Background and Analysis for Board Motion on Section 13 of H.684

The Board has been asked to provide input in response to a section of a bill in the General Assembly, H.684. Section 13 proposes to remove the requirement for written practice guidelines and the requirement for transition to practice under an agreement with a physician or experienced APRN.

The Board has previously passed motions in 2011 and 2014 that provide support for there being a requirement of what is known as "transition to practice" for inexperienced APRNs. When those opinions were offered, written practice guidelines were a longstanding feature of APRN practice. In response to the proposal in H.684, Section 13, to remove both the requirement for written practice guidelines and the requirement for transition to practice under an agreement with a physician or experienced APRN, the Board finds:

- Patient safety is served by written practice guidelines. In the words of the Federal Trade Commission (FTC) Report cited to the Committee by OPR: *Licensure and scope of practice regulations can help to ensure that health care consumers (patients) receive treatment from properly trained professionals. APRN certification and state licensure requirements should reflect the types of services that APRNs can safely and effectively provide, based on their education, training, and experience*. 2014 FTC Report on Competition and the Regulation of Advanced Practice Nurses, pages 3-4 (emphasis supplied). The report includes examples of what constitutes burdensome scope of practice restrictions: *Some scope of practice restrictions are procedure-oriented, limiting APRNs' ability to prescribe medicines, refer for, order, or perform certain tests or procedures, or treat certain indications. Other restrictions focus on the types of patients APRNs may see. For example, APRNs may not be allowed to "examine a new patient, or a current patient with a major change in diagnosis or treatment plan, unless the patient is seen and examined by a supervising physician within a specified period of time."* FTC Report at 9-10 (footnotes omitted). The Vermont law includes none of those requirements that are seen as burdensome; it requires only submission of guidelines that reflect current standards of advanced nursing practice specific to the APRN's role, population focus, and specialty. That's a minimal administrative burden that allows for an APRN to practice without any other restrictions within the limits of their training and experience.

- Patient safety is served by requiring a period of supervised or mentored clinical practice for inexperienced providers of medical care, before they qualify for fully independent practice. One recent study found a strong correlation between physicians having fewer years of residency training and the likelihood of having a board sanction for a quality of care issue. *Training Matters: A Retrospective Study of Physician Disciplinary Actions by the Louisiana State Board of Medical Examiners*, 1990-2010. That study confirms what one would surmise based on simple logic: more training makes one better prepared to engage in a complex task such as providing medical diagnosis and treatment. APRN program standards call for 500 supervised clinical hours during training. In contrast, medical school programs typically consist of 5,000 or more supervised clinical hours, yet MDs do not qualify to be licensed when they finish medical school. This Board requires two full years of residency training, estimated at 3,000 to 4,000 hours per year, in order to qualify for a license to practice independently.
- A principal justification offered by OPR and other witnesses who favor elimination of the requirements at issue is that the FTC advocates for competition in medical care. FTC advocacy includes the position that regulation should be minimized so as not to unduly impair

competition. However, Vermont's requirements do not present barriers and are not anti-competitive.

- OPR's position relies on the 2014 Study Report by the FTC. Throughout the report when it mentions burdensome supervision requirements, it is phrased in terms of requirements for physician supervision. The Vermont law allows for an APRN with two years' experience to act as the collaborating professional. Alone, the ability to have an APRN act as the collaborating professional is a significant distinction between the Vermont APRN standard and those of all other states that are discussed as having burdensome requirements. Moreover, the Vermont requirement could not be less restrictive without being eliminated. The report offers examples of what are considered burdensome supervision requirements: *Physician supervision may be required for all APRN practice, or for particular practice activities such as prescribing medications. Supervision rules sometimes define the parameters of supervision more specifically. Some require that APRN patient charts be reviewed at some particular frequency; some limit the number of independent APRNs one physician may supervise, or restrict the physical distance permitted between a supervising physician and a supervised APRN. Florida law, for example, imposes broad supervision requirements on APRN practice, while also specifying that an APRN cannot practice more than a certain distance from the primary place of practice of his or her supervising physician.* FTC Report, 10-11 (footnotes omitted). The Vermont law simply calls for collaboration. As implemented by the Board of Nursing, the rule regarding collaboration states in its entirety: ***8.16 Collaborating Provider Responsibilities*** *A collaborating provider shall: (a) review, sign, and date the APRN's practice guidelines; (b) serve as an advisor, mentor, and consultant to the APRN; (c) participate in quality assurance activities.*

- A very recent FTC opinion supported the passage of a law that would allow independent practice by Pennsylvania APRNs after three years of practice under a collaboration agreement. That is compelling evidence that the FTC would find Vermont's lesser requirement of collaboration for those with less than two years' experience not to be a barrier to competition.

- Additionally, the 2014 FTC Report cited by OPR shows what the FTC considers to be burdensome, rigid requirements. Examples in the report include: a requirement that a collaborating physician share patients with the APRN; restrictions on the number of APRNs that a physician may supervise; limitations on the physical distance that a supervising doctor may be from an APRN. FTC Report, pages 32-33. Vermont's statutory requirements for APRNs are not burdensome or rigid. Witnesses supporting the bill struggled to identify any examples of APRNs being unable to practice because of the statutory requirements. The one example offered was of an APRN who was able to practice, but who had some difficulty finding a collaborating provider. Moreover, it became clear that the APRN's difficulty was not based on the law, but on

the Board of Nursing's own rules about who can be a collaborating professional, which offer no flexibility or ability to seek a waiver.

Approved by Board motion, 13-0 on February 7, 2018

The following statement was approved by Board Motion 12-1 on February 7, 2018. The dissenting member stated that his dissent was based on a belief that APRN supervision requirements should be stronger than the existing statutes provide.

The purpose for the Board of Medical Practice is to protect the public when receiving medical care. It is the Board's position that Section 13 of H.684 should not be enacted into law. Neither the minimal requirements to document an APRN's scope of practice in a practice guideline document, nor the requirement for an inexperienced APRN to have a collaboration agreement in place amounts to a barrier to practice or an anti-competitive measure. The statutory requirements are reasonable regulatory responses that promote practice only within those areas for which an APRN is qualified and promote the availability of a collaborating mentor for the least experienced APRNs. The requirements protect the public and are well justified.