



# The New York State Society of Anesthesiologists, Inc.

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## MEMORANDUM IN OPPOSITION

**The Paulin/Gallivan (A0442/S1385) nurse anesthetist title bill is fundamentally flawed for failing to define a scope of practice for nurse anesthetists in order to protect patients undergoing anesthesia**

1. By failing to provide the scope of practice of a nurse anesthetist and not following the statutory framework that the Legislature created in 1971 (Chapter 987) and has used through 2016 (Chapter 497) to recognize professions, including the granting of title, the nurse anesthetist title bill introduced by Paulin/Gallivan (A0442/S1385) is flawed. The bill:

a. Fails to follow the entire regulatory framework governing the professions which is predicated upon the profession's defined scope of practice to ensure the profession is being practiced within the acceptable, defined scope of practice.<sup>i</sup>

b. Impedes the ability of the Board of Regents and Office for Professions to carry out their regulatory obligations with respect to the new profession of "certified registered nurse anesthetists," including responding to complaints of unprofessional conduct and unauthorized acts by the professional.

c. Creates uncertainty between the NYS Education Department and Department of Health with respect to the standard of anesthesia care that physician-anesthesiologists, operative physicians, and nurse anesthetists are required to follow with respect to Article 28 facilities.

d. Obviates the NYS Legislature's constitutional obligation and duty to protect and promote the welfare of NYS citizens by failing to define the scope of practice of health care professionals (i.e., nurse anesthetist).<sup>ii</sup> A matter of public concern is the administration of potentially lethal drugs to NYS patients by a nurse anesthetist.

e. Creates ambiguity in the operating room where the safety of patients undergoing surgery and the administration of anesthesia requires clarity of the roles among and between physician-anesthesiologists, the operative physician, and the nurse anesthetist because medical management decisions must be made in a matter of seconds.

2. The enactment of the Paulin/Gallivan nurse anesthetists title bill (A0442/S1385) WILL BY NECESSITY:

a. Create a pathway for the Board for Nursing, based upon broad regulatory authority provided under Article 130 of the Education Law, to proceed to define the nurse anesthetists' scope of practice without guidance from the NYS Legislature.

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b. Create an ambiguity by incorporation of the provision that it will not permit “independent practice” of a nurse anesthetist.

*For example, the creation of a collaborative relationship between a nurse anesthetist and another health care professional does not create “independent practice”; however, a collaborative relationship where the “collaborative health care provider” need not be immediately available contravenes the existing physician-led anesthesia care team standard of care. In fact, this is precisely what the Board for Nursing and NYSANA pursued in 2004; namely, to circumvent the Legislature, they attempted to create a Nurse Practitioner in Anesthesia profession and eliminate the physician-led anesthesia care team model. The initiative was withdrawn because it would have jeopardized the well-being of patients undergoing anesthesia in New York State.*

c. Create a situation where, unlike any other recognized health care profession (with the exception of Clinical Nurse Specialist) the Board for Nursing, not the Legislature, may define the scope of practice of a health care professional without any input from Board for Medicine, Department of Health, or professional medical societies.

3. The bill purports to protect nurse anesthetists by conferring a title; however, without a defined nurse anesthetist scope of practice that distinguishes a nurse anesthetist’s practice from another health care professional, the conferring of a title does nothing to achieve this “objective.”

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NYSANA has made it clear, in their Memorandum in Opposition to the Morelle / DeFrancisco bill, that the NYSSA should have no role in defining a nurse anesthetist’s scope of practice despite the fact that the predominate mode of the delivery of anesthesia care in NYS, the United States and the Veterans Administration is through the physician-led anesthesia care team. As such, it is impossible to define the scope of practice of the nurse anesthetist without defining the supervisory responsibilities of the physician-anesthesiologist.

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<sup>i</sup> All critical health care professions recognized by the NYS Legislature, in accordance with the Education Law, Title VIII “The Professions”, define the scope of practice of the profession. The attached chart summarizes the section of law and verifies that the scope of practice for these critical health care professions was defined when the title legislation was passed. Clinical Nurse Specialist (CNS) does not contain a defined scope of practices; however, they are Registered Professional Nurses, which has a defined scope, with certification as a clinical nurse specialist (specialty named in certificate) and CNS are not administering potentially lethal drugs.

<sup>ii</sup> The New York State Constitution (Article XVII §3) identifies the protection and promotion of the health of the people of New York as matters of public concern. Certainly, the administration of potentially lethal drugs highly qualifies as a matter of public concern. More importantly, the New York State Constitution empowers the New York State Legislature with the authority to make provisions to ensure those concerns are met. This was accomplished when the Legislature enacted Article 130 Title VIII “The Professions” in 1971 and created the uniform framework defining each profession then recognized and delegating the authority to the Board of Regents and Commissioner of Health to oversee and regulate the professions.

**Education Law Chapter 16, Title VIII (The Professions)**  
**Title VIII Education Department**  
**Chapter II Regulations of the Commissioner**  
**Subchapter B Regulations of the Professions**

<b>Part<sup>1</sup></b>	<b>Part Title</b>	<b>Titles Contained Therein<sup>2 3</sup></b>	<b>Education Law</b>	<b>Law</b>	<b>Chapt.</b>	<b>Sect.</b>	<b>Scope? Y/N</b>
60.1	Professional Study of Medicine	Doctor of Medicine	Art. 131 §6521	1971	987	2	Yes
		Doctor of Osteopathic Medicine					
60.8	Registration of Physician Assistants or Specialist Assistants	Physician Assistant <sup>4</sup>	Art. 131-A §6532(1) Art. 131-B §6542	1971 amd 2012	1135 48	4 3	Yes Yes
		Specialist Assistant (shall be for a particular field of practice) as defined by Comm. of Health	Art. 131-A §6532(2)  Art. 131-C §6549	1971 <i>split from PA</i> amd 2012	1135 48	4 3	Yes Yes
60.9	Acupuncture	License in medicine or dentistry OR	Art. 160 §8211	1990	772	1	Yes
		Special Assistant-Acupuncture					
61	Dentistry, Dental Hygiene, Certified Dental Assisting	Dentist	Art. 133 §6601	1971 amd 2001	987 576	2 1	Yes Yes
		Dental Hygienist	Art. 133 §6606	1971 amd 2013	987 239	2 1	Yes
		Certified Dental Assistant	Art. 133 §6608	1994 2013	494 239	1 2	Yes Yes
63	Pharmacy	Pharmacist	Art. 137 §6801	1971	987	2	Yes
		Pharmacy Intern <sup>5</sup>					

<sup>1</sup> Not included are Parts obviously not (people) health care related (e.g., Veterinary Medicine, Architecture, Public Accountancy, etc.)

<sup>2</sup> There are no abbreviations for titles contained in the Parts

<sup>3</sup> Tried to indicate where a doctoral degree is not required but where the regulations say the applicant must have master's degree *or higher degree*

<sup>4</sup> In 1971 title was "Physician's Associate"

<sup>5</sup> A limited permit shall be displayed ... where pharmacy intern is engaged for supervised practice

Part <sup>1</sup>	Part Title	Titles Contained Therein <sup>2 3</sup>	Education Law	Law	Chapt.	Sect.	Scope? Y/N
64	Nursing	Registered Professional Nurse	Art. 139 §6901 Art. 139 §6902	1971 1972	987 50	2 2	Yes <sup>6</sup> Yes
		Licensed Practical Nurse	Art. 139 §6902	1971 1972	987 50	2 2	Yes Yes
		Nurse Practitioner <sup>7</sup>	Art. 139 §6902	1988	257	1	Yes
		Clinical Nurse Specialist <sup>8</sup> [8 NYCRR 64.8)	Art. 139 §6911	2013	364	1	No <sup>9</sup>
65	Podiatry	Doctor of Podiatric Medicine (Podiatrist)	Art. 141 §7001	1971	987	2	Yes
66	Optometry	Doctor of Optometry (Optometrist)	Art. 143 §7101	1971 1995	987 517	2 1	Yes Yes
67	Ophthalmic Dispensing	Ophthalmic Dispenser	Art. 144 §7121	1971	987	2	Yes
72	Psychology	Doctoral degree in Psychology	Art. 153 §7601 Art. 153 §7601-a	1971 2002	987 676	2 3	No <sup>10</sup> Yes
73	Chiropractic	Chiropractor	Art. 132 §6551	1971 amd 1991	991 683	1 1	Yes Yes
75	Speech-Language Pathology and Audiology	Speech-Language Pathologist (may have doctoral degree)	Art. 159 §8201	1974	1055	1	Yes
		Audiologist (may have doctoral degree)	Art. 159 §8203	1974	1055	1	Yes
76	Occupational Therapy	Occupational Therapist	Art. 156 §7901	1975	779	1	Yes
		Occupational Therapy Assistant	Art. 156 §7902-a	2015	470	1	Yes

<sup>6</sup> “Nurse” and “Practice Nurse” are defined in 1971, with scope of practice for each.

<sup>7</sup> “Nurse practitioner certificates issued to a registered professional nurse will reflect the specialty area of nurse practitioner academic preparation” – do not see where they have to use it in their title (and NPs may have more than one specialty area)

<sup>8</sup> Clinical Nurse Specialist (CNS) does not have a definition other than being a Registered Professional Nurse and provide evidence of meeting all professional education & experience requirements for certification as a clinical nurse specialist (one or more specialty areas of practice).

<sup>9</sup> No definition of scope other than being a Registered Professional Nurse with certification as a clinical nurse specialist (specialty named in certificate).

<sup>10</sup> No scope included originally, but amended Laws of 2002 Chapter 676 to include scope.

<b>Part<sup>1</sup></b>	<b>Part Title</b>	<b>Titles Contained Therein<sup>2 3</sup></b>	<b>Education Law</b>	<b>Law</b>	<b>Chapt.</b>	<b>Sect.</b>	<b>Scope? Y/N</b>
77	Physical Therapy	Physical Therapist (may have doctoral degree)	Art. 131-A §6531 Art. 136 §6731	1971 1980	987 618	2 3	Yes Yes
		Physical Therapy Assistant	Art. 136 §6738	1980	618	3	Yes
78	Massage	Massage Therapist	Art. 155 §7801	1971	987	2	Yes
79-2 <sup>11</sup>	Professional Study of Acupuncture	Acupuncturist	Art. 160 §8211	1990	772	1	Yes
79-4	Respiratory Therapy, Respiratory Therapy Technician	Respiratory Therapist	Art. 164 §8501	1992	817	1	Yes
		Respiratory Therapy Technician	Art. 164 §	1992	817	1	Yes
79-5	Mid-Wifery	Midwife (may have doctoral degree)	Art. 140 §6951	1992	327	1	Yes
79-8	Medical Physics <sup>12</sup>	Medical Physicist (may have doctoral degree)	Art. 166 §8701	2001	495	1	Yes
79-19	Perfusionist	Licensed Perfusionist	Art. 134 §6630	2013	409	2	Yes
?? <sup>13</sup>	Pathologists' Assistants	Pathologists' Assistant <sup>14</sup>	Art. 168 §8850	2016	497	1	Yes

<sup>11</sup> Please also see Part 60.9

<sup>12</sup> Medical physics – application of physics concepts, theories, and methods to medicine and healthcare; e.g., medical imaging, nuclear medicine, radiation oncology

<sup>13</sup> ?No Part number yet?

<sup>14</sup> Bachelor's and master's degree programs are accredited through the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS).