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**SUPPLEMENTAL LETTER  
REGARDING ANALYSIS OF NURSE ANESTHESIOLOGIST  
DESIGNATION UNDER FLORIDA AND TEXAS LAW**

Dear Committee for Proper Recognition of CRNA:

This letter is a supplement to our guidance letter to you dated April 4, 2019. That prior letter provided guidance regarding your efforts as members of the American Association of Nurse Anesthetists (“AANA”) to persuade the organization to change its name to the “American Association of Nurse Anesthesiologists.” It provided our opinion as to the likely legal arguments that opposing parties might make in challenging the proposed name change, the strengths and weaknesses of such arguments, and the potential counterarguments that the AANA could assert.

Following our issuance of that letter, you requested further guidance on whether Florida law and Texas law prohibit, permit, or are silent on usage of the term “nurse anesthesiologist” by a certified registered nurse anesthetist (“CRNA”). This letter provides that additional guidance.

**1 Summary of Guidance**

Neither Florida law nor Texas law specifically address whether a CRNA may use the term “nurse anesthesiologist” as a descriptor of the professional services provided by the CRNA. While provisions of both Florida law and Texas law do regulate the identifiers that a CRNA must use in his or her professional practice, we believe these provisions can be reasonably interpreted to require only that a CRNA identify as his or her *title* or *licensure status* “certified registered nurse anesthetist” or “CRNA.” Absent explicit prohibition or regulation, we believe neither Florida law nor Texas law preclude or otherwise limit a CRNA in using the term “nurse anesthesiologist” in a descriptive sense.

Where applicable, we note relevant provisions of Florida law and Texas law that we believe can be reasonably cited to *affirmatively support* descriptive usage of the term “nurse anesthesiologist”

by a CRNA. While there is not a precise line between terms of “title” and terms of “description” in this context, we believe that permissible descriptive usages of the term “nurse anesthesiologist” by a CRNA could include as a term of introduction or address (in much the same way that many physicians identify by their specialty and not generally as a “physician” or “doctor”) or as a term of distinction from other anesthesiologist providers (for example, physician anesthesiologists or dentist anesthesiologists).

We emphasize, however, that the relevant regulatory authorities in Florida and Texas – namely, the boards of nursing and medicine in each state – could reach a contrary conclusion that a CRNA may use the term “nurse anesthesiologist” as a descriptor and pursue an enforcement action accordingly. To mitigate this happening and confirm our legal interpretations, we would advise that these agencies be consulted for an opinion or other guidance on this issue. In any event, should the nursing and medicine boards in these states take an enforcement action to challenge a CRNA’s descriptive usage of the term “nurse anesthesiologist,” we believe the CRNA could mount a strong defense for the reasons set forth in our prior letter, as further supplemented herein. Likewise, we believe that any legal action initiated by a private party – for example, a physician or physician association – could be defended on the same grounds.

## **2 Limitations of guidance**

We reiterate and reincorporate the limitations of our guidance set forth in our prior letter.

With respect to the additional supplemental guidance provided herein, we emphasize that our analysis is limited only to those issues and authorities of Florida law and Texas law as set forth in Section 4 of this opinion. Further, our analysis is based on the facts you have represented to us, as summarized in Section 3 of this opinion. If any material facts are omitted or misstated, our analysis and recommendations are subject to change.

## **3 Facts as provided**

We reiterate and reincorporate the facts set forth in our prior letter.

We understand you are seeking the additional supplemental guidance provided herein to support efforts at the state-level equivalents of the AANA in Florida and Texas (the Florida Association of Nurse Anesthetists (“FANA”) and the Texas Association of Nurse Anesthetists (“TANA”), respectively) to recognize the term “nurse anesthesiologist” as a permissible term that CRNAs licensed in those states may use to describe their professional practice. With respect to TANA, you informed us that the organization, acting through its Board of Directors, recently voted in favor of usage of the term “nurse anesthesiologist” as a descriptor by Texas-licensed CRNAs. However, following such vote, we understand that legal counsel for the Texas Board of Nursing (“TBN”) communicated to legal counsel for TANA that usage of the term “nurse anesthesiologist” could violate the Texas Nurse Practice Act and its implementing regulations. On the basis of this communication from the TBN, TANA subsequently sent an email

communication to its members regarding usage of the term “nurse anesthesiologist.” In relevant part, the email states:

When functioning in an [advanced practice registered nurse (“APRN”)] role, the Texas Administrative Code is clear an APRN must use the title officially recognized by the BON, which is Certified Registered Nurse Anesthetist, CRNA, or Nurse Anesthetist.

While there are times when drawing comparisons to a physician anesthesiologist may be useful, anything which may mislead your patients is unsupportable, and could result in disciplinary or legal action. The AANA decision to recognize nurse anesthesiologist as a descriptor is in no way an official title change or an attempt to change the CRNA credential.

We understand that the American Society of Anesthesiologists is using the email to support a public relations campaign to fight against usage of the term “nurse anesthesiologist” by CRNAs.

## 4 Analysis

### A. Florida Law

The starting point in our analysis of Florida law is a provision of the Florida statutory code that is generally applicable to all healthcare professions, including physicians and nurses. It authorizes the applicable licensing agency to take disciplinary action against a licensee on the following basis:

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. This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394 [relating to mental health], chapter 395 [relating to hospitals], chapter 400 [relating to nursing homes and other related facilities], or chapter 429 [assisted care communities]. 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.<sup>1</sup>

With respect to CRNAs, which Florida law recognizes as a category of APRN, a section of the Nurse Practice Act provides: “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.’”<sup>2</sup> Similar titling

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<sup>1</sup> FLA. STAT. § 456.072(1)(t) (emphasis added).

<sup>2</sup> FLA. STAT. § 464.015(8) (emphasis added); *see also id.* § 464.015(9) (“A person may not practice or advertise as, or assume the title of,

requirements with respect to doctors of medicine, physician assistants, and anesthesiologist assistants are set forth in Florida Board of Medicine (“FBM”) regulations.<sup>3</sup>

From the foregoing, we believe that Florida law can reasonably be construed to require that a CRNA identify as his or her *licensure title* “certified registered nurse anesthetist” or “CRNA.” However, we do not believe any of the pertinent provisions of Florida law prohibit, explicitly or implicitly, a CRNA from using the term “nurse anesthesiologist” as a *descriptor* of the professional services that the CRNA provides. If Florida law were intended to have this effect, we would expect the Medical Practice Act or Nurse Practice Act, or the regulations implemented thereunder by the FBM or Florida Board of Nursing (“FBN”), respectively, to include specific provisions to this effect, comparable to the statutory and regulatory provisions under Florida law that address how an anesthesiologist assistant must address himself or herself in relation to an anesthesiologist.<sup>4</sup> The absence of comparable regulation applicable to CRNAs leads us to infer that CRNAs are not subject to the same identification requirements as anesthesiologist assistants and therefore are free to use the term “nurse anesthesiologist” in a descriptive manner.

We do not believe usage of the term “anesthesiologist” in certain provisions of the Florida statutory code as a reference to a physician who specializes in administering anesthesia compels a contrary conclusion. Where this term appears, we believe it is properly understood as only a *descriptive term* to differentiate a physician who administers anesthesia from other physician specialists<sup>5</sup> or to identify such physician in relation to an anesthesiologist assistant.<sup>6</sup> In other words – we do not believe these provisions, explicitly or implicitly, give physician anesthesiologists the sole legal authority to use the term “anesthesiologist.”

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registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or advanced practice registered nurse or use the abbreviation ‘R.N.’, ‘L.P.N.’, ‘C.N.S.’, ‘C.R.N.A.’, ‘C.N.M.’, ‘C.N.P.’, or ‘A.P.R.N.’, or take any other action that would lead the public to believe that person was authorized by law to practice as such or is performing nursing services pursuant to the exception set forth in s. 464.022(8) unless that person is licensed, certified, or authorized pursuant to s. 464.0095 to practice as such.”)

3 See FLA. ADMIN. CODE § 64B8-11.003 (setting forth the means by which a doctor of medicine, physician assistant, or anesthesiologist assistant must “identify the license under which he or she practices”); FLA. ADMIN. CODE § 64B8-11.001 (“No person licensed pursuant to Chapter 458, F.S., shall disseminate or cause the dissemination of any advertisement or advertising that contains the licensee’s name without clearly identifying the licensee as either a medical doctor (M.D.), physician assistant (P.A.), or anesthesiologist assistant (A.A.)”); FLA. ADMIN. CODE § 64B8-31.0051 (specifying licensure disclosure requirements applicable to anesthesiologist assistants); see also FLA. STAT. § 458.3475(3)(c) (“An anesthesiologist assistant must clearly convey to the patient that he or she is an anesthesiologist assistant.”).

4 See *supra* note 3.

5 See, e.g., FLA. STAT. § 382.009(2) (requiring a determination of death to be made by two physicians, one of whom is the treating physician and one of whom is a “board-eligible or board-certified neurologist, neurosurgeon, internist, pediatrician, surgeon, or anesthesiologist”).

6 See, e.g., FLA. STAT. § 458.3475(1)(a) (defining an “anesthesiologist” for purposes of anesthesiologist assistant regulations as 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”).

## B. Texas Law

As noted in TANA’s email to its members, TBN regulations set forth in the Texas Administrative Code regulate the titles that CRNAs and other categories of APRNs may use to identify themselves professionally.<sup>7</sup> With respect to CRNAs, the regulations recognize as a licensure title “certified registered nurse anesthetist” and its abbreviation, “CRNA.”<sup>8</sup> The regulations further provide: “A registered nurse who holds current licensure issued by the Board as an APRN shall, *at a minimum*, use the designation ‘APRN’ and the APRN *licensure title*, which consists of the current role and population focus area, granted by the Board.”<sup>9</sup> Additionally: “When providing care to patients, the APRN shall wear and provide clear identification that includes the current APRN designation and licensure title being utilized by the APRN, as specified by this section. An APRN may also include additional certifications or educational credentials in his/her identification, so long as the certifications and/or credentials are current, accurate, and not misleading as to their meaning.”<sup>10</sup>

Based on the foregoing, we agree with TANA’s assessment that a CRNA in Texas must identify as his or her *licensure title* “certified registered nurse anesthetist” or “CRNA.” However, as in our analysis above of Florida law, we do not believe the TBN regulations prohibit, explicitly or implicitly, a CRNA from using the term “nurse anesthesiologist” as a *descriptor* of the professional services that the CRNA provides. This reading is supported by the inclusion of the clause “at a minimum” in the above-quoted TBN regulation. This language suggests that “certified registered nurse anesthesiologist” and “CRNA” are the “minimum” identifiers that a CRNA may use professionally – but not the *only* identifiers that a CRNA could use, particularly when the usage is descriptive in nature and not intended as a reference to the CRNA’s licensure status.

Other provisions of the Texas statutory code that include the term “anesthesiologist” arguably support this interpretation. For example, a provision of the Dental Practice Act that establishes an advisory committee on “anesthesia-related deaths or incidents” makes references to a membership that must include both a “dentist anesthesiologist” and a “physician anesthesiologist.”<sup>11</sup> Consistent with the proposed usage of the term “nurse anesthesiologist” as a descriptor, the terms “anesthesiologist” in this context are descriptive in nature, identifying a *type* of provider who administers anesthesia; they do *not* refer to a *licensure category or title*. Moreover, the delineation between a “dentist” anesthesiologist and a “physician” anesthesiologist supports our understanding, as elaborated in our prior letter, that the term “anesthesiologist,” by itself, does not exclusively mean a physician or doctor of medicine.

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7 22 TEX. ADMIN. CODE § 221.2.

8 *Id.* § 221.2(a)(1)(C).

9 *Id.* § 221.2(b) (emphasis added).

10 *Id.* § 221.2(c).

11 TEX. OCC. CODE § 258.202(a)(2), (5).

While other scattered Texas statutes do use the standalone term “anesthesiologist” in a manner apparently referring to a physician who administers anesthesia,<sup>12</sup> we believe this usage, as in the above-noted section of the Dental Practice Act, is merely descriptive, referring to a specific type of physician. However, we do not believe these provisions can reasonably be construed, explicitly or implicitly, to prohibit or otherwise regulate a CRNA’s usage of the term “nurse anesthesiologist” as a descriptor.

Elsewhere in the Texas statutory code, we note a section of the Medical Practice Act, which states: “A person, partnership, trust, association, or corporation commits an offense if the person, partnership, trust, association, or corporation, *through the use of any letters, words, or terms affixed on stationery or on advertisements, or in any other manner*, indicates that the person, partnership, trust, association, or corporation is entitled to practice medicine if the person, partnership, trust, association, or corporation is not licensed to do so.”<sup>13</sup> Although this provision – particularly the italicized terms – is written broadly, we do not believe descriptive usage of the term “nurse anesthesiologist” by a CRNA would violate the statute. For the reasons we explained in our prior letter, the term “anesthesiologist” is not synonymous with “physician” or “doctor of medicine.” Thus, we do not believe that by describing oneself as a “nurse anesthesiologist” a CRNA would be “indicat[ing] that [the CRNA] . . . is entitled to practice medicine . . . .”

Notwithstanding our interpretation of Texas law as at least implicitly allowing a CRNA to use the term “nurse anesthesiologist” in a descriptive fashion, it is possible that the TBN or the Texas Medical Board (“TMB”) (which enforces the Medical Practice Act) might take a contrary position and initiate an enforcement action against a CRNA describing oneself as a “nurse anesthesiologist.” The fact that the TBN has cautioned TANA about the “nurse anesthesiologist” descriptor supports this concern. Accordingly, to obtain a definitive understanding of how the TBN and TMB would respond to a CRNA’s descriptive usage of the term “nurse anesthesiologist,” we would advise reaching out to each board and requesting an opinion or other enforcement guidance on this issue. Should either agency take a position that descriptive usage of the term “nurse anesthesiologist” by a CRNA is unlawful, we believe the CRNA could vigorously defend against any enforcement action based on such position for the reasons noted above and in our prior letter. In relevant part, we believe any such enforcement action would infringe the CRNA’s First Amendment “commercial speech” rights, as discussed in our prior letter. We note that the case we cited heavily in our First Amendment analysis in our prior letter,

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12 See, e.g., TEX. INS. CODE § 1456.001(3) (defining, for purposes of a chapter of the Texas Insurance Code, a “facility-based physician” as a “radiologist, an anesthesiologist, a pathologist, an emergency department physician, a neonatologist, or an assistant surgeon”).

13 TEX. OCC. CODE § 165.156; see also TEX. OCC. CODE § 104.003 (specifying the identifiers to be used by a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of chiropractic, doctor of optometry, or doctor of podiatry “who uses the person’s name on a written or printed professional identification, including a sign, pamphlet, stationery, or letterhead, or who uses the person’s signature as a professional identification”); TEX. OCC. CODE § 104.004 (“In using the title ‘doctor’ as a trade or professional asset or on any manner of professional identification, including a sign, pamphlet, stationery, or letterhead, or as a part of a signature, a person other than a person described by Section 104.003 shall designate the authority under which the title is used or the college or honorary degree that gives rise to the use of the title.”).

*American Academy of Implant Dentistry v. Parker*,<sup>14</sup> is binding precedent in Texas and therefore would directly apply in any enforcement action initiated by either the TBN or TMB.

## **5 Conclusion**

I trust that this opinion is responsive to your request. I suggest that we schedule a phone call to discuss this guidance and the next course of action.

Sincerely,

A handwritten signature in black ink, appearing to read "Connor D. Jackson", followed by a horizontal line.

Jackson LLP  
Connor D. Jackson, Attorney

CDJ;lc

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<sup>14</sup> 860 F.3d 300, 307 (2017).