STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner

Dannel P. Malloy
Governor

Nancy Wyman
Lt. Governor

Charles A. Horan, III, Director
Carrier, Driver and Vehicle Safety Standards
U. S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

CMRRR 91 7199 9991 7035 3415 2008

RE: DECLARATORY RULING CONCERNING WHETHER REGISTERED NURSES LICENSED IN CONNECTICUT CAN PERFORM PHYSICAL EXAMINATIONS FOR COMMERCIAL DRIVER'S LICENSES

DECISION AND ORDER

The petitioner of the above-referenced matter was provided an opportunity, in accordance with Public Acts 2015, No. 15-5 § 493, to file exceptions to the attached Proposed Memorandum of Decision of the Connecticut Board of Examiners for Nursing rendered on November 18, 2015. Exceptions were due by December 18, 2015. No exceptions were filed.

After evaluating the substantive merits of the proposed ruling, the administrative record before the Connecticut Board of Examiners of Nursing, including the federal regulations and Advisory Criteria governing the medical examination requirements for commercial driver fitness determinations by a medical examiner, and assessing whether the proposed ruling comports with the standards established by the state legislature in Conn. Gen. Stat. § 20-87a, it is clear that the scope of practice for Registered Nurses in Connecticut, as set forth in Conn. Gen. Stat. § 20-87a, does not permit Registered Nurses to conduct the testing and physical examination of the body systems required on the Medical Examination Report, as codified in 49 C.F.R. § 391.43, to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce, and complete the Medical Examiner's Certificate on the Medical Examination Report. As such, I hereby adopt the attached Proposed Memorandum of Decision of the Connecticut Board of Examiners for Nursing rendered on November 18, 2015, as the Final Decision.

12/18/15
Date

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner

c: Connecticut Board of Examiners for Nursing
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Kevin W. Watson, MD, President, Hartford County Medical Association, CMRRR
F. Scott Gray, MD, President, Connecticut Orthopaedic Society, CMRRR
Susan Schaffman, Executive Director, Connecticut Orthopaedic Society, E-mail

Enclosure: Declaratory Ruling

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

IN RE: PROPOSED DECLARATORY RULING CONCERNING WHETHER REGISTERED NURSES LICENSED IN CONNECTICUT CAN PERFORM PHYSICAL EXAMINATIONS FOR COMMERCIAL DRIVER'S LICENSES

Procedural Background

By letter submitted to the Chairperson of the State of Connecticut Board of Examiners for Nursing (the "Board") in August 2015, Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, Federal Motor Carrier Safety Administration ("FMCSA"), U.S. Department of Transportation in Washington, D.C., requested that the Board issue a response to the following question:

> Does the scope of practice for a Registered Nurse permit him/her to conduct the testing and physical examination of body systems required on the enclosed Medical Examination Report, determine whether the driver is physically qualified to drive a [commercial motor vehicle] in interstate commerce, and complete the Medical Examiner's Certificate?

Board Exhibit ("Bd. Ex.") 1. Attachments to the letter include the pertinent federal regulations, the Medical Examination Report, and Advisory Criteria codified in 49 C.F.R. § 391.43. Bd. Ex. 1.

On September 10, 2015, the Board, through its Liaison, notified the Commissioner of the Department of Public Health of Mr. Horan's request. See Public Acts 2015, No. 15-5, § 493. On September 14, 2015, the Commissioner notified the Board that any decision rendered by the Board in this matter shall be a proposed decision and that the Commissioner, or her designee, shall render the final determination of the matter (the "Commissioner's notification"). Bd. Ex. 2. See Public Acts 2015, No. 15-5, § 493.

At its scheduled meeting on September 16, 2015, the Board deemed the letter a petition for a declaratory ruling and voted to take up said petition at its October 21, 2015 meeting and take any of the actions provided in Conn. Gen. Stat. § 4-176(e), including but not limited to, issuing a proposed declaratory ruling at said meeting without further proceedings.

On October 6, 2015, a Notice of Declaratory Ruling Proceeding was posted in the *Connecticut Law Journal,* which gave notice that the Board intended to take up this matter at its meeting scheduled for October 21, 2015, and that it intended to take any actions provided in Conn. Gen. Stat. § 4-176(e), including but not limited to, issuing a declaratory ruling at said meeting without further proceedings (the "Notice"). Bd. Ex. 3.

On October 21, 2015, at its scheduled meeting, the Board, as provided by Conn Gen. Stat. § 4-176(e), voted to issue a declaratory ruling, without further proceedings, regarding whether the scope of practice for a Registered Nurse ("RN") in Connecticut permits a RN to conduct the testing and physical examination of body systems required on the Medical Examination Report, as codified in 49 C.F.R. § 391.43, to determine whether a driver is physically qualified to drive a commercial motor vehicle ("CMV") in interstate commerce, and complete the Medical Examiner's Certificate on the Medical Examination Report.

On October 21, 2015, the Board entered the letter from Mr. Horan and the letter's attachments into the record as Bd. Ex. 1. The Board also entered the Commissioner's notification, the Notice, and letters from the Hartford County Medical Association and the Connecticut Orthopaedic Society into the record. Bd. Exs. 2-5.

The Declaratory Ruling was conducted in accordance with Conn Gen. Stat. § 4-176 and § 19a-9-1 et seq. of the Regulations of Connecticut State Agencies.

In Connecticut, the scope of practice for RNs is set forth in Conn. Gen. Stat. § 20-87a.[1] In issuing this proposed declaratory ruling, the Board reviewed the RN's scope of practice in Conn. Gen. Stat. § 20-87a, the pertinent federal regulations, the Medical Examination Report and Advisory Criteria, as provided in Bd. Ex. 1. The Board reviewed each of the requirements set forth in the federal regulations, the Medical Examination Report and Advisory Criteria to determine whether such testing and physical examinations of body systems were within the scope of practice for RNs under Conn. Gen. Stat. § 20-87a. In making its ruling, the Board

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[1] Conn Gen. Stat. § 20-87a states, in pertinent part,

> (a) The practice of nursing by a registered nurse is defined as the process of diagnosing human responses to actual or potential health problems, providing supportive and restorative care, health counseling and teaching, case finding and referral, collaborating in the implementation of the total health care regimen, and executing the medical regimen under the direction of a licensed physician, dentist or advanced practice registered nurse. A registered nurse may also execute orders issued by licensed physician assistants, podiatrists and optometrists, provided such orders do not exceed the nurse's or the ordering practitioner's scope of practice.

applied the training and experience of its expert members. *See Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994).

On October 21, 2015, the Board issued the following proposed ruling:

Proposed Ruling

The scope of practice for Registered Nurses in Connecticut does not permit them to conduct the testing and physical examination of body systems required on the Medical Examination Report, as codified in 49 C.F.R. § 391.43, to determine whether a driver is physically qualified to drive a commercial motor vehicle in interstate commerce, and complete the Medical Examiner's Certificate on the Medical Examination Report.

11/18/15
Date

Patricia C. Bouffard, D.N.Sc.
Chairperson
Connecticut Board of Examiners for Nursing