




 Outlook

[External] State Board of Nursing Draft CRNA regulations

From Andy Boryan <ajb109@gmail.com>  
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To ST, RegulatoryCounsel <RA-STRegulatoryCounsel@pa.gov>  
Cc jennifer ray beckman <jenniferraybeckman@gmail.com>

 1 attachment (200 KB)  
LTR TO REGULATORY COUNSEL RE 16A-5145 CRNA.pdf;

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Please see the attached letter containing public comments from the Pennsylvania Society of Anesthesiologists related to the proposed Board of Nursing Regulations for CRNA's. Thank you and please confirm receipt if possible. I am available by email or my cell phone listed below for any questions. Thank you.

Andrew Boryan, MD  
7177293145



P E N N S Y L V A N I A  
*s o c i e t y o f*  
A N E S T H E S I O L O G I S T S

1554 Paoli Pike, Suite 298  
West Chester, PA 19380

July 16, 2025

VIA EMAIL ([RA-STRegulatoryCounsel@pa.gov](mailto:RA-STRegulatoryCounsel@pa.gov))

Regulatory Counsel  
State Board of Nursing  
P.O. Box 69523  
Harrisburg, PA 17106-9523

Re: **16A-5145 (CRNA) – OBJECTIONS AND SUGGESTED MODIFICATIONS  
TO STATE BOARD OF NURSING PROPOSED CERTIFIED  
REGISTERED NURSE ANESTHETISTS REGULATIONS**

Dear Regulatory Counsel:

Please accept this correspondence as the written comments, suggestions and objections to the above referenced State Board of Nursing proposed rulemaking related to Certified Registered Nurse Anesthetists (“CRNAs”) submitted by the Pennsylvania Society of Anesthesiologists (“PSA”). The CRNA proposed regulations were published in the June 28, 2025 *Pennsylvania Bulletin* (55 Pa. Bulletin 4360-4369). PSA’s comments, suggestions and objections will be addressed separately.

**INCOMPLETE REGULATORY DEFINITION OF OVERALL DIRECTION**

Act 60 of 2021 (“Act 60”) amended the Pennsylvania Professional Nursing Law (“Nursing Law”) establishing the CRNA title and qualifications pursuant to 63 P.S. §218.3 and §218.8(a)-(f); defining the CRNA scope of practice pursuant to 63 P.S. §218.9(a)-(b); and adding definitions pursuant to 63 P.S. §212(16)-(17).

Act 60 amended the Nursing Law to include a definition of “*overall direction*”, as follows:

(17) “Overall direction” means oversight of anesthesia services and medical management of patient care by a qualified individual who is present and available onsite, but not necessarily present in the same procedure room as a certified registered nurse anesthetist performing anesthesia services for the duration of the services provided.

63 P.S. §212(17) (emphasis added). The proposed CRNA regulations, however, truncate the statutory definition, proposed as follows:

*Overall direction – Oversight of anesthesia services and medical management of patient care by a health care provider identified under §21.1020(a)(1)-(4) (relating to CRNA practice).*

49 Pa. Code §21.1001 (proposed); 55 Pa. Bulletin at 4366 (June 28, 2025). Act 60 references the term “qualified provider”, which is missing from the proposed regulatory definition. Accordingly, **PSA recommends the final regulation should include the phrase “qualified provider.”** PSA does not object to the remainder of the first sentence in the proposed definition of “overall direction.”

PSA, however, **objects to the absence of the final clause of the Act 60 definition of “overall direction.”** In order to maintain consistency, clarity and accuracy in the context of the statutory and regulatory definitions, **the final regulation should include the remainder of the statutory definition and include the phrase “who is present and available onsite, but not necessarily present in the same procedure room as a CRNA performing anesthesia services for the duration of the services provided.”** It is imperative to include the full statutory definition of “overall direction” in the final regulations to avoid any misinterpretation or subtle effort to expand CRNA scope of practice.

Further, to clarify the apparent purpose and intent of Representative Mentzer’s remarks submitted for the record in the Legislative Journal, as referenced in the State Board of Nursing’s comments at 55 Pa. Bulletin 4361, Representative Mentzer stated:

This agreement creates a legally recognized title for Certified Registered Nurse Anesthetists while maintaining patient safety standards. SB 416 protects patient safety standards by **clarifying that CRNAs do not have the ability to practice independently** and are subject to oversight and overall direction by a licensed anesthesiologist or surgeon.

*Legislative Journal*, House of Representatives, June 25, 2021, p.1129 (emphasis added).

Read in its proper context, Representative Mentzer’s intent was to confirm CRNAs **cannot practice independently**. With respect to the oversight and overall direction by a licensed anesthesiologist or surgeon, it is clear that both podiatrists and dentists can perform procedures that constitute “surgery”, thereby making those podiatrists and dentists “surgeons.” See 49 Pa. Code §33.203(d)(1)(i)(C), (d)(4) and (k)(6), (8) and (10) (identifying dentists who are authorized to practice as a “surgeon”); and 63 P.S. §42.2(a) (statutory authority for podiatrists to perform surgery). Accordingly, **PSA recommends the final CRNA regulations confirm CRNAs cannot practice independently inasmuch as CRNAs are subject to oversight and overall direction by one of the physicians or providers listed in Act 60.**

**THE TERM “PROCEDURE” SHOULD BE REPLACED WITH THE PHRASE “ANESTHESIA CARE” OR “ANESTHESIA SERVICES”**

*PSA objects to the use of the terms “procedure” and “specific procedure” included in proposed 49 Pa. Code §21.1020 and §21.1021(a) because nothing in Act 60 or the Nursing Law authorizes CRNAs to perform procedures. CRNAs are only statutorily authorized to perform and provide “anesthesia care” or “anesthesia services.”* The proposed CRNA practice regulatory provision states as follows:

- (a) Except for circumstances identified in subsection (c), a currently certified CRNA may perform anesthesia services in cooperation with the physician, podiatrist or dentist involved in the procedure for which anesthesia is being provided if the **procedure** is performed under the overall direction of one of the following...

Proposed 49 Pa. Code §21.1020(a) (emphasis added). The proposed CRNA regulatory standards of conduct state:

A CRNA shall undertake a **specific procedure** only if the CRNA has the necessary knowledge, preparation, experience and competency to properly execute the **procedure** and the **procedure** is within the scope of practice of a CRNA.

Proposed 49 Pa. Code §21.1021(a) (emphasis added).

Physician Anesthesiologists are licensed, trained and experienced in the performance of not only *anesthesia care* but also *procedures*. Physician Anesthesiologists’ procedures include a variety of pain management injections in the outpatient setting and other pain management services that are not directly related to a surgical procedure. Act 60 did not authorize CRNAs to perform any procedure. On the contrary, Section 8.9 of Act 60 states, in its entirety, as follows:

§ 218.9. Scope of practice for certified registered nurse anesthetists.

- (a) A certified registered nurse anesthetist shall have the authority to **perform anesthesia services** in cooperation with a **physician, podiatrist or dentist involved in a procedure** for which **anesthesia care** is being provided if the anesthesia services are performed under the **overall direction** of any of the following:
  - (1) A physician licensed by the State Board of Medicine or the State Board of Osteopathic Medicine who has completed an accredited residency training program in anesthesiology.
  - (2) A physician licensed by the State Board of Medicine or the State Board of Osteopathic Medicine who is **performing the procedure** for which the certified registered nurse anesthetist is performing anesthesia services.

- (3) A podiatrist licensed by the State Board of Podiatry who is **performing the procedure** for which the certified registered nurse anesthetist is performing anesthesia services.
- (4) A dentist licensed by the State Board of Dentistry and permitted by the act of May 1, 1933 (P.L. 216, No. 76),<sup>1</sup> known as “The Dental Law,” or the State Board of Dentistry to administer, supervise or direct the administration of anesthesia.

(b) Nothing in this section shall be construed to:

- (1) prohibit a certified registered nurse anesthetist who would otherwise require direction from providing brief periods of care in the event of an emergency that temporarily prevents or interferes with overall direction;
- (2) restrict the authority of a health care facility to provide for additional oversight requirements for a certified registered nurse anesthetist practicing within the facility; or
- (3) limit or prohibit a certified registered nurse anesthetist from **engaging in those activities which normally constitute the practice of professional nursing as defined in section 2.**<sup>2</sup>

63 P.S. §218.9(a)-(b) (emphasis added).

The highlighted text includes the term “procedure” *only in the context of the surgical procedure performed by a surgeon, podiatrist or dentist (within their respective scopes of practice)*. Act 60 only authorizes CRNAs to perform “*anesthesia care*” or “*anesthesia services*” under the overall direction of an Physician Anesthesiologist, surgeon, podiatrist or dentist (within their statutory scopes of practice). Act 60 does not authorize the CRNA to perform any procedure external to “*anesthesia care*” or “*anesthesia services*.”

Further, the final clause of §218.9(b)(3) quoted above makes it clear that a CRNA can still engage in activities that normally constitute the practice of professional nursing. The Nursing Law includes the following definitions:

- (1) The “**Practice of Professional Nursing**” means diagnosing and treating human responses to actual or potential health problems through such services as casefinding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens as prescribed by a licensed physician or dentist. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of medical therapeutic or corrective

measures, except as performed by a certified registered nurse practitioner acting in accordance with rules and regulations promulgated by the Board.

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- (4) **“Diagnosing”** means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen.
- (5) **“Treating”** means selection and performance of those therapeutic measures essential to the effective execution and management of the nursing regimen, and execution of the prescribed medical regimen.
- (6) **“Human responses”** means those signs, symptoms and processes which denote the individual's interaction with an actual or potential health problem.

63 P.S. §212(1), (4)-(6) (emphasis added). Careful analysis of the foregoing exception and the existing scope of Professional Nursing makes it absolutely clear that CRNAs cannot perform *procedures* external to anesthesia care or anesthesia services.

The Nursing Law, including the Act 60 amendment, is a *limited licensure law*. Under Pennsylvania case law, the absence of express authority to perform a procedure in a limited license practice act means it is unlawful and impermissible for a limited licensed practitioner such as a CRNA to perform any particular procedure that is *not expressly listed in the statute*. “Procedures” external to anesthesia care or anesthesia services are not on the statutory list. Therefore, procedures are not within the scope of CRNA practice. Pennsylvania courts have applied strict statutory construction principles to limited professional licensure statutes and scope of practice. Licensure statutes are narrowly and strictly construed. McGrath v. BPOA, 146 A.3d 310, 316 (Pa. Cmwlth. 2016). Therefore, the CRNA scope of practice must be narrowly construed, not expansively interpreted.

Several licensure scope of practice decisions apply the narrow construction principle. PennDOT v. PCS, 349 A.2d 509 (Pa. Cmwlth. 1976); Department of State v. Schatzberg, 371 A.2d 544 (Pa. Cmwlth. 1997); Bennett v. BPOA, 214 A.3d 728, 733 (Pa. Cmwlth. 2019); and McElwee v. State Board of Veterinary Medicine, 271 A.3d 40 (Pa. Cmwlth. 2022). In order to avoid the unlawful practice of medicine, services and procedures must be explicitly included in the statutory scope of practice list. Goslin v. State Board of Medicine, 949 A.2d 372 (Pa. Cmwlth. 2008) (midwifery was expressly authorized under the Licensing Act, and no violation occurred). Accordingly, because “procedures” are not specifically included in the statutory scope of CRNA practice, they are excluded and cannot be articulated in the final CRNA regulations. Therefore, the State Board of Nursing cannot legally publish any CRNA regulation for which it does not have express statutory authority.

Numerous Pennsylvania Supreme Court and Commonwealth Court decisions have enforced this legal principle steadfastly in the last several years, and have stricken several agency regulations that exceeded the agency’s statutory authority. See Corman v. Acting Secretary of Pa. DOH, 266 A.3d 452 (Pa. 2021) (DOH mask mandate regulation exceeded statutory authority); Federated

Ins. Co. v. Summit Pharmacy, 308 A.3d 329 (Pa. Cmwlth. 2024) (workers' compensation Red Book values regulation exceeded statutory authority); Medical Marijuana Access & Patient Safety v. Johnson, 317 A.3d 1106 (Pa. Cmwlth. 2024) (DOH statement of policy constituted invalid regulation); Green Analytics v. Pa. DOH, 298 A.3d 181 (Pa. Cmwlth. 2023) (medical marijuana regulation exceeded statutory authority); Philadelphia Surgery Center v. Excalibur Ins., 289 A.3d 157 (Pa. Cmwlth. 2023) (workers' compensation fee review regulations exceeded statutory authority); Pa. Medical Society v. State Board of Medicine, 546 A.2d 720 (Pa. Cmwlth. 1998) (Medical Board's physician weight control prescription regulation invalidated); Rand v. State Board of Optometry, 762 A.2d 392 (Pa. Cmwlth. 2000) (testing date regulation exceeded statutory authority and invalidated); and NFIB v. OSHA, 142 S. Ct. 661 (U.S. 2022) (federal vaccine mandate regulation exceeded Congressional statutory authority and invalidated). Accordingly, because every recent challenge to a regulation exceeding statutory authority has been stricken by Pennsylvania appellate courts, the State Board of Nursing must comply with the case law, and strictly follow the terms of Act 60.

Based on the foregoing, ***PSA objects to the use of the term "procedure." The term "procedure" must be stricken from proposed §21.1020 and §21.1021(a) and replaced with the phrase "anesthesia care" or "anesthesia services" as the context directs to ensure the regulations are consistent with Act 60 and the regulations do not open the door for an unlawful and unconstitutional expanded CRNA scope of practice. Further, PSA recommends inclusion of the following clarifying provision:***

***The CRNA must be credentialed to perform anesthesia care or anesthesia services in the health care facility in which the anesthesia service is being performed.***

The foregoing modifications will ensure the final CRNA regulations are consistent with the statutorily proscribed limitations contained in Act 60.

### **CRNA TITLING CLARIFICATION – ILLEGALITY OF THE NURSE ANESTHESIOLOGIST TITLE**

PSA's Physician Anesthesiologists have encountered numerous CRNAs throughout the Commonwealth of Pennsylvania who have begun using the designation "Nurse Anesthesiologist." CRNAs' use of the title "Nurse Anesthesiologist" is not authorized by Act 60; is *per se* unlawful; should be expressly prohibited in the final regulations; and should subject the licensee to licensure disciplinary action by the State Board of Medicine, State Board of Osteopathic Medicine and/or the State Board of Nursing.

Act 60 established the CRNA statutory titling authority to be limited as follows:

An individual who holds a license to practice professional nursing in this Commonwealth who meets the requirements under Section 8.8 of this act to be a certified nurse anesthetist **shall have the right to use the title "certified registered nurse anesthetist" and use the abbreviation "C.R.N.A."** No other person shall have that right.

63 P.S. §213(b.1) (emphasis added). The proposed Use of Title CRNA regulation generally repeats the Act 60 statutory provisions; however, the proposed regulation does not go far enough to expressly prohibit CRNA misconduct that is already occurring.

To provide further context, the Department of Health Ambulatory Surgery Facility regulations define “Anesthesiologist” as a “Physician.” 28 Pa. Code §551.3. The Statutory Construction Act defines a “Physician” as a medical doctor or doctor of osteopathic medicine. 1 Pa.C.S. §1991. The Medical Practice Act contains an identical definition. 63 P.S. §422.1.

Section 10 of the Medical Practice Act addresses **unauthorized practice of medicine and surgery** and states as follows:

No person other than a medical doctor shall engage in any of the following conduct except as authorized or exempted by this Act:

- (1) Practice medicine and surgery.
- (2) **Purport to practice medicine and surgery.**
- (3) **Hold forth as authorized to practice medicine and surgery through use of a title,** including, but not necessarily limited to, medical doctor, doctor of medicine, doctor of medicine and surgery, doctor of a designated disease, physician, physician of a designated disease, or any abbreviation for the foregoing.
- (4) **Otherwise hold forth as authorized to practice medicine and surgery.**

63 P.S. §422.10(1)-(4) (emphasis added).

Therefore, any CRNA who purports to use the name or title “Nurse Anesthesiologist” would violate the foregoing statutes. An individual who violates §10 of the Medical Practice Act quoted above is subject to disciplinary action by the State Board of Medicine or State Board of Osteopathic Medicine, an injunction by the Attorney General and civil money penalties imposed by either Board pursuant to 63 P.S. §422.38 (injunctions against unlawful practice) and §422.39 (civil money penalties for violating Act).

By way of further context, the Department of Health’s Photo Identification Badges regulations require a health care employee who delivers direct health care (at a variety of locations) to use a photo identification badge which must include *the employee’s title*. 28 Pa. Code §53.3(a)(4). Those regulations define the term “Title” as follows:

*Title* – A license, certification or registration held by the employee.

28 Pa. Code §53.1(c).

Act 60 read in conjunction with 28 Pa. Code §53.1 and §53.3(a)(3) limits the titles that may be used by a CRNA as either “certified registered nurse anesthetist” or “C.R.N.A.” Accordingly, ***PSA recommends proposed §21.1005(a) be revised to read as follows:***

A registered nurse who has satisfactorily met the requirements set forth in the act and this subchapter and holds current certification as a CRNA or whose certification is maintained on inactive status **shall be authorized to use only the title “certified registered nurse anesthetist” or a “C.R.N.A.”, and shall not use any other title or designation, including but not limited to Nurse Anesthesiologist.**

PSA respectfully requests that the foregoing objections and recommended modifications be adopted by the State Board of Nursing in the final CRNA regulations. Thank you for your consideration and anticipated cooperation.

Sincerely,



Andrew J. Boryan, M.D., D.A.B.A  
PSA President

cc: PSA Board of Directors

PA Senate Consumer Protection & Professional Licensure Committee

House Professional Licensure Committee

Charles I. Artz, Esquire, PSA General Counsel