BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

GEORGIA BOARD OF NURSING, **Petitioner,** **v.** **JAMES GARRETT,** **Respondent.**	**Docket No.: 2225952** **2225952-OSAH-PLBD-RN-92-Walker** **Agency Reference No.: RN242896**

FILED
OSAH
08/11/2022
Devin Hamilton, Legal Assistant

INITIAL DECISION

I. Summary of Proceedings

The Petitioner, the Georgia Board of Nursing ("Board"), brought this action seeking to sanction the Respondent's license to practice as a registered professional nurse based on alleged violations of the laws and rules governing nursing practice in Georgia. The evidentiary hearing took place on July 11, 2022, before the undersigned administrative law judge. The Board was represented by Assistant Attorney General Sandra Bailey. Gregory Sewell, Esq. appeared for the Respondent, James Garrett. After consideration of the evidence presented and for the reasons stated below, the undersigned finds that the Respondent's license to practice as an RN in Georgia should not be sanctioned.

II. Findings of Fact

1.

The Respondent holds a license to practice as an advanced practice registered nurse ("APRN") in the State of Georgia and held such license at all times relating to the issues presented for hearing.[1] His license is active. (Testimony of Janet Freeman; Exhibit P-1.)

[1] Pursuant to O.C.G.A. § 43-26-3, an APRN is a registered professional nurse "who is recognized by the board as having met the requirements established by the board to engage in advanced nursing practice, and who holds a master's degree or other graduate degree from an approved nursing education program and national board certification in his

2.

On or about July 27, 2020, the Georgia Composite Medical Board ("GCMB") notified the Board that it had received a complaint regarding Dr. Jonathan Sule concerning the care and treatment of one of his patients, S.M. According to the GCMB, "[b]ased on our review of the information in the complaint, it was decided that it would be appropriate to send a copy of the complaint to your agency for [] review." (Testimony of Janet Freeman; Exhibit P-3.)

3.

Dr. Jonathan Sule is a board-certified neurologist who owned JS Medical Diagnostics, LLC ("JS Medical") in Valdosta, Georgia.[2] JS Medical provided patients with general neurology care. The Respondent had been working for Dr. Sule as an APRN since September 2018. (Deposition of Jonathan Sule (hereinafter "Sule Deposition") at 7-8; Testimony of Respondent; Exhibit P-5.)

4.

On or about August 21, 2020, the Board's investigator contacted Dr. Sule and asked him to provide a "detailed statement addressing the circumstances surrounding the unfortunate medical emergency involving S.M . . . ." After receiving the investigator's request, Dr. Sule sent the Board an email explaining that S.M. had been his patient from 2015 to 2019. As part of her course of treatment, the practice had administered lumbar transforaminal epidural injections ("TEI"). (Testimony of Janet Freeman; Exhibit P-9.)

5.

A TEI is a steroid injection used for pain management. In conjunction with the TEI, a practitioner injects a local anesthetic through an occipital nerve block. According to Dr. Sule, he

or her area of specialty . . . ."

[2] In 2020 Dr. Sule moved to Washington and requested that his Georgia medical license be placed on inactive status. (Exhibit P-9.)

had "trained [the Respondent] to perform lumbar transforaminal epidural injections and this procedure was included within [the Respondent's] scope of practice." (Testimony of Dr. McClear; Testimony of the Respondent; Exhibit P-9.)

6.

On July 29, 2019, S.M. had an appointment with JS Medical for pain treatment. At 9:40 a.m. the Respondent administered a TEI to S.M. Immediately following treatment S.M. was able to speak and appeared to be recovering well; however, within a few minutes she became unresponsive. The Respondent, Dr. Sule and another nurse practitioner began CPR. At approximately 10:00 a.m. Emergency Medical Services took S.M. to the hospital; one week later she passed away. (Testimony of Janet Freeman; Testimony of Dr. McClear; Testimony of the Respondent; Exhibits J-1, P-5, R-1.)

7.

After receiving Dr. Sule's email, the Board sent the matter to its investigative committee "B" for further review. Based on the investigative committee's recommendation, the Board filed a Statement of Matters Asserted and Statutes and Rules Involved seeking disciplinary action against the Respondent. (Testimony of Janet Freeman; see Court File.)

8.

Dr. Barbara McClear is nurse practitioner who holds a doctorate in nursing practice. She has been a nurse for thirty-seven years. During the course of her professional career, she has practiced nursing, taught at the Medical College of Georgia and published articles in peer-reviewed academic journals. Dr. McClear also conducts peer reviews for the Board. (Testimony of Dr. McClear.)

9.

The Board requested that Dr. McClear conduct a peer review regarding the Respondent's treatment of S.M. Dr. McClear reviewed S.M.'s medical records, statements from Dr. Sule, the Respondent and a medical assistant, and the correspondence between the Board and the Respondent. (Testimony of Dr. McClear.)[3]

10.

Dr. McClear determined that the Respondent's performance of the TEI and occipital nerve block met minimal standards of acceptable and prevailing nursing practice (also "reasonable standard of care"). However, she concluded that the Respondent's treatment of S.M. was below the reasonable standard of care in two areas: documentation and scope of practice. (Testimony of Dr. McClear.)

A. Documentation

11.

The reasonable standard of care for documentation requires that a practitioner document a patient encounter with a "SOAP" note. The term SOAP is an acronym for subjective, objective, assessment and plan. Thus, a complete SOAP note must contain subjective information, such as the patient's underlying complaint, objective information such as a physical exam, an assessment including diagnoses, and a plan of treatment. (Testimony of Dr. McClear.)

12.

Dr. Sule's medical practice used an electronic medical record platform called Patient Fusion. Patient Fusion provides users with a template for SOAP notes. It is not uncommon to begin a SOAP note during a patient encounter but then complete the note after the appointment.

[3] The cost for her peer review services in this case was $250.00. (See Exhibit P-4.)

When inputting a SOAP note into Patient Fusion, a user can press the "save" button, which allows the writer to reopen the note. If a user presses the "sign" button, the SOAP note automatically closes, locks and uploads to a patient's electronic medical record. (Deposition of Joshua Batson at 34-35 (hereinafter "Batson Deposition"); Testimony of Dr. McClear; Testimony of the Respondent.)

13.

Once closed in Patient Fusion, the SOAP note may not be reopened. Should a practitioner need to supplement or correct an error in the SOAP note, the practitioner must press the "addendum" button to add additional information to the original SOAP note. If a practitioner creates an addendum that rectifies the SOAP note's insufficiencies or errors, the documentation meets the reasonable standard of care. (Batson Deposition at 36; Testimony of Dr. McClear.)

14.

According to the Respondent, when composing a SOAP note he typically began with the patient's previous SOAP note and then edited it using the Patient Fusion template. In Patient Fusion, the template for a SOAP note places the "save" tab adjacent to the "close" tab. Before administering the TEI on July 29, 2019, the Respondent opened S.M.'s previous SOAP note. Although he meant to save the SOAP note he inadvertently closed it before finishing; thus, the SOAP note was inaccurate and incomplete. (Testimony of Respondent.)

15.

Dr. McClear reviewed the Respondent's SOAP note for S.M. dated July 29, 2019, and noted multiple documentation errors. First, the Respondent's SOAP note is inaccurate. It reflects that S.M. left the office in good spirits; however, her medical records indicate that she was taken from the office to the hospital after being found unresponsive. The SOAP note also is incomplete.

The Respondent failed to document that he had administered nitrous oxide, vitamin B-12 or oxygen during the TEI. Additionally, the Respondent did not document his performance of an occipital nerve block in conjunction with the TEI. According to Dr. McClear, these documentation errors all fell below the reasonable standard of care. (Testimony of Dr. McClear.)

16.

The Respondent did not file an addendum to the SOAP note using the Patient Fusion Template. Instead, shortly after S.M. was transported to the hospital, Dr. Sule requested that the Respondent write a detailed supplemental report regarding the encounter. Dr. Sule "specifically asked [the Respondent] to prepare this in this narrative format" because he wanted "to document as best as [the Respondent] could recall what happened as we were taking care of [S.M.]" In the supplemental report, the Respondent corrected the SOAP note's inaccuracies and omissions. The supplemental report was scanned into S.M.'s electronic medical record. (Sule Deposition at 32; Testimony of the Respondent; Exhibit R-1.)

17.

Dr. McClear testified that the Respondent's supplemental report did not remedy the insufficiencies in the SOAP note. She acknowledged that a patient's transport to the hospital is a "sentinel event" that might be charted differently than ordinary patient encounters. Nonetheless, Dr. McClear maintained that, in addition to the supplemental report, the Respondent should have added an addendum to the SOAP note to ensure that a future practitioner received accurate information. (Testimony of Dr. McClear.)

18.

Dr. Hope Bussenius has been a nurse practitioner for almost thirty years. She obtained her doctorate in Nursing Practice from Augusta University, Medical College of Georgia. Dr.

Bussenius worked at Gwinnett Medical Hospital as a documentation specialist and has taught at Emory University for the past ten years. (Testimony of Dr. Bussenius).

19.

Dr. Bussenius is familiar with electronic medical record platforms like Patient Fusion. According to Dr. Bussenius, some of the electronic medical record platforms are "clunky" and "lock out" easily. She agreed with Dr. McClear that the practitioner could address inaccuracies in the SOAP note by completing an addendum. However, Dr. Bussenius maintained that a practitioner does not have to attach the addendum to the original SOAP note. As long as the addendum is uploaded to the patient's electronic medical record, the documentation would meet the reasonable standard of care. Given that the Respondent's supplemental report was uploaded to S.M.'s medical record, she concluded that his documentation was reasonable and met the reasonable standard of care for documentation. (Testimony of Dr. Bussenius.)

20.

Joshua Batson is an APRN. He currently serves as the APRN chair for the Georgia Board of Nursing.[4] From 2014-2020, Mr. Batson worked as an APRN with JS Medical. (Batson Deposition at 8, 9, 12.)

21.

While a SOAP note communicates to future providers what happened during a patient encounter, it is not the only place a patient's medical care on a particular day is documented. Mr. Batson testified that after the Respondent's supplemental report had been uploaded it became part of S.M.'s electronic medical record, "just like [] MRI reports, nerve conduction reports, EEG

[4] Mr. Batson served on investigative committee "A" and did not participate in the development of any recommendations for discipline relating to the Respondent's care and treatment in the instant matter. (Batson Deposition at 12-13.)

reports, anything outside of the SOAP note that also went into the chart, copies of prescriptions, things like that." Although inadvertent SOAP note closures were not typical, if a closure took place, adding an addendum to the electronic medical record would offer a future provider with the necessary information. (Batson Deposition at 38, 41-42, 51, 58; see Exhibits J-1, R-1.)

B. Scope of Practice

22.

An APRN and a delegating physician may enter into a Nurse Protocol Agreement for the purpose of defining the scope of practice to be exercised by the APRN. The Nurse Protocol Agreement must be approved by the GCMB. It is "the foundational aspect of [an APRN's] practice . . . ." (Batson Deposition at 25-26; Testimony of Dr. McClear; Exhibit P-8.)

23.

On or about January 25, 2019, pursuant to O.C.G.A § 43-34-25, the Respondent and Dr. Sule, his delegating physician, filed a Nurse Protocol Agreement with the GCMB. The Nurse Protocol Agreement reflects that the Respondent is a certified APRN family-nurse practitioner. According to the APRN protocol worksheet, the Respondent would be authorized to perform procedures within the competency of his certification specialty. The GCMB approved the Nurse Protocol Agreement on February 7, 2019. (Exhibit P-8.)

24.

Under O.C.G.A. § 43-34-25(b), a delegating physician may delegate the authority to perform certain medical treatments, diagnostic studies, or radiographic imaging tests to an APRN via the Nurse Protocol Agreement. An APRN can add to the competency of his or her certification specialty by receiving additional training, including on the-job-training. When the APRN has met the GCMB's training requirements, the APRN and delegating physician file an APRN protocol

worksheet, or Form C, documenting the APRN's training and competency, with the GCMB. After the GCMB approves the filing, the additional competency can be added to the existing Nurse Protocol Agreement. (Testimony of Dr. Bussenius; Testimony Dr. McClear.)

25.

The Form C's instructions for completion provide that documentation of competency must include:

1. Documentation of training the APRN has received for this procedure (such as school curriculum or at a previous medical practice)
2. Number of times the delegating physician has supervised this procedure being performed by the APRN (minimum of 10)
3. Number of times this procedure has been performed by the APRN without supervision (minimum of 10)
4. Patient outcomes, including any complications
5. Time frame in which the on-the-job training occurred
6. Signature and date of the delegating physician

(emphasis in original). An APRN cannot submit a Form C to the GCMB without the consent of the delegating physician. (Sule Deposition at 28; Testimony of Dr. McClear; Exhibit P-10.)

26.

Although the Form C requires that, at a minimum, an APRN seeking certification must perform ten unsupervised procedures, the training process itself is unique for each APRN and delegating physician. Accordingly, the Form C does not provide a specific timeline, only a minimum procedure count. (Batson Deposition at 33; Testimony of Bussenius; Exhibit P-10.)

27.

Dr. Sule began training the Respondent to perform TEI and occipital nerve blocks. He used the same training protocol with the Respondent that he had used as a resident: observation, direct supervision, and unsupervised performance. (Sule Deposition at 18; Testimony of the Respondent.)

28.

Like the Respondent, Mr. Batson received on-the-job training in the performance of TEI and occipital nerve blocks from Dr. Sule.[5] In Mr. Batson's experience, Dr. Sule's training model could be described as "watch one, do one, teach one." The first phase of training was to watch Dr. Sule perform the procedures. During the second phase, Dr. Sule observed Mr. Batson performing the procedures and provided guidance. During the third phase, Mr. Batson explained what he was doing to Dr. Sule while performing the procedure. At the end of phase three, Mr. Batson would perform the procedures without supervision. (Batson Deposition at 18-22.)

29.

Although the GCMB's Form C requires that an APRN perform a minimum of ten unsupervised procedures, Mr. Batson testified that "ultimately the physician who is training you has to sign off on the training." Mr. Batson estimates that he watched a minimum of 200 epidural steroid injections, and performed several hundred TEIs, both observed and unobserved, prior to completing his training with Dr. Sule. His training took nine to twelve months. (Batson Deposition at 22, 24, 31-32, 50.)

30.

When Mr. Batson or other ARPNs completed their training, Dr. Sule would send a Form C to the GCMB for approval. In the past the GCMB had approved the submitted paperwork. (Sule Deposition at 24-25; Exhibit R-8.)

31.

Dr. Sule has trained other APRNs for up to two years, and the extent of training required for each APRN is a "judgement call." On the date of the incident, the Respondent was in the third

[5] Mr. Batson also attended workshops that included training in occipital nerve blocks. (Batson Deposition at 19.)

phase of training wherein he was performing unsupervised procedures, but Dr. Sule was within proximity. Although the Respondent had not completed training, Dr. Sule believed that he was close to finishing.[6] If the Respondent's training had been completed, Dr. Sule would have filed a Form C to amend the Respondent's Nurse Protocol Agreement. (Sule Deposition at 20, 22, 23, 27, 33.)

32.

In his statement to the Board, Dr. Sule wrote that "I trained [the Respondent] to perform lumbar transforaminal epidural injections and this procedure was included within [the Respondent's] scope of practice." Dr. Sule explained that his statement did not mean that the GCMB had approved a Form C or that the procedure had been included in the Respondent's Nurse Protocol Agreement. Rather, his statement was intended to convey to the Board that the Respondent was competent to complete the procedures: "in order for him to reach Phase 3, he had to have already shown me that he was competent to do this without me looking over his shoulder . . . [s]o that would [] put it within the scope of his practice, would it not?" (Sule Deposition at 38; Exhibit P-9.)

33.

The Respondent also made several statements to the Board regarding the incident. In a statement dated August 21, 2020, he stated:

> My supervising physician, Dr. Jonathan Sule, specifically trained me in the performance of lumbar transforaminal epidural injections and occipital injections, which included training where Dr. Sule performed the injections and training where Dr. Sule directly supervised my performance of more than 100 procedures. These procedures are within my scope of practice . . . .

In a statement dated April 1, 2021, the Respondent noted that he had observed Dr. Sule perform

[6] Ultimately, because Dr. Sule decided to sell his practice, the Respondent and Dr. Sule never filed a Form C with the GCMB adding the TEI/occipital nerve block to his scope of practice. (Batson Deposition at 82, 91.)

TEIs many times and that:

> Dr. Sule then directly observed my performance of more than one hundred of these procedures. I then performed many more of these procedures, again greater than 10, without Dr. Sule in the procedure room but with Dr. Sule in the building…I believe that I performed these procedures more than 100 times . . . I had been undergoing this type of training for seven months . . . it was my understanding that Dr. Sule would provide the Nursing Board with the appropriate paperwork to formally add these procedures, and others, to my Nurse Protocol Agreement with him.

(Testimony of Respondent; Exhibits P-5, P-6.)

34.

The Respondent testified that he was not attempting to mislead the Board by suggesting that the procedure had been added to the original Nurse Protocol Agreement, but only wanted the Board to understand that he had been trained to perform the procedure without supervision. In a statement dated June 24, 2021, the Respondent acknowledged that "[t]he procedure is not a part of my protocol agreement with Dr. Sule, because my final training documentation (form c) on the procedure was not submitted to the composite board due to the practice being sold to Dr. Swader." (Testimony of Respondent; Exhibit P-7.)

35.

After reviewing S.M.'s medical records, statements from Dr. Sule, the Respondent and a medical assistant, and the correspondence between the Board and the Respondent, Dr. McClear determined that in performing the TEI and occipital nerve block. the Respondent was not acting within the parameters of his Nurse Protocol Agreement in violation of the Board's rules and regulations. (Testimony of Dr. McClear.)

36.

The Board seeks to discipline the Respondent by imposing a Public Reprimand, collecting a $500 fine, and requiring he pay the Board's investigative costs of $250.00 and

complete additional continuing education courses.

III. Conclusions of Law

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has "all the powers of the ultimate decision maker in the agency . . . ." O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge "shall make an independent determination on the basis of the competent evidence presented at the hearing." Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Board is the entity responsible for licensing nurses in Georgia and establishing standards for the nursing profession. The Board is authorized to sanction an RN who has violated the statutes and rules governing the profession as set forth in the Georgia Registered Professional Nurses Practice Act, O.C.G.A. §§ 43-26-1 to -13; the rules of the Georgia Board of Nursing, Ga. Comp. R. & Regs. 410-1-.01 to 410-14-.01; and the general statutory provisions regarding disciplinary actions by professional licensing boards, found at O.C.G.A. § 43-1-19.[7] The sanctions available to the Board are set forth in O.C.G.A. § 43-1-19(d), as follows:

> (1) Refuse to grant or renew a license to an applicant;
>
> (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

[7] Chapter 1 of Title 43 is expressly adopted and incorporated by reference into Chapter 26 of Title 43. O.C.G.A. § 43-26-5(c).

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a fine not to exceed $500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or

(8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

O.C.G.A. § 43-1-19(d).

4.

The Board has the authority to discipline a licensee upon a finding that the licensee has done the following:

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public that materially affects the fitness of the licensee . . . to practice a business or profession licensed under this title or is of a nature likely to jeopardize the interest of the public; such conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Such conduct or practice shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title; […]

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice

> of a business or profession licensed under this title, when the licensee or applicant knows or should have known that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement[.]

O.C.G.A. § 43-1-19(a)(6), (8).

5.

Ga. Comp. R. & Regs. 410-11-.10 provides that the Board my revoke, suspend, or otherwise discipline a registered professional nurse and/or nurse practitioner who demonstrates unprofessional conduct under Ga. Comp. R. & Regs. 410-10-.03 or fails to comply with current scope and standards of practice as detailed in Ga. Comp. R. & Regs. 410-11-.03(2)(b).

6.

Pursuant to Ga. Comp. R. & Regs. 410-10-.03(1), nursing conduct failing to meet the minimal standards of acceptable and prevailing nursing practice, which could jeopardize the health, safety, and welfare of the public, shall constitute unprofessional conduct. Unprofessional conduct includes documentation errors such as "[f]ailing to maintain a patient record that accurately reflects the nursing assessment, care, treatment, and other nursing services provided to the patient" and/or "[f]alsifying, omitting or making a materially incorrect, inconsistent, or unintelligible entry in any record." Ga. Comp. R. & Regs. 410-10-.03(3)(a), (b).

7.

The SOAP note uploaded for S.M. was both inaccurate and incomplete in violation of Ga. Comp. R. & Regs. 410-10-.03(3)(a), (b). Dr. McClear and Dr. Bussenius agreed that an addendum correcting the SOAP note's errors and omissions would satisfy minimal standards of acceptable and prevailing nursing practice regarding documentation. However, Dr. McClear testified that to satisfy the reasonable standard of care the addendum would have had to have been appended to the original SOAP note. In contrast, Dr. Bussenius and Mr. Batson maintained that the

Respondent's supplemental report filed on the day of the incident and uploaded to S.M.'s electronic medical record was sufficient to meet the reasonable standard of care.

8.

In considering the testimony of the witnesses, the undersigned notes that Dr. McClear and Dr. Bussenius have similar educational backgrounds and work experience, and both testified credibly during the administrative hearing. In this case the evidence is in equipoise; accordingly, the undersigned concludes that the party with the burden of proof, in this case the Board, has not carried its burden. Cf. In the Matter of Payne, 289 Ga. 746 (2011).

9.

Under O.C.G.A. § 43-34-25(b), a delegating physician may delegate the authority to perform certain medical treatments, diagnostic studies, or radiographic imaging tests to an APRN via a Nurse Protocol Agreement. An APRN must adhere to the Nurse Protocol Agreement. Ga. Comp. R. & Regs. 410-11-.14(1)(c). Additionally, an APRN may not assume patient care responsibilities that are outside the nurse's scope of practice. Ga. Comp. R. & Regs. 410-10-.03(2)(j). The Board maintains that because the Respondent's Nurse Protocol Agreement did not include the authority to perform a TEI/occipital nerve block, he failed to adhere to his Nurse Protocol Agreement and acted beyond his scope of practice in violation of Ga. Comp. R. & Regs. 410-10-.03(2)(j).

10.

In order for a delegating physician to add medical procedures performed by the APRN which are not within the competency of their certification specialty to a Nursing Protocol Agreement, there must be documentation of the APRN's training. Considering the testimony of the Respondent, Mr. Batson and Dr. Sule, and their statements to the Board, the undersigned finds that the evidence demonstrated that the Respondent was in training to perform a TEI/occipital

nerve block per the requirements of the APRN protocol worksheet, or Form C. Although in one statement to the Board the Respondent stated that the procedure was within his scope of practice, considering the context of the statement, and the weight of the evidence, the undersigned finds it more likely than not that the Respondent was referring to extent of his training rather than to the text of the Nurse Protocol Agreement.

11.

When requesting to add procedures to a Nurse Protocol Agreement not specifically mastered during APRN education and training, the GCMB requires the submission of an APRN protocol worksheet, or Form C. The Form C mandates that the APRN and a delegating physician submit documentation demonstrating that a procedure has been performed a minimum number of times by the APRN with and without supervision. Arguably, anytime the APRN performs the procedure during training the APRN acts in violation of the standing Nurse Protocol Agreement and/or exceeds the APRN's scope of practice.

12.

The Medical Practice Act defines a Nurse Protocol Agreement as "a written document mutually agreed upon and signed by an advanced practice registered nurse and a physician, by which document the physician delegates to that advanced practice registered nurse the authority to perform certain medical acts" including medical treatments. O.C.G.A. § 43-34-25(a)(10); see also O.C.G.A. § 43-34-23(a)(7). Under O.C.G.A. § 43-26-5(a)(12), the Board is authorized to enact rules and regulations for registered professional nurses performing acts under a Nurse Protocol Agreement as authorized under the Medical Practice Act, Georgia Code Sections 43-34-23 and 43-34-25.

13.

Although the Board may enact rules and regulations for nurses performing acts under a Nurse Protocol Agreement, the GCMB must determine if Nurse Protocol Agreements fail to meet accepted standards of medical practice. O.C.G.A. § 43-34-25(m)(2), see Ga. Comp. R. & Regs. 360-32-.03(3) (GCMB charged with determining that Nurse Protocol Agreement meets accepted standards of medical practice and may require the delegating physician to amend the document.) Accordingly, the GCMB is authorized to promulgate rules and regulations including establishing criteria and standards governing nurse protocols. O.C.G.A. § 43-34-25(m); see also O.C.G.A. § 43-34-23(c). The GCMB's rules and regulations mandate that a delegating physician ensure that the medical acts provided by the APRN pursuant to the protocol agreement are "[c]ommensurate with the education, training, experience and competence of the APRN. . . ." Ga. Comp. R. & Regs. 360-32-.05(3)(a).

13.

"It is an elementary rule of statutory construction that statutes relating to the same subject matter are 'in pari materia' and must be construed together and harmonized whenever possible." Land USA, LLC v. Ga. Power Co., 297 Ga. 237, 241 (2015) (citations omitted). Considering the aforementioned statutes and rules, the undersigned concludes that an APRN's conduct would not violate a Nurse Protocol Agreement or exceed the APRN's scope of practice if the APRN is training with a delegating physician as directed by the GCMB. In this case, the evidence demonstrated that the Respondent was training with a delegating physician in anticipation of filing the Form C with the GCMB.

IV. Decision[8]

In accordance with the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that the Respondent's license to practice as an RN should not be sanctioned.

SO ORDERED, this 11th day of August, 2022.

Ronit Walker
Administrative Law Judge

[8] This Court's decision constitutes an "Initial Decision." This Initial Decision will become the "Final Decision" of the Board in thirty days, unless either party makes a timely application for the Board to review the Initial Decision. If either party seeks timely review of the Initial Decision, the result of that review by the Board will constitute the Final Decision. See O.C.G.A. §§ 50-13-17(a), 50-13-41(d); Ga. Comp. R &. Regs. 616-1-2-.27.