



The Nurse Practitioner Association New York State

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Workers' Compensation Board
IME Advisory Committee
Menands, NY 12204

August 21, 2019

To Whom it May Concern:

I am submitting these comments on behalf of the Nurse Practitioner Association New York State ("NPA" or "Association"), the only statewide professional association of nurse practitioners ("NPs") in New York, nearly 18,000 of who practice throughout New York State. The Association has been actively monitoring the Workers' Compensation Board ("WCB") Independent Medical Examination ("IME") Advisory Committee, implemented pursuant to Chapter 59 of the Laws of 2017, and the Committee's thoughtful efforts to prepare recommendations to the Governor and the Legislature regarding laws pertaining to IMEs. We are aware the discussions that occurred at your recent meetings regarding the NP profession, that included factually inaccurate statements. We are compelled to respond and request that you consider the following information as the WCB and the IME Advisory Committee prepares its final report.

Background

NPs have been practicing since 1965 and gained legal scope of practice in New York State in 1988. We are licensed, certified, and regulated by the State Education Department ("SED"). NPs possess a license as a registered professional nurse ("RN") first, and then obtain additional certification as a nurse practitioner, which requires completion of a rigorous educational program approved by the State. NPs are highly skilled, prepared, and experienced individuals who exercise independent judgment, and collaborate with multiple specialists and healthcare practitioners every day. Although NPs focus on primary care health issues generally, every New York NP must be certified in one or more specific practice areas: Acute Care, Adult Health, Psychiatry, Family Health, Palliative Care, Community Health, Women's Health, Obstetrics/Gynecology, Gerontology, Holistic Care, Neonatology, Oncology, Pediatrics, Perinatology, School Health, and College Health. Many New York NPs also seek national board accreditation in comparable specialties.



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In New York, NPs are autonomous and, unlike other allied professions, NPs are not supervised by or dependent upon any other professional. NPs are independent healthcare practitioners who are legally accountable for the care they provide. The Nurse Practitioners Modernization Act, a 2014 statutory change adopted pursuant to the enacted Executive Budget, made it clear that experienced NPs may practice independently. NPs with more than 3600 hours of clinical experience are *not* required to have a written practice agreement, nor identify practice protocols. Experienced NPs must, however, maintain collaborative relationships with a qualified physician or a licensed health care facility (i.e., hospital, nursing home, ambulatory surgery center, or diagnostic and treatment center). New York defines a “collaborative relationship” as one where an NP communicates by phone, in person, in writing or electronically, with a physician in the same specialty as the NP, or communicates with a physician, in the same specialty within an Article 28 or with a physician having privileges at such institution. This communication and the collaborative relationship’s primary purpose is to exchange information to provide comprehensive care or make referrals as necessary. There is no mandate in how this evidence of a collaborative relationship is maintained, however the NP must attest and be able to produce evidence of the relationship upon request by the State Education Department (e.g. patient medical record). Experienced NPs who practice and have legally authorized collaborative relationships to are *not required* to: sign an agreement with a physician; practice in accordance with a written agreement or written practice protocols; be supervised by a physician; or, have a physician to co-sign or review any of the NP’s orders, prescriptions, or other clinical records.

Those newly licensed NPs with less than 3600 hours of clinical experience must maintain a written practice agreement, executed by a physician. These more junior NPs also must practice pursuant to written protocols reflecting the specialty area(s) of practice in which the NP is certified, and participate in a retrospective chart review every 3 months with a physician (which can be limited to one patient chart). These NPs do not need to have any other relationship with a physician or healthcare facility of any kind to comply with the Education Law, nor are these individuals supervised or directed by the collaborator.



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NPs are authorized to diagnose illness and physical conditions and perform therapeutic and corrective measures, order tests, prescribe medications, and devices and immunizing agents, without supervision. We possess full prescribing authority and are the primary care provider of choice for many New Yorkers. Of note, NPs are qualified to evaluate mental capacity and competency of patients, for purposes of executing advance directives. Psychiatric NPs have a focus in behavioral health, and given that NPs have full prescribing authority, the profession is wholly sensitive to opioid use disorder and the importance of appropriate pain management.

WCL Reforms in the 2019 Enacted Executive Budget

This year's final enacted budget modernized the workers' compensation law ("WCL") with regards to provider access. The WCL that was designed decades ago, long before the NP scope of practice was established in New York. As such, the WCL historically failed to account for the role of the NP. As noted above, the Education Law authorizes NPs to independently diagnose illness and physical conditions and perform therapeutic and corrective measures, order tests, devises, and immunizing agents, and refer patients to other health care providers and specialists. Yet, despite that patients often rely on care provided by NPs, the out dated law prevented NPs from participating in the Workers Compensation system.

The 2019 statutory changes ensure that workers injured on the job will have greater access to care by adding NPs to the list of "medical professionals" identified "as care providers under the workers compensation system." This change expands injured workers' access to additional qualified healthcare providers, increases the availability of quality care, reduces costs to the system, and ensures injured workers return to work in a timely fashion.

Recognizing the work of the Advisory Committee, the Executive and the Legislature opted not to authorize the expanded providers to participate in IMEs as part of the new law. We remain hopeful that this Committee, in issuing recommendations, will acknowledge the only logical progression is that NPs and social workers who provide services within the workers compensation system, should also be permitted to perform appropriate IMEs.



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Comments at Advisory Committee July Meeting

The NPA was surprised by the erroneous comments made by some members of the Advisory Committee regarding the NP scope of practice. As described above, it is fully within the experience, education, preparation, and scope of a NP to fully participate within the WC system. Prior to this year, the only barrier for NPs to treat injured workers was the statutory limitation on the list of professionals permitted to be reimbursed. The ability for a NP to seek reimbursement for services is wholly unrelated to whether the injured worker would receive quality diagnosis and treatment. Moreover, to posit that a NP's role in making patient assessments and medical determinations is inferior to any other professional is without merit. NPs have leading roles in all healthcare settings – hospitals (including emergency rooms), nursing homes, ambulatory surgery centers, convenient care settings, diagnostic and treatment centers, medical practice groups, and private offices. NPs regularly are credentialed by hospitals, and are granted admitting privileges. Further, every quality study completed to date has shown the effective and high-quality aspects of NP-partnered care. We are frontline primary care professionals meeting the needs of patients across New York State. No adjudicator would be confused as to the import of an assessment or treatment plan by a NP.

Similarly, to suggest that NPs are unable to seek any form of national board certification demonstrates a lack of understanding of the profession. Just like other healthcare professionals, NPs have the ability to seek national certification through competency-based examinations. This is in addition to complying with all New York State mandates to become certified and registered, after completing a rigorous educational program.

Conclusion

The Education Law and WCL are both clear: NPs are wholly authorized to diagnose and treat patients, including those who have been injured in the workplace. NPs provide high quality care, and the 2019 reform will increase patient's timely access to medical care. Should the Committee have specific questions about the nurse practitioner profession or the New York statutory scope of practice, I would be pleased to make myself available. The NPA commends the WCB for all its efforts to ensure New Yorkers have access to quality and competent care, particularly as the new



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law is implemented beginning in 2020. We trust that this is only the beginning of the process, and look forward to continuing this productive partnership.

Sincerely,

Stephen Ferrara, DNP, RN, FNP-BC
Executive Director