthesia was Katherine Lawrence who administered ether and chloroform to soldiers during the Civil War. The first nurse who limited her nursing practice exclusively to the administration of anesthesia was in 1887, Sister Mary Bernard, at St. Vincent's Hospital in Erie, Pennsylvania. The first organized educational program of any kind to teach the administration of anesthesia was established in 1915 at the Lakeside Hospital School of Anesthesia in Cleveland, Ohio. The first class was six months long. It cost $50. And the first class of graduates were two dentists, six physicians, and 12 nurses. The American Association of Nurse Anesthetists was founded in 1931. In 1936 the physicians who administered anesthesia established a group called the American Society of Anesthetists.

In 1939 a professor at the University of Illinois College of Medicine sent a letter to the American Society of Anesthetists stating that he claims to have coined the term anesthesiology and defined it as, and I quote, "The science that treats the means and methods of producing various degrees of

insensibility to pain with or without hypnosis. An anesthetist is a technician, and an anesthesiologist is an expert scientific authority on anesthesia and anesthetics. I cannot understand why your group does not term themselves the American Society of Anesthesiologists. Sincerely M.J. Syfert, M.D."

If the Board wishes, I have copies of these documents. I'll be happy to submit them as part of the record.

In 1945 the organization, which was then the American Society of Anesthetists, changed their name to the American Society of Anesthesiologists. Regarding Dr. Syfert's opinion, I would like to state that I am not a technician. I am not an extender of anybody else's professional activity. I am not an assistant to any other profession. I am not a mid-level anything. I am an advanced practiced registered nurse whose speciality is anesthesiology. The fact that anesthesiology is not the practice of medicine was, in fact, ruled decades ago exactly on January the 18th, 2001, the Department of Health and Human Services in the Federal Register as part of the final rule governing participation in Part A, conditions of participation, Part A of Medicare in hospitals, and I quote partially, and if you wish I

have the entire document which we can supply to you as part of the record, "Anesthesia administration by nurse anesthetists have a long history in this country, including independent practice in Department of Defense hospitals. We cannot agree that the administration of anesthesia is the practice of medicine." Close quotes, period.

So although other people may claim that the word anesthesiology means physician, it does not. Never has, never will. In fact, 55 percent of the people in the country when surveyed by the American Society of Anesthesiologists didn't realize an anesthesiologist was a physician. So, if this petition is granted, I don't think anybody is going to be confused. I think it will be, in fact, a benefit to the public to understand the person taking care of them is in fact a scientific expert in anesthesia. All of our people are now minimally trained at the Master's level. The vast majority of our programs are now doctoral programs. They will all be doctoral programs by 2023.

If -- thank you, Counselor. I am in fact a member of the Committee for Proper Recognition of CRNAs. It is a group which is moving forward towards the descriptor change and the title change. The

American Association of Nurse Anesthetists has approved this title effective this year. Other states have already taken this action. The New Hampshire Board of Nursing has ruled that nurse anesthesiologists is an acceptable description for CRNAs, and as of last Friday Arizona Board of Nursing took precisely the same action. I am also prepared to submit documentation of these acts to the Board should you wish to have it in the record. I am open to any questions the Board may have.

CHAIR WHITSON: Board members. Dr. Glymph.

DR. GLYMPH: So you plan on using this in the facility, Tampa General, where you practice at.

DR. McDONOUGH: I practice clinically at Tampa General. I am professor and chair of the Nurse Anesthesiology Program at the University of North Florida in Jacksonville, and there as well.

CHAIR WHITSON: Are you -- so you're planning on using this just as a description of the services you provide. Not necessarily titling yourself --

DR. McDONOUGH: No, no, this --

CHAIR WHITSON: -- as an anesthesiologist?

DR. McDONOUGH: -- is a descriptor. This is not a title. A title is --

CHAIR WHITSON: It's just --

DR. McDONOUGH: A title is governed by statute, --

CHAIR WHITSON: Right.

DR. McDONOUGH: -- administrative rule. This is a descriptor.

CHAIR WHITSON: Right -- as if you're trying to explain your services or the differentiation to a patient.

DR. McDONOUGH: Exactly. Physician's Assistant, for instance, in this state now routinely tell people that they are their anesthetist. Excuse me, anesthesiology assistants tell patients that they are anesthetists. The American Academy of Anesthesiologists assistants has a website, their website, which is called anesthetist.org. When they had their national meeting in Florida last year the theme of the meeting was Meet Your New Anesthetist. And organized physician anesthesiologists are now referring -- they don't refer to nurse anesthetist as nurse anesthetist or CRNAs, they refer to them as anesthetist, and they refer to AAs as anesthetist as well, and I think this is causing a tremendous amount of confusion, and I for one would like to be sure that I am safe within the disciplinary guidelines of the

Board to try and bring some clarity to this by referring to -- to my role and my services of that as a nurse anesthesiologist.

CHAIR WHITSON: Are your plans to use this in conversation? Or printed? Thoughts. I mean, are you...

DR. McDONOUGH: In conversation I believe would be correct.

CHAIR WHITSON: Ms. McKeen.

MS. McKEEN: I'm not sure why at this point you would seek this statement from the Board.

DR. McDONOUGH: Well, because I don't want to risk getting into trouble by calling myself, discussing the fact that I'm a nurse anesthesiologist and then having someone raise a complaint with the Board of Nursing against me doing that.

MS. McKEEN: I think I meant your motivation, why the title is important.

DR. McDONOUGH: Well, the title is important because there's a lot of confusion on the part of the public because anesthesiologist's assistants are referring to themselves as anesthetists. This is the national trend. It has been approved at the national level by the American Association of Nurse Anesthetists that nurse anesthesiologist is an

appropriate descriptor. Other Boards of Nursing have changed, and I'm asking for permission for me to do that here in Florida.

MS. McKEEN: Thank you.

DR. McDONOUGH: You're welcome.

CHAIR WHITSON: I have another question on that. Just bouncing off your idea --

MS. NEUMAN: Ms. Whitson?

CHAIR WHITSON: Yes.

MS. NEUMAN: I'm sorry.

CHAIR WHITSON: Carry on.

MS. NEUMAN: Dr. McDonough, did I -- I think I read in your literature that is -- is it New Hampshire has already recognized -- I believe the State of New Hampshire?

DR. McDONOUGH: Yes, ma'am. The national -- our National Association the AANA has recognized the change. The New Hampshire Board of Nursing recognized the change. I believe it was last month and last Friday the Arizona Board of Nursing also recognized the change.

MS. McKEEN: When you reference the change, do you mean the ability to use the phrase, the descriptor nurse anesthesiologist?

DR. McDONOUGH: Yes, that's what I was

referring to. The ability to use it as a descriptor.

MS. McKEEN: Right.

DR. McDONOUGH: I'm not asking for a title change. I'm asking for a descriptor.

MS. NEUMAN: It was very clear in the literature.

DR. McDONOUGH: Thank you.

MS. NEUMAN: Thank you.

MS. McKEEN: Ms. Whitson, you were saying?

CHAIR WHITSON: Do you think it would be better served for this to come out through the professional organizations as opposed to --

DR. McDONOUGH: It already has.

CHAIR WHITSON: -- us making a ruling on it?

DR. McDONOUGH: Well, the professional organization has in fact ruled on it. They have decided that nurse anesthesiologists is an acceptable -- they actually use it as a title as well as a descriptor. However, my concern is I want to be safe in terms of the Board of Nursing. I have great respect for the Board and I don't want to do anything that's going to get me in trouble with the Board. So this is a matter of self-protection from my point of view. I think this is an appropriate thing to do, but I want to have the approval of the Board to do it

before so, before I would fully do it.

MS. JOHNSON: Ms. Whitson?

CHAIR WHITSON: Ms. Johnson.

MS. JOHNSON: May we hear from the other gentleman.

(Inaudible)

MS. JOHNSON: Oh, no, we voted one.

CHAIR WHITSON: The Association of Nurse Anesthetists.

MS. JOHNSON: There were two and we voted that one could, so I would like to hear from him, please.

MR. THOMAS: Sure. I just had a couple of legal points that I wanted to point out. The first is there was some mention that there is --

UNIDENTITFED: We can't hear.

CHAIR WHITSON: Mr. Thomas, will you speak into the microphone, please?

MR. THOMAS: Okay. So there was some mention that the word of anesthesiologist is defined in statute. That's true. But if look at how it's defined, it's defined within the Anesthesiologist Assistant Practice Act, and those definitions are clear. These terms only apply to the use in this particular section. In other words, that -- you can't

use the term anesthesiologist to mean that outside of this. This is only what it means for the AA Practice Act which is where it's needed because only an anesthesiologist can supervise an AA to just -- in that statute it also says -- the term direct supervision says, it is defined as on-site personal supervision by an anesthesiologist. Now, we all know that the term "direct supervision" doesn't mean supervision by an anesthesiologist. It does in that -- in that one section of law. That's why those terms only apply in that very narrow section. So even though it is defined in those, it doesn't apply to any other section of law. And like Dr. McDonough said, even if it did apply, what we're seeking is the use of the term nurse anesthesiologist, not anesthesiologist by itself.

And I think to clarify, one of the -- one of the -- there is no law that directly governs what a CRNA can call themselves or directly governs whether they can use the term nurse anesthesiologist. The law prohibits the use of a term that's misleading, deceptive or fraudulent. In this case, we have the use of the word -- the term nurse anesthesiologist, the term ologist, the suffix applies to an expert in a scientific area, and the term anesthesiology refers to

a branch of medical science dealing with anesthesia. So I don't think you can say it's deceptive to use the term nurse anesthesiologist, which literally means a nurse who is an expert in the area of anesthesia. So, under Florida law I don't think this would be a violation so long as the practitioner advised a patient of their license under which they practice.

MS. MIKOS: And I would just like to add a couple of things that were in the petition but we haven't said here today that I just want make sure I understood. There is no title protection for the word anesthesiologist in any statute. The definition that's included, as Mr. Thomas just said, is a limited section governing anesthesia assistants and who they report to. But there is no title protection in either 458 or 459, or anywhere else in Florida statutes for the term anesthesiologist. Thank you.

DR. McDONOUGH: If I may recognize, Madam Chair?

CHAIR WHITSON: Just a moment. Mr. Baker has a question.

MR. BAKER: The actions by New Hampshire and Arizona, were those based upon a petition or more of a blanket?

DR. McDONOUGH: They were based upon a

petition --

MR. BAKER: Petition? Thank you.

DR. McDONOUGH: -- from licensees.

I would also like to point out that the -- the -- the addition of nurse anesthesiologists as a permissible phrase to describe what I do is very consistent with the other types of anesthesiologists, the two other types of anesthesiologists who are not physicians. One is a dentist. We use in Florida the term dental anesthesiologist all the time. The Board of Dentistry talks about it. I believe it's also in some administrative rule, but I'm not positive about that. I can check on that. And veterinary anesthesiologist. So to be an anesthesiologist does not mean you're a physician. It means you're a specialist in anesthesia, and than be preceded by dental anesthesiologist, veterinary anesthesiologist. In fact, the American Society of Anesthesiologists, the physicians specialty group, now has routinely started referring to themselves physician anesthesiologist.

CHAIR WHITSON: Ms. Desmond.

MS. DESMOND: I would just say that Dr. McDonough has made a very good presentation and it's a reasonable presentation in my mind that I don't feel

like there would be any Board action on my part. I mean, that is the concern. I don't see that there would be an issue with the Board with you using that descriptor. It's been approved in other places. It's used in other disciplines. And the professional organization has also condoned it. So, for me I don't -- I think he's made a very good presentation here to support his request.

MS. NEUMAN: Board counsel, I have a question just to reiterate. Now, Dr. McDonough is asking this in keeping with the rules of Declaratory Statement Request for himself only; is that correct?

DR. McDONOUGH: That is correct.

MS. LOUCKS: That's correct. And if the Board were to grant his petition, it wouldn't necessarily stop a complaint being filed or an investigation being opened on him. Using that term it would allow him individually to say I received this answer to my Declaratory Statement from the Board and the Board says it's okay for me to use it. Another CRNA who might have a complaint filed against them could make the argument that, "Well, the board said it was okay for Dr. McDonough," but it wouldn't put a stop on that particular investigation as it would for Dr. McDonough.

MS. NEUMAN: Exactly, because this is for just Dr. McDonough who obviously has the credentials to --

MS. LOUCKS: Right, right. If that was another CRNA that used that title and there was a complaint open, then they would have to demonstrate that they, you know, to the Probable Cause Panel or to whomever was reviewing it that they would have requirements that the Board would be satisfied with that they would be an anesthesiologist.

MS. DESMOND: But just to clarify, he's asking for a descriptor, --

MS. LOUCKS: He's only --

MS. DESMOND -- not a title.

MS. NEUMAN: Right. And he'll use that only to apply to himself as he describes for his clients.

MR. BAKER: I have a question.

CHAIR WHITSON: Mr. Baker.

MR. BAKER: I just want to get counsel's input as part of the discussion with the Board members that if granted, it's permissible for this type of Declaratory Statement to be binding on a future Board.

MS. LOUCKS: Yes.

MR. BAKER: Say ten years from now when none of these folks may be sitting here, a decision they

made can bind future appointees of this Board on what they might view as their role.

MS. LOUCKS: That's correct, as it relates to Dr. McDonough.

CHAIR WHITSON: Can I ask Dr. Glymph to -- have you found any issues in your own practice with regard to that.

DR. GLYMPH: Yeah, I would say no. I mean, I think it's very clear what Dr. McDonough presented, especially with the prefix nurse anesthesiologist. No confusion whatsoever. So -- and, like I said, it's a descriptor. It's been approved by the national Board as well as other Boards have now approved it. So I think it's nothing in a stretch for Florida to do it.

CHAIR WHITSON: I make a motion to approve.

DR. GLYMPH: Second.

MS. LOUCKS: Just to clarify, you're approving that he can use that -- the term nurse anesthesiologist as a descriptor, but he still needs to identify himself additionally as a CRNA?

MS. NEUMAN: Yes.

MS. LOUCKS: Okay.

CHAIR WHITSON: So it's been moved and seconded. All those in favor.

Those opposed.

Seeing none, the motion passes.

MS. LOUCKS: Ms. Mikos, I can e-mail the order to you. Is that acceptable?

MS. MIKOS: That would be great. Thank you, very much.

MS. LOUCKS: Thank you.

CHAIR WHITSON: Thank you.

DR. McDONOUGH: Thank you.

DR. GLYMPH: Mr. Baker, let me ask you a question. So the Arizona and the -- so the blanket statement of the petition, that would affect the whole body of the profession, right?

MR. BAKER: Well, I asked that question because some Boards of Nursing have legal authority that have policy statements.

DR. GLYMPH: Ahhhh.

MR. BAKER: And that's why I was curious if they had responded to a petition or if they had granted a policy statement.

DR. McDONOUGH: Mr. Baker, I have an answer regarding New Hampshire for that. The answer is somewhat hyper, and the reason I know the answer is the petitioner was one of my graduates, Dr. Dwayne, Thibault, Dwayne, D-W-A-Y-N-E, Thibault, T-H-I-B-A-U-L-T, CRNA, petitioned the Board and they

actually changed -- the Board has the authority in New Hampshire to actually change the title. In fact, now in New Hampshire you can choose to be licensed in New Hampshire as an APRN with the title Certified Registered Nurse Anesthetist, or Certified Registered Nurse Anesthesiologist. There is a checkmark for each of those titles on the APRN application. So New Hampshire process is different from ours. He -- he actually asked for a title change and got it, and they have the authority to do that in New Hampshire. We do not here. So I'm just asking for me.

MS. MIKOS: And just to be clear, the New Hampshire document is labeled "A Position Statement". Thank you.

CHAIR WHITSON: Thank you.

o-O-o

CERTIFICATE OF REPORTER

I, Gerard "Bo" Kriegshauser, Notary Public, State of Florida, do hereby certify that I was authorized to and did stenographically report the foregoing declaratory statement of Dr. John P. McDonough consisting of pages 2 through 25.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with this action, nor am I financially interested in this action.

Dated this 5th day of October, 2019.

_____

Gerard "Bo" Kriegshauser

FLORIDA DEPARTMENT OF HEALTH
BOARD OF NURSING

Petition for Declaratory Statement
Before the Board of Nursing

In re: John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.
_____/

PETITIONER'S RESPONSE IN OPPOSITION TO THE FLORIDA MEDICAL ASSOCIATION, INC., FLORIDA SOCIETY OF ANESTHESIOLOGISTS, INC., AND FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION, INC.'S MOTION TO INTERVENE

Petitioner, John P. McDonough, A.P.R.N., C.R.N.A., Ed.D. ("Petitioner" or "Dr. McDonough") by and through his undersigned attorneys, and pursuant to Rule 28-106.205(1), Florida Administrative Code hereby opposes the Florida Medical Association, Inc. ("FMA"), Florida Society of Anesthesiologists, Inc. ("FSA") and Florida Osteopathic Medical Association, Inc.'s ("FOMA") Motion to Intervene ("Motion to Intervene") for lack of standing, and in support thereof states:

1. Dr. McDonough filed the underlying Petition in this case seeking the Florida Board of Nursing's ("Board") opinion as to whether he may describe himself as, or his professional duties as those of, a "nurse anesthesiologist" without subjecting his Florida nursing licenses to discipline under Section 456.072, Florida Statutes, or Section 464.018, Florida Statutes.

2. FMA, FSA, and FOMA are trade based associations comprised of physicians, seeking to intervene by claiming standing on the basis that their physician members routinely use the term "anesthesiologist," with "the understanding that patients and potential patients recognize the term to refer to a physician licensed pursuant to Chapter 458 or 459 of the Florida Statutes." See Mtn. to Intervene ¶10.

3. However, to show standing FMA, FSA, and FOMA must demonstrate that a substantial number of their members, although not necessarily majority, are "substantially affected," that the subject matter rule at issue is within the association's general scope of interest and activity, and that relief requested is of type appropriate for them to receive on behalf of their members. Fla. Home Builders Ass'n v. Dep't of Labor & Employment Sec., 412 So. 2d 351 (Fla. 1982); See Rule 28-106.205(1), Florida Administrative Code.

4. While the Administrative Procedure Act does not define the terms "substantially affected" or "substantial interest," courts have traditionally used a two-prong test to determine if a party has standing. To have a substantial interest in the outcome of the proceeding the party must show 1) that they will suffer an injury in fact which is of sufficient immediacy to entitle them to a hearing, and 2) that their substantial injury is of a type or nature which the proceeding is designed to protect. Agrico Chem. Co. v. Dep't of Envtl. Regulation, 406 So. 2d 478, 482 (Fla. Dist. Ct. App. 1981). To satisfy the "sufficiently real and immediate injury in fact" element of the test, an injury must not be based on pure speculation or conjecture. Office of Ins. Regulation & Fin. Servs. Comm'n v. Secure Enterprises, LLC, 124 So. 3d 332, 336 (Fla. Dist. Ct. App. 2013).

5. FMA, FSA, and FOMA have not alleged any facts sufficient to demonstrate that their members' interests have been (or will be) substantially affected, and the subject at issue in the Petition is not within any of these associations' interests. The Motion to Intervene alleges that a substantial number of physician members would be substantially affected by the use of the term "anesthesiologist." However, the question posed to the Board in the Petition is related to the use of the term "nurse anesthesiologist," not "anesthesiologist." The term "nurse anesthesiologist" would clearly identify the individual as a nurse, rather than a physician. This is similar to terms such as "physician's assistant" or "certified nursing assistant." Further, Florida law grants no title

protection to the word "anesthesiologist." As such, the physician members of FMA, FSA, and FOMA could not reasonably be substantially affected by this Board's determination related specifically to the use of the term "nurse anesthesiologist" by Dr. McDonough, an advanced practice registered nurse ("A.P.R.N.") who is nationally certified as a certified registered nurse anesthetist (C.R.N.A.). Hence, the physician trade associations have no standing and their Motion to Intervene should be denied.

6. In fact, contrary to the allegations in the Motion to Intervene, use of the term "nurse anesthesiologist" would actually *reduce* confusion for individuals by clearly indicating the title New Hampshire Board of Nursing. Other states have taken a similar position. See Anesthesiologist as a communication tool and optional descriptor for Certified Registered Nurse Anesthetists (CRNAs)."

7. In cases such as this when individual members of an association are licensed under a different board and cannot show that they would be adversely affected by the outcome of a proceeding, courts have held that such associations did not have standing. In Florida Board of Optometry v. Florida Board of Medicine, the First District Court of Appeal affirmed a final order from the Division of Administrative Hearing that found, in part, that evidence, although conflicting, supported the determination that Board of Medicine's proposed "Surgical Care Rule" would not adversely affect optometrists or nurses and, thus, that optometrists, *their association, and nurses' association* did not have standing to challenge the rule as optometrists and nurses were not subject to Board of Medicine rules and discipline. 616 So. 2d 581 (Fla. Dist. Ct. App. 1993).[1]

[1] The final order highlighted that optometrists licensed in Florida are not regulated by or subject to discipline by the Board of Medicine, that they are also not subject to its rules, and that the weight of the evidence failed to prove that the proposed rule would cause the Florida Optometric Association ("FOA") members to be adversely affected economically or in any other substantial manner as the proposed rule did not regulate the conduct of the Florida Nursing Association ("FNA") members, who are not subject to discipline by the Board of Medicine. The hearing officer found that FOA,

8. Similar to Florida Board of Optometry v. Florida Board of Medicine, the individual members of the associations seeking to intervene here would not be subject to this Board's disciplinary proceedings, decisions, or rules, and any opinion rendered by this Board on the use of the term "nurse anesthesiologist." In turn, this Board's opinion in this matter would not adversely affect (economically or in any other substantial manner) the physician members of FMA, FOMA, or FSA.

WHEREFORE, Dr. McDonough respectfully requests that the Board deny the Motion to Intervene, on the basis of lack of standing of FMA, FOMA, and FSA.

Respectfully submitted,

/S/ Cynthia A. Mikos

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FNA, and individual members did not have standing to challenge the validity of the rule, which regulates only physicians. The District Court of Appeals affirmed. Id. at 583.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via email to deborah.loucks@myfloridalegal.com and via U.S. Mail to Deborah Loucks, Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL 32399; via facsimile (850) 413-8743 and U.S. Mail to the Florida Department of Health, Agency Clerk, 4052 Bald Cypress Way, Bin A02, Tallahassee, FL 32399; via email to Joe.Baker@flhealth.gov and via U.S. Mail to the Board of Nursing at 4052 Bald Cypress Way, Bin C-02, Tallahassee, FL 32399-3258; via email to nulandlaw@aol.com and via U.S. Mail to Christopher Nuland, Esq., Law Offices of Christopher L. Nuland, P.A., 4427 Herschel Street, Jacksonville, Florida 32210; via email to JScott@flmedical.org and U.S. Mail to Jeffery Scott, Esq., Florida Medical Association, 1430 Piedmont Drive East, Tallahassee, FL 32308; via email to jwinn@winnlaw.com and U.S. Mail to Jason Winn, Esq. Florida Osteopathic Medical Association, 2544 Blairstone Pines Drive, Tallahassee, FL 32301; and via email to gthomas@llw-law.com and U.S. Mail to Glenn Thomas, Esq. Lewis, Longman and Walker, 315 South Calhoun Street, Suite 830, Tallahassee, FL 32301 on this 1st day of August 2019.

/S/ Cynthia A. Mikos

Cynthia A. Mikos

2022 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Department of Health

BILL INFORMATION	
BILL NUMBER:	861
BILL TITLE:	Medical Specialty Designations
BILL SPONSOR:	Massullo
EFFECTIVE DATE:	July 1, 2022

COMMITTEES OF REFERENCE
1) Professions & Public Health Subcommittee
2) Health & Human Services Committee
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Click or tap here to enter text.

SIMILAR BILLS	
BILL NUMBER:	1192
SPONSOR:	Rodriguez

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 11, 2022
LEAD AGENCY ANALYST:	Kama Monroe
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Louise St. Laurent
FISCAL ANALYST:	Madison Adkins

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill creates section 456.072(1)(tt), Florida Statutes, which limits the use of medical specialty terms to practitioners who have completed Accreditation Council for Graduate Medical Education (ACGME) accredited residencies or fellowship programs. The paragraph includes an exception if the practitioner is expressly authorized by law to use such term. The bill also authorizes for Department of Health (Department) to have the same enforcement authority as the applicable board to enforce this provision and authorizes the Department adopt rules to implement this provision.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 456.072, Florida Statutes, provides a list including grounds for discipline and associated penalties, which allows a Board, or the Department where there is no Board, to take disciplinary action against a licensee. Among others, the list includes the following relevant infractions:

> Paragraph 456.072(1)(a), F.S., "Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession."
>
> Paragraph 456.072(1)(t), F.S., "Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement."

The individual practice acts for regulated health care professions also include provisions restricting the use of terminology which indicates that a person holds a certification or qualification to those who have achieved a specified certification or qualification. An example includes section 464.018, Florida Statutes, which provides that advanced practice registered nurse may be disciplined by the Board for "Advertising or holding himself or herself out as having certification in a specialty that he or she has not received."

Many practice acts governing licensed health care practitioners include provisions which make it a misdemeanor, punishable criminally, to identify a practitioner's activities by using certain terms which are considered specific to that licensed profession if the practitioner does not hold that license. For example, section 466.026, Florida Statutes, specifies that a person who does not hold a license under chapter 466, Florida Statutes, may not refer to themselves as a "dentist."

However, it is important to note that these provisions do not include all terms that may be used by a licensed professional to refer to a practice or medical specialty. Physicians licensed under chapter 458 or 459, Florida Statutes, are authorized to practice a specialty without registering or providing any information to the Department related to the specific area of practice. When applying for a license or completing the professional profile, physicians are not required to list any specialty, board certifications, or specify in any manner a specialized area of practice. As such, there are no existing statutory restrictions for physicians to use common specialty terms such as "obstetrician," "pediatrician," "anesthesiologist," or "dermatologist" to indicate a specialized practice.

Relevant terms that are used within chapter 456, Florida Statutes, include, "license," "specialization," "certified," and "board certified."

"License" is defined by section 456.001, Florida Statues, as any permit, registration, certificate, or license including a provisional license issued by the department. When a health care practitioner is referred to as "licensed" this indicates that the individual has met the requirements of law and rule and have been issued a license to practice a particular health care profession within the state. Examples may include medical doctor or advanced practice registered nurse.

"Specialization" or "specialized" are not terms defined by statute but are generally understood to include a method to identify the specific type of patient or service the health care practitioner provides. Examples may include a dentist who specializes in pediatric patients or a physiatrist who focuses on patients with autism.

"Certified" or "certification" are not defined by statute but are frequently used in laws and rules to mean a type of practice reserved for practitioners who have completed the necessary program to receive a specific certification.

"Board certification" in a specialty is a professional designation awarded by a professional organization which indicates that the physician or other health care professional has a higher level of training and expertise in a given specialty.

The Accreditation Council for Graduate Medical Education (ACGME) confers certification to allopathic and osteopathic physicians for the following specialties and subspecialties:

Allergy and Immunology

Anesthesiology (Subspecialties: Addiction Medicine, Adult Cardiothoracic, Anesthesiology Critical Care Medicine, Clinical Informatics, Hospice and Palliative Medicine, Obstetric Anesthesiology, Pain Medicine, Pediatric Anesthesiology, Pediatric Cardiac Anesthesiology, Regional Anesthesiology and Acute Pain Medicine)

Colon and Rectal Surgery

Dermatology (Subspecialties: Dermatopathology, Micrographic Surgery and Dermatologic Oncology, Pediatric Dermatology)

Emergency Medicine (Subspecialties: Addiction Medicine, Clinical Informatics, Emergency Medical Services, Medical Toxicology, Pediatric Emergency Medicine, Sports Medicine, Undersea and Hyperbaric Medicine)

Family Medicine (Subspecialties: Addiction Medicine, Clinical Informatics, Geriatric Medicine, Hospice and Palliative Medicine, Sports Medicine)

Internal Medicine(Subspecialties: Addiction Medicine, Adult Congenital Heart Disease, Advanced Heart Failure and Transplant Cardiology, Cardiovascular Disease, Clinical Cardiac Electrophysiology, Clinical Informatics, Critical Care Medicine, Endocrinology, Diabetes, and Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Hematology and Medical Oncology, Hospice and Palliative Medicine, Infectious Disease, Internal Medicine-Pediatrics, Interventional Cardiology, Medical Oncology, Nephrology, Pulmonary Critical Care, Pulmonary Disease, Rheumatology, Sleep Medicine, Transplant Hepatology)

Medical Genetics and Genomics (Subspecialties: Clinical Informatics, Medical Biochemical Genetics, Molecular Genetic Pathology)

Neurological Surgery (Subspecialty: Endovascular Surgical Neuroradiology)

Neurology (Specialties: Neurology, Child Neurology) (Subspecialties: Brain Injury Medicine, Clinical Neurophysiology, Endovascular Surgical Neuroradiology, Epilepsy, Neurodevelopmental Disabilities, Neuromuscular Medicine, Pain Medicine, Sleep Medicine, Vascular Neurology)

Nuclear Medicine

Obstetrics and Gynecology (Subspecialties: Addiction Medicine, Complex Family Planning, Female Pelvic Medicine and Reconstructive Surgery, Gynecologic Oncology, Maternal-Fetal Medicine, Reproductive Endocrinology and Infertility)

Ophthalmology (Subspecialties: Ophthalmic Plastic and Reconstructive Surgery)

Orthopaedic Surgery (Subspecialties: Adult Reconstructive Orthopaedic Surgery, Foot and Ankle Orthopaedic Surgery, Hand Surgery, Musculoskeletal Oncology, Orthopaedic Sports Medicine, Orthopaedic Surgery of the Spine, Orthopaedic Trauma, Pediatric Orthopaedic Surgery)

Osteopathic Neuromusculoskeletal Medicine

Otolaryngology - Head and Neck Surgery (Subspecialties: Neurotology, Pediatric Otolaryngology)

Pathology (Subspecialties: Blood Banking/Transfusion Medicine, Chemical Pathology, Clinical Informatics, Cytopathology, Dermatopathology, Forensic Pathology, Hematopathology, Medical Microbiology, Molecular Genetic Pathology, Neuropathology, Pediatric Pathology, Selective Pathology)

Pediatrics (Subspecialties: Addiction Medicine, Adolescent Medicine, Child Abuse Pediatrics, Clinical Informatics, Developmental-Behavioral Pediatrics, Hospice and Palliative Medicine, Internal Medicine-Pediatrics, Neonatal-Perinatal Medicine, Pediatric Cardiology, Pediatric Critical Care Medicine, Pediatric Emergency Medicine, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology Oncology, Pediatric Hospital Medicine, Pediatric Infectious Diseases, Pediatric Nephrology, Pediatric Pulmonology, Pediatric Rheumatology, Pediatric Transplant Hepatology, Sleep Medicine, Sports Medicine)

Physical Medicine and Rehabilitation (Subspecialties: Brain Injury Medicine, Neuromuscular Medicine, Pain Medicine, Pediatric Rehabilitation Medicine, Spinal Cord Injury Medicine, Sports Medicine)

Plastic Surgery (Subspecialties: Hand Surgery, Craniofacial Surgery)

Preventive Medicine (Subspecialties: Addiction Medicine, Clinical Informatics, Medical Toxicology, Undersea and Hyperbaric Medicine)

Psychiatry (Subspecialties: Addiction Medicine, Addiction Psychiatry, Brain Injury Medicine, Child and Adolescent Psychiatry, Consultation-Liaison Psychiatry, Forensic Psychiatry, Geriatric Psychiatry, Hospice and Palliative Medicine, Sleep Medicine)

Radiation Oncology (Subspecialty: Hospice and Palliative Medicine)

Radiology (Specialties: Diagnostic Radiology, Interventional Radiology-Integrated) (Subspecialties: Abdominal Radiology, Clinical Informatics, Endovascular Surgical Neuroradiology, Interventional Radiology, Musculoskeletal Radiology, Neuroradiology, Nuclear Radiology, Pediatric Radiology)

Surgery (Subspecialties: Complex General Surgical Oncology, Hand Surgery, Pediatric Surgery, Surgical Critical Care, Vascular Surgery)

Thoracic Surgery (Subspecialty: Congenital Cardiac Surgery)

Urology (Subspecialties: Female Pelvic Medicine and Reconstructive Surgery, Pediatric Urology)

The ACGME certifies physicians exclusively, no other health care professionals. Certifications for other health care professions are offered by the associated professional organization. In some instances, these certifications may use the same terminology as is used by the ACGME. For example, the following credentials may be earned by advanced practice registered nurses and are recognized by the Board of Nursing:

- Psychiatric-Mental Health Nurse Practitioner, from the American Nursing Credentialing Center
- Certified Registered Nurse Anesthetists, from the National Board of Certification and Recertification for Nurse Anesthetists
- Primary Care Certified Pediatric Nurse Practitioner, from the Pediatric Nursing Certification Board

Health care boards are established by law and are exclusively responsible for licensing, disciplining, and revoking the licenses practitioners within their jurisdiction. The Department is only authorized to take disciplinary actions against practitioners licensed in professions that do not have a regulatory board. For example, genetic counselors are not associated with a regulatory board and are solely regulated by the Department of Health.

The exception to department intervention in board regulated professions, are emergency actions, including emergency suspension or emergency restriction. These actions are authorized by law when a licensee poses an immediate threat to the health and safety of the public. These actions remain effective only until a regulatory case has progressed through the disciplinary process of the associated regulatory board. An example of a board regulated profession is advanced practice registered nurse (APRN) who are solely regulated by the Board of Nursing in accordance with chapter 464, Florida Statutes. However, if an APRN is accused of an act that poses an immediate threat to the health and safety of the public, the Department may intervene and issue an emergency suspension or restriction until the Board of Nursing takes final disciplinary action on the case.

The department does not have authority to circumvent the board's authority to take disciplinary action on a licensed practitioner, except under emergency circumstances as described. As specified by section 456.072(2), Florida Statutes, the department may only impose penalties on disciplinary acts provided in section 456.072(1), Florida Statutes, when there is no regulatory board.

2. EFFECT OF THE BILL:

The bill amends section 456.072, Florida Statutes, which specifies grounds for discipline, applicable to all licensed health care practitioners. Specifically, it creates section 456.072(1)(tt), Florida Statutes, which states that if the ACGME accredits or recognizes a term as a residency or fellowship program, a practitioner may not use that term unless they have completed such a residency or fellowship. The section includes an exception if the practitioner is expressly authorized by law to use the term.

The language, as proposed establishes a type of title protection which may restrict health care practitioners from advising the public regarding the specialized nature of their practice. Some certifications issued by the ACGME use terms that are so common that practitioners could inadvertently violate this provision of law. Examples may include the psychologist or mental health counselor that limits a practice to child and adolescent psychology, the massage therapist who specializes in working with oncology patients, and the surgeon who does orthopedic surgery, but is not currently certified in that specialty. Furthermore, certifications offered by other recognized professional organizations use the same terminology as the ACGME. It is unclear how a health care practitioner, who earns a recognized certification or specialization in such an area could use that credential under this new provision

It is relevant to include that on September 13, 2019, a final order DOH-19-1500-DS-MQA, on a declaratory statement was filed with the Agency Clerk. The declaratory statement held that an Advanced Practice Registered Nurse who is also a Certified Registered Nurse Anesthetist, could use the term "nurse anesthesiologist" to refer to himself and his duties. The Florida Medical Association, The Florida Society of Anesthesiologists, Inc., and the Florida Osteopathic Medical Association, Inc., filed a motion to intervene in this matter which was denied. The proposed language will not prevent a nurse or advanced practice registered nurse from using the term "Nurse Anesthesiologist."

The bill provides enforcement authority to the department that is the same as the applicable regulatory board. This language creates a situation where two entities have the same enforcement authority which will make legislative implementation problematic. The department does not have the power to circumvent the board's authority to take disciplinary action on a licensed practitioner, except under emergency circumstances. As specified by section 456.072(2), Florida Statutes, the department may only impose penalties on disciplinary acts provided in section 456.072(1), Florida Statutes, when there is no regulatory board.

The Department does not currently have a process or the existing personnel to enforce this provision separate from the board offices. Establishing this office will require financial resources and additional full time equivalent positions, including additional professional legal staff.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	The Department has been given specific rulemaking authority and will need to create a disciplinary process under which they can impose discipline on health care practitioners who are licensed by a Board and have violated this specific statutory provision. Board rules may be required to be amended to capture the title protection as well, they are delineated below.
Is the change consistent with the agency's core mission?	Y☐ N☒
Rule(s) impacted (provide references to F.A.C., etc.):	Rules which may need to be amended include: 64B11-4.003, 64B32-5.001, 64B17-7.001, 64B19-17.002, 64B2-16.003, 64B13-15.005, 64B13-15.006, 64B10-14.004, 64B3-12.001, 64B18-14.002, 64B33-5.001, 64B14-7.003, 64B6-7.002, 64B12-8.020, 64B4-5.001, 64B16-30.001, 64B5-13.005, 64B9-8, 64B9-15, 64B1-9.001, 64B15-19.002, 64B20-7.001, 64B7-3-.002, 64B8-8.001, 64B8-55.001, 64B8-30.015, 64B24-8.002, 64B23-6.001, 64B21-504.001

***4.* WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	None
Expenditures:	DOH/MQA will incur non-recurring cost for rulemaking, which current budget authority is adequate to absorb. DOH/MQA may experience a recurring increase in workload and costs associated with the enforcement of the provisions of this bill. The impact is indeterminate; therefore, the fiscal impact cannot be calculated.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	While the bill does not specifically require specialty designations to be reported to the Department, this information would be needed from each provider for the Department to regulate disciplinary matters and associated penalties for practitioners violating this provision. DOH/MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service and Data Download Portals, Cognitive Virtual Agent, Continuing Education Tracking System, License Verification and other search sites, MQA Business Intelligence Portal, and the board's website to create and support detailed specialty information by practitioners. MQA will experience some recurring costs associated with establishing and maintaining additional transactions in LEIDS and Versa Online for providers updating their credentials with the Department. Updates to fully integrate these credentials are estimated to be completed within six months.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

None.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Line 18 of the proposed legislation provides that a licensee cannot use a term designating a medical specialty unless the licensee has completed the residency or fellowship program for such specialty. No context is provided for the term "using" and it is not defined in the proposed legislation or in any other statute. This may subject the legislation to challenge as being so vague as to be unenforceable. Any rules promulgated in response to the proposed legislation may also be subject to challenge as lacking sufficient statutory authority. Lines 23-24 provides that the department shall enforce the newly created ground for discipline. This appears to conflict with several sections of the statutes which specifically vest disciplinary authority in the appropriate boards. Disciplinary authority is vested in the department only in the absence of a duly appointed board. Section 456.072, Florida Statutes, provides that the disciplining authority is the appropriate board and also provides that the appropriate boards are responsible for determining sanctions for disciplinary violations. Section 456.073, Florida Statutes, provides that the department investigates complaints and determines legal sufficiency but the appropriate board determines whether or not probable cause exists to pursue disciplinary action. The statute further provides that the department must follow the direction of the probable cause panel regarding filing a formal administrative complaint. Section 456.079, Florida Statutes, provides that the appropriate boards shall adopt disciplinary guidelines to govern disciplinary action.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

March 8, 2022
Meeting Date

Rules
Committee

861
Bill Number or Topic

175492
Amendment Barcode (if applicable)

Name Dina Velocci, DNP CRNA APRN

Phone

Address 1214 Packer Street #2
Street

Email

Key West | Florida | 33040
City | *State* | *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/8/22
Meeting Date

Rules
Committee

861
Bill Number or Topic

175492
Amendment Barcode (if applicable)

Name Scott Ross

Phone 850-222-9075

Address [redacted] 124 W. Jefferson St

Email Scott@ccarfl.com

Street

TLH FL 32301

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Association of Nurse Anesthesiology

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3-8-22
Meeting Date

Rules
Committee

861
Bill Number or Topic

175492
Amendment Barcode (if applicable)

Name Allison Carvajal

Phone 850-727-7087

Address 120. N. Monroe
Street

Email allison@ramba consulting.com

Tallahassee FL. 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Nurse Practitioner Network

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/8/2022
Meeting Date

Rules
Committee

HB 861
Bill Number or Topic

175492
Amendment Barcode (if applicable)

Name Erin Ballas

Phone 8507286387

Address 730 E. Park Ave
Street

Email erinballas@paconsultants.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Nurses Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Community Affairs
Education
Rules

SENATOR TRAVIS HUTSON
7th District

March 8, 2022

The Honorable Kathleen Passidomo
404 South Monroe Street
Tallahassee, FL 32399-1100

Chair Passidomo,

I am writing to request to be excused from today's Rules Committee meeting. Thank you for your consideration of this request.

Respectfully,

Travis Hutson

REPLY TO:
❒ 4875 Palm Coast Parkway, NW, Suite 5, Palm Coast, Florida 32137 (386) 446-7610 FAX: (888) 263-3475
❒ 416 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5007

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Banking and Insurance
Governmental Oversight and Accountability
Reapportionment
Rules

SELECT SUBCOMMITTEE:
Select Subcommittee on Legislative Reapportionment

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

SENATOR KELLI STARGEL
22nd District

March 8, 2022

The Honorable Kathleen Passidomo
Committee on Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Passidomo:

I respectably request to be excused from the March 8th committee meeting for Rules.

Sincerely,

Kelli Stargel

cc: John Phelps/Staff Director
Tom Yeatman/Deputy Staff Director
Cynthia Futch/ CAA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❒ 420 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 3/8/2022 2:02:08 PM
Ends: 3/8/2022 3:50:37 PM Length: 01:48:30

2:02:08 PM Meeting called to order by Chair
2:02:15 PM Roll call by CAA
2:02:20 PM Quorum announced
2:02:49 PM Chair with opening comments
2:02:58 PM Tab 1 CS/HB 7049
2:03:22 PM Senator Brodeur explains the bill
2:04:50 PM Senator Book with question
2:04:56 PM Senator Brodeur responds
2:05:33 PM Senator Book with follow-up
2:06:26 PM Senator Brodeur responds
2:06:39 PM Senator Book with question
2:06:46 PM Senator Brodeur responds
2:07:09 PM Senator Book with follow-up
2:07:13 PM Senator Brodeur responds
2:07:59 PM Senator Book with question
2:08:01 PM Senator Brodeur responds
2:08:07 PM Senator Book with question
2:08:11 PM Senator Brodeur responds
2:08:25 PM Senator Book with question
2:08:30 PM Senator Brodeur responds
2:08:33 PM Senator Book with question
2:08:40 PM Senator Brodeur responds
2:09:49 PM Senator Book with follow-up
2:09:52 PM Senator Brodeur responds
2:10:32 PM Senator Book with follow-up
2:10:37 PM Senator Brodeur responds
2:11:19 PM Senator Book with follow-up
2:11:23 PM Senator Brodeur responds
2:11:40 PM Senator Book with question
2:11:43 PM Senator Brodeur responds
2:11:49 PM Senator Book with follow-up
2:11:56 PM Senator Brodeur responds
2:13:02 PM Senator Book with question
2:13:08 PM Senator Brodeur responds
2:14:09 PM Senator Book with question
2:14:11 PM Senator Brodeur responds
2:15:25 PM Senator Gibson with question
2:15:30 PM Senator Brodeur responds
2:16:24 PM Senator Gibson with follow-up
2:16:30 PM Senator Brodeur responds
2:17:06 PM Senator Gibson with follow-up
2:17:10 PM Senator Brodeur responds
2:17:37 PM Senator Gibson with question
2:17:43 PM Senator Brodeur responds
2:18:10 PM Senator Gibson with question
2:18:15 PM Senator Brodeur responds
2:19:08 PM Senator Gibson with question
2:19:13 PM Senator Brodeur responds
2:19:19 PM Senator Gibson with question
2:19:22 PM Senator Brodeur responds
2:19:27 PM Senator Gibson with question
2:19:37 PM Senator Brodeur responds

2:20:02 PM Senator Gibson with question
2:20:05 PM Senator Brodeur responds
2:20:19 PM Senator Gibson with question
2:20:22 PM Senator Brodeur responds
2:20:42 PM Senator Gibson with question
2:20:46 PM Senator Brodeur responds
2:21:08 PM Senator Gibson with question
2:21:10 PM Senator Brodeur responds
2:21:13 PM Senator Gibson with question
2:21:16 PM Senator Brodeur responds
2:21:56 PM Senator Gibson with question
2:22:00 PM Senator Brodeur responds
2:22:16 PM Senator Farmer with question
2:22:28 PM Senator Brodeur responds
2:22:54 PM Senator Farmer with question
2:22:59 PM Chair with comments
2:23:17 PM Senator Farmer with question
2:23:22 PM Senator Brodeur responds
2:23:34 PM Senator Farmer with question
2:23:39 PM Senator Brodeur responds
2:23:48 PM Senator Farmer with question
2:23:53 PM Senator Brodeur responds
2:24:03 PM Senator Farmer with question
2:24:08 PM Senator Brodeur responds
2:24:18 PM Senator Farmer with question
2:24:33 PM Senator Brodeur responds
2:24:54 PM Senator Farmer with question
2:24:59 PM Senator Brodeur responds
2:25:33 PM Senator Bean with question
2:25:41 PM Senator Brodeur responds
2:26:25 PM Senator Brandes with question
2:26:36 PM Senator Brodeur responds
2:26:57 PM Senator Brandes with question
2:27:00 PM Senator Brodeur responds
2:27:05 PM Senator Brandes with question
2:27:08 PM Senator Brodeur responds
2:27:22 PM Senator Brandes with question
2:27:25 PM Senator Brodeur responds
2:27:35 PM Senator Brandes with question
2:27:37 PM Senator Brodeur responds
2:27:44 PM Senator Brandes with question
2:27:48 PM Senator Brodeur responds
2:28:25 PM Senator Brandes with question
2:28:39 PM Senator Brodeur responds
2:28:51 PM Senator Brandes with question
2:28:54 PM Senator Brodeur responds
2:29:26 PM Senator Brandes with question
2:29:28 PM Senator Brodeur responds
2:29:42 PM Senator Brandes with question
2:29:45 PM Senator Brodeur responds
2:29:58 PM Senator Brandes with question
2:30:02 PM Senator Brodeur responds
2:30:16 PM Senator Brandes with question
2:30:19 PM Senator Brodeur responds
2:30:24 PM Senator Brandes with question
2:30:30 PM Senator Brodeur responds
2:30:41 PM Senator Brandes with question
2:30:48 PM Senator Brodeur responds
2:31:16 PM Senator Brandes with question
2:31:21 PM Senator Brodeur responds
2:31:23 PM Senator Brandes with question
2:31:44 PM Senator Brodeur responds

2:32:31 PM Senator Brandes with question
2:32:37 PM Senator Brodeur responds
2:32:49 PM Senator Gibson with question
2:32:57 PM Senator Brodeur responds
2:33:51 PM Senator Book with question
2:34:00 PM Senator Brodeur responds
2:34:43 PM Senator Book with question
2:34:46 PM Senator Brodeur responds
2:35:46 PM Senator Book with comments
2:36:05 PM Appearance Forms
2:36:16 PM John Murphy speaks against
2:37:22 PM Jeff Kottkamp, American Lawyer Media, speaks against
2:40:11 PM Senator Farmer with question
2:41:12 PM Mr. Kottkamp responds
2:41:32 PM Senator Powell with question
2:41:41 PM Mr. Kottkamp responds
2:42:14 PM Adam Basford, Associated Industries of Florida, speaks against
2:43:58 PM William Snowden speaks against
2:45:35 PM David Dunn-Rankin speaks against
2:47:44 PM Emerald Greene speaks against
2:49:35 PM Pamela Marsh, First Amendment Foundation, Inc., speaks against
2:50:43 PM Jim Fogler, President-The Florida Press Association, speaks against
2:53:01 PM Senator Brandes with question
2:54:00 PM Mr. Fogler responds
2:54:19 PM Senator Brandes with question
2:54:23 PM Mr. Fogler responds
2:54:38 PM Senator Gibson with question
2:54:43 PM Mr. Fogler responds
2:55:08 PM Todd Wilson speaks against
2:56:27 PM Leo Hentschker speaks against
2:59:17 PM Jake Seaton speaks against
3:01:35 PM Senator Book with question
3:02:36 PM Mr. Seaton responds
3:03:40 PM Bryan Boukari speaks against
3:06:19 PM William Hatfield speaks against
3:08:48 PM Samuel Morley, FL Press Association, speaks against
3:10:28 PM Senator Gruters in debate
3:10:52 PM Senator Gibson in debate
3:15:35 PM Senator Book in debate
3:16:39 PM Senator Farmer in debate
3:21:36 PM Senator Powell in debate
3:23:23 PM Senator Boyd in debate
3:23:47 PM Senator Brandes in debate
3:26:49 PM Senator Brodeur closes on the bill
3:29:14 PM Roll call on CS/HB 7049
3:30:16 PM CS/HB 7049 is reported favorably
3:30:51 PM Tab 2 CS/CS/HB 861
3:31:05 PM Senator Rodriguez explains the bill
3:31:55 PM Amendment Barcode 175492
3:32:00 PM Senator Albritton explains the amendment
3:32:54 PM Appearance Forms
3:32:56 PM Dina Velocci , DNP, CRNA, APRN waives in support
3:33:11 PM Scott Ross, Florida Association of Nurse Anesthesiology, waives in support
3:33:17 PM Allison Carvajal, Florida Nurse Practitioner Network, waives in support
3:33:22 PM Erin Ballas, Florida Nurses Association, waives in support
3:33:31 PM Senator Farmer in debate
3:35:20 PM Senator Rodriguez in debate
3:35:27 PM Senator Albritton waives close
3:35:32 PM Amendment is adopted
3:35:40 PM Senator Gibson with question
3:36:04 PM Senator Rodriguez responds
3:37:14 PM Senator Brandes with question

3:37:20 PM Senator Rodriguez with comments
3:38:04 PM Senator Albritton with response
3:38:25 PM Senator Brandes with question
3:38:29 PM Senator Albritton responds
3:39:04 PM Senator Brandes with question
3:39:09 PM Senator Albritton responds
3:39:23 PM Senator Rodriguez responds
3:39:39 PM Senator Brandes with question
3:39:48 PM Senator Rodriguez responds
3:40:19 PM Senator Brandes with question
3:40:22 PM Senator Rodriguez responds
3:40:50 PM Senator Brandes with question
3:40:54 PM Senator Rodriguez responds
3:41:16 PM Senator Albritton with response
3:41:44 PM Senator Gibson with question
3:41:51 PM Senator Rodriguez responds
3:42:40 PM Senator Gibson with question
3:42:53 PM Senator Rodriguez responds
3:43:43 PM Senator Gibson with question
3:43:49 PM Senator Rodriguez responds
3:44:00 PM Senator Brandes in debate
3:45:34 PM Senator Albritton in debate
3:47:19 PM Senator Gibson in debate
3:48:48 PM Senator Gibson in debate
3:48:57 PM Senator Rodriguez closes on the bill
3:49:06 PM Roll call on CS/CS/HB 861
3:49:37 PM CS/CS/HB 861 is reported favorably
3:50:13 PM Senator Gibson moves to adjourn
3:50:23 PM Meeting Adjourned