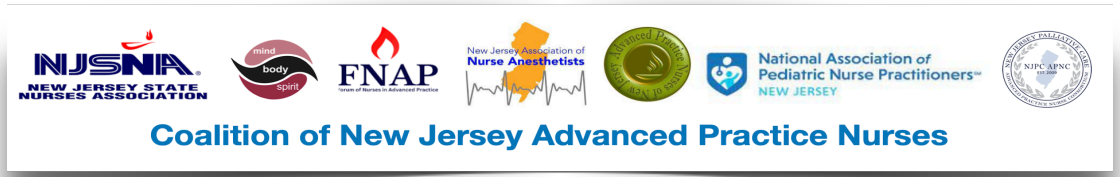


Barbara Blozen EdD, MA, RN
President, NJ Board of Nursing &
Mary Fortier, EdD, RN, CNL
Executive Director, NJ Board of Nursing
P.O. Box 45010
Newark, New Jersey 07101

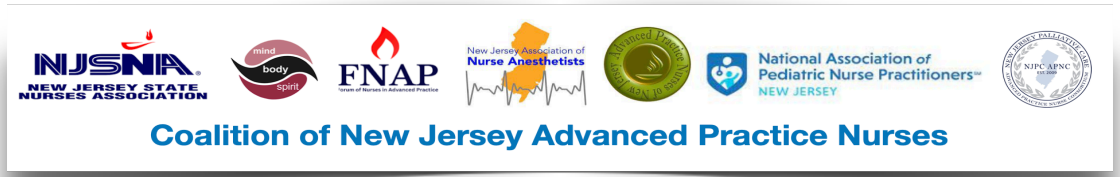
July 20, 2023

Dear Dr. Blozen and Dr. Fortier, Board members and members of the APN Subcommittee,

We, the Consortium of Advanced Practice Nursing groups are writing to express our alarm about an Advanced Practice Nurse (APN) issue that was discussed at the July 7, 2023 New Jersey (NJ) Board of Nursing (BON) meeting, namely: proposed regulations that would list procedures which APNs in this state are permitted to perform, and moving this list under the rubric of the Joint Protocol. It is our understanding that a key legal advisor to the Board seeks to make this change, believing it is necessary to define the scope of APN practice with greater particularity. The proposed regulatory change poses several significant problems:

1. The Joint Protocol (JP) provision in NJ APN statutes relates only to the prescription of legend drugs and devices. The performance of procedures by APNs was not intended to fall under the JP requirement and has not been there for the past 32 years. Moving the totality of procedures there would be in contravention of the statute and add additional hurdles to the provision of care. Additionally, listing procedure imposes a rigidity on APN practice that impedes the inevitable evolution of care.

The Joint Protocol was a political compromise introduced near the end of a six year legislative battle in 1992 to ensure the passage of NJ's first APN titling and prescription bills. The Joint Protocol was very deliberately limited in the final statute, to the prescribing of legend drugs and devices. It was not intended as a blanket contractual agreement covering every aspect of an APN's practice, as did exist in other states, at that time. When the Joint Protocol rule was adopted on June 2, 2000 (NJ Register Monday July 3, 2000, Vol.32, No. 23, p.9), Mark Herr, Director of the Division of Consumer Affairs, responded to a public comment concerned that the Joint Protocol (JP) sought to cover all areas of an APN's practice: "The joint protocols were never intended to deal with any practice area outside prescriptive authority."



In February 2021, this consortium of Nurses in Advanced Practice wrote a joint letter to the Board of Medical Examiners (BOME), upon publication of the proposed rule amending Surgery, Special Procedures and Anesthesia Services (13:25-4A.1: New Jersey Register, January 4, 2021). This rule authorizes Advanced Practice Clinicians to "perform minor procedures consistent with their respective scopes of practice and as addressed within their individual collaborating agreements." We pointed out that the performance of minor procedures (as early aspiration abortion is defined in the BOME rule) does not fall under the rubric of the Joint Protocol in APN statutes, but that the JP is required for prescribing medication only. When the adopted rule was published on December 6, 2021, the BOME did not respond to this expressed concern. It would be paradoxical if the BOME's effort to increase access to reproductive care by adding APNs to a mix of those authorized to provide that care in BOME rules, would result in restrictions on access to all procedural care performed by APNs because the BON, contrary to statute, changes its own rules to accommodate the BOME.

2. The Scope of APN practice is broadly articulated in APN statutory language, passed by the NJ Legislative and signed by the Governor, in 1992, and amended in 1999 and 2004. That language was deliberately designed by its drafters at the New Jersey State Nurses Association to be broad to allow for the evolution of APN practice over time, in response to changing patients' needs. The Scope of Practice for NJ APNs at 49: 11-49: Permitted Duties of an advanced practice nurse:

a. In addition to all other tasks which a registered professional nurse may, by law, perform, an advanced practice nurse may manage preventive care services and diagnose and manage deviations from wellness and long-term illnesses, consistent with the needs of the patient and within the scope of practice of the advanced practice nurse, by: (1) initiating laboratory and other diagnostic tests; (2) prescribing or ordering medications and devices, as authorized by subsections b. and c. of this section; and (3) prescribing or ordering treatments, including referrals to other licensed health care professionals, and performing specific procedures in accordance with the provisions of this subsection.

"In accordance with the provisions of this subsection," meant, subsection a.: "consistent with the needs of the patients and within the scope of practice of the advanced practice nurse." Subsection a. in the statute, is separate from subsections b. and c. which involve medications and devices and do fall under the provisions of the JP.

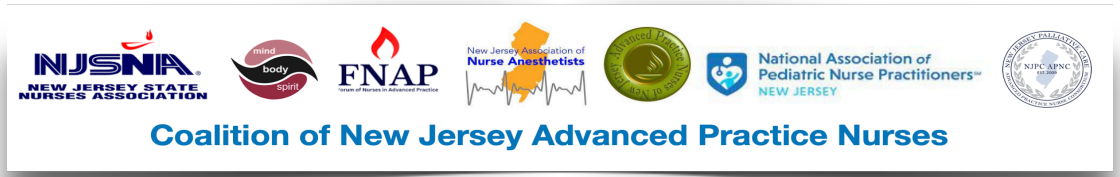
3. The scope of practice broadly defined in NJ's APN statute, emanates from those defined in policy statements issued by national nursing professional bodies and organizations, including the National Council

of State Boards of Nursing. APNs are tested for scope of practice competence in their professional foci by national certifying bodies, recognized by the NJ BON. APNs respond to the changing needs of their patients by completing educational programs designed to teach both didactic and clinical skills in keeping with evidence-based principles and the highest standards of current nursing practice; this is true for the diagnostic decisions they make, the laboratory tests and treatments they order, their referrals to other providers, the medications they prescribe and the procedures they perform. It is an APN's professional responsibility to maintain malpractice insurance covering their individual scope of practice. In NJ, the rate of malpractice suits and settlements against APNs, consistent with that of their colleagues throughout the United States, including those in Full Practice Authority states, remains low.

4. At this time, the Joint Protocol requirement in NJ is suspended by virtue of the Governor's Executive Order #112, as it has been since April 2020. Nursing leadership in NJ have received no alerts from the NJ BON suggesting the suspension has led to increased risks to patient safety. Actively in play in the NJ Legislature are A1522/A2286, bills which would make the JP suspension permanent and grant Full Practice Authority to NJ APNs, as has occurred in 27 other states (including neighboring NY and DE). In 2021, the National Academy of Medicine issued a report calling for the permanent elimination of statutory and regulatory barriers to APN practice, emphasizing that these barriers both reduce access to care and increase the costs of care, without improving health care quality and safety. *

5. Creating a list of procedures APNs are permitted to perform within the APN regulations would be a significant step backward; the list will quickly become outdated, as it would if such a list were created for registered professional nurses. Requiring that procedures be performed only under the JP, a step not required by APN statutes, would present onerous additional barriers to APN practice. Here are some of the ways the JP already impedes practice in NJ:

- APNs are often unable to secure a relationship with a physician willing to act as a mandated collaborator and to sign the Joint Protocol agreement.
- Physician fees to act as a mandated collaborator can be excessive; a recent survey of NJ APNs found that they paid an average of $1,000/month. When larger health care settings and institutions pay these fees for physicians, it adds to the general cost of health care.
- If the mandated collaborating physician moves, retires, dies, loses their license, or refuses to renew the JP, practice stops and patients are left without their medications until a collaborating physician is replaced.



- Laboratory, diagnostic test results, and consultative care results are often sent to the mandated collaborating physician, not to the APN who ordered them, delaying timely care.
- Medication containers often list both the prescribing APN and the collaborating physician causing confusion for patients or other providers.
- Health insurance companies often refuse to credential, empanel or directly reimburse an APN unless the mandated collaborating physician (CP) is credentialed and empaneled by the insurer. If the CP terminates the insurance contract, any of the APNs' patients insured with that company can no longer see the APN causing disruption and discontinuity in the patient's care.
- NJ APNs are increasingly choosing to work in neighboring states without the restrictive legal barriers present in this state. This limits patient access to care.

We strongly urge you not to propose the regulatory change you are contemplating related to APNs and procedures. Such a change will not only be contradictory to the existing statute, but it will also add substantially to the hurdles that APNs must already face in trying to make their care accessible to NJ residents. It would be counterproductive to introduce this burdensome regulation now, when APNs are currently working without a JP, and when pending legislation is likely to remove it permanently. The attached white paper: "Maximizing Access to Health Care in New Jersey: The Case for Full Practice Authority," outlines the need for care in NJ, describes how the JP interrupts access to APN care, and discusses how Full Practice Authority will increase patient access to care without compromising healthcare safety or quality.

We would appreciate your sharing this letter with other BON subcommittee members as well as the other members of the Board and relevant regulatory staff that have been charged with reviewing this proposed regulation for its potential for serious negative impact on APN practice in the state of NJ.

Respectfully,

Judith Schmidt, DHA, MSN, RN, CEO,
The New Jersey State Nurses Association and the Institute for Nursing

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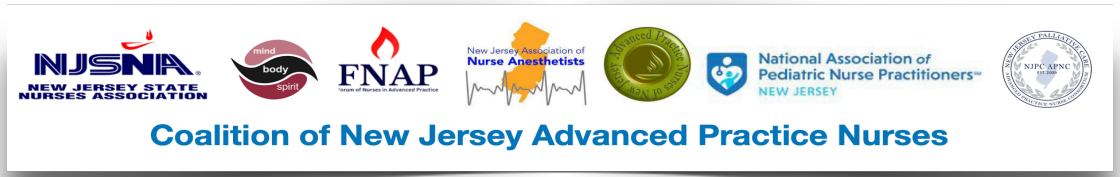
President Forum of Nurses in Advanced Practice of NJSNA



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**National Academies of Sciences, Engineering and Medicine [NASEM] (2021). The future of nursing 2020-2030: Charting a path to achieve health equity. Washington, DC: The National Academies Press. https://doi.org/10.17226/25982.