OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 18-001

LICENSED OCCUPATIONS:
Authority of Advanced Practice
Clinicians to Dispense Mifepristone

The Honorable Heather Steans
Chair, Special Committee on Oversight of
Medicaid Managed Care
State Senator, 7th District
5533 North Broadway
Chicago, Illinois 60640

Dear Senator Steans:

I have your letter inquiring whether, in light of recent statutory amendments, physician assistants (PAs) or advanced practice registered nurses (APRNs)[1] (collectively referred to as advanced practice clinicians (APCs)), may continue to dispense and administer mifepristone under the supervision of a physician. For the reasons stated below, it is my opinion that the recent statutory amendments do not impact the authority of APCs to dispense and administer mifepristone under the supervision of a physician.

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[1]Illinois' advanced practice registered nurses were formerly known as advanced practice nurses (APNs). Public Act 100-513, effective January 1, 2018, changed the terminology. This opinion will use the current terminology–advanced practice registered nurse (APRN).

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BACKGROUND

Mifepristone,[2] in combination with another medication called misoprostol, is used for the medical termination of an intrauterine pregnancy during early pregnancy.[3] The United States Food and Drug Administration (FDA) first approved of the use of mifepristone in 2000,[4] and then approved a supplemental application submitted in 2016 by the drug company that markets mifepristone.[5] Mifepristone is only available to be dispensed in certain health care settings and is not available in retail pharmacies or legally available over the internet.[6] The FDA requires that mifepristone be provided "by or under the supervision of" a qualified health care provider who is certified to prescribe mifepristone.[7] The FDA has recognized that some states allow health care providers other than physicians to prescribe and dispense medications to

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[2]Mifepristone is marketed under the brand name Mifeprex and is also known as RU-486.

[3]Food and Drug Administration, Mifeprex (mifepristone) Information (updated February 5, 2018), *available at* https://www.fda.gov/Drugs/DrugSafety/ucm111323.htm; Food and Drug Administration, Questions and Answers on Mifeprex (updated March 28, 2018) (FDA Questions and Answers on Mifeprex), *available at* https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm492705.htm.

[4]Memorandum from Department of Health & Human Services, Public Health Service, Food and Drug Administration, Center for Drug Evaluation and Research, to NDA 20-687 MIFEPREX (mifepristone) Population Council (September 28, 2000) (FDA Memorandum), *available at* http://wayback.archive-it.org/7993/20161024033545/http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm111366.pdf.

[5]Letter from Department of Health & Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, to Danco Laboratories, LLC (NDA 020687/S-020 Supplement Approval) (March 29, 2016), *available at* https://www.accessdata.fda.gov/drugsatfda_docs/appletter/2016/020687Orig1s020ltr.pdf. The approval includes changes in dosage and the dosing regimen, a modification of the gestational age up to which mifepristone has been shown to be safe and effective, and a revision of the label to meet current labeling requirements. FDA Questions and Answers on Mifeprex.

[6]FDA Questions and Answers on Mifeprex; FDA Memorandum at 6.

[7]FDA Questions and Answers on Mifeprex; FDA Memorandum at 6.

patients and has instructed health care providers to check their individual state laws.[8] Thus, whether APCs in Illinois may currently dispense mifepristone turns on the authority that State law grants to APCs.

Authority of Advanced Practice Clinicians under Illinois Law

A number of Illinois statutes set forth the scope of APCs' authority and, specifically, their authority to dispense drugs such as mifepristone. The Medical Practice Act of 1987 (the Medical Practice Act) (225 ILCS 60/1 *et seq.* (West 2016)) is the clear starting point for a review of the authority to dispense drugs. Subsection 33(a) of the Medical Practice Act (*id.* §33(a)) authorizes licensed physicians to purchase and dispense legend drugs[9] requiring a

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[8]FDA Questions and Answers on Mifeprex; FDA Memorandum at 4-5.

[9]The Medical Practice Act does not define the term "legend drug." It is well established, however, that undefined statutory terms must be given their ordinary and popularly understood meaning. *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶15, 28 N.E.3d 747, 751 (2015). The term "legend" in the medical context refers to "a statement on the label of a drug product indicating that federal law prohibits the druggist from dispensing it except on the prescription of a physician" (Webster's Third New International Dictionary 1291 (1993)), while the term "drug" refers to "a substance used as a medicine or in making medicines for internal or external use" (Webster's Third New International Dictionary 695 (1993)). Therefore, a "legend drug" is commonly understood to mean those drugs that are approved by the FDA and that are required by Federal law to be dispensed to the public only by prescription of a licensed physician or other licensed provider.

This understanding of the term "legend drug" is consistent with section 3.23 of the Illinois Food, Drug and Cosmetic Act (410 ILCS 620/3.23 (West 2017 Supp.), as amended by Public Act 100-699, effective August 3, 2018), which prohibits the manufacture, delivery, or possession with intent to manufacture or deliver a legend drug of 6 or more pills, and defines "legend drug" as:

> a drug limited by the Federal Food, Drug and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:
>
> (1) habit forming;
>
> (2) toxic or having potential for harm; or
>
> (3) limited in use by the new drug application for the drug to use only under a medical practitioner's supervision.

prescription in the regular course of practicing medicine. Mifepristone is a legend drug. Subsection 33(a) also provides that "dispensing of such legend drugs shall be the personal act of the person licensed under this Act and may not be delegated to any other person not licensed under this Act or the Pharmacy Practice Act[10] unless such delegated dispensing functions are under the direct supervision of the physician[.]"

Section 54.2 of the Medical Practice Act (225 ILCS 60/54.2 (West 2017 Supp.)) addresses physician delegation of patient care tasks or duties to licensed persons practicing within their respective scopes of practice and to unlicensed persons with appropriate training and education under specified circumstances. Specifically, subsection 54.2(a) of the Act (*id.* §54.2(a)) provides that nothing in that Act shall be construed to limit physician delegation of patient care tasks or duties to other licensed persons, including a licensed practical nurse or a registered professional nurse[11] practicing within the scope of his or her individual licensing Act. Methods of delegation may include oral, written, electronic, standing orders, protocols, guidelines, or verbal orders. *Id.* §54.2(f). Subsection 54.2(a) also provides that no physician may delegate any patient care task or duty that is statutorily or by rule mandated to be performed by a physician.

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[10]*See* 225 ILCS 85/1 *et seq.* (West 2016).

[11]An APRN is a registered professional nurse who has met specified qualifications. *See* 225 ILCS 65/50-10, 65-30 (West 2017 Supp.). A PA is an "other licensed person." *See* 225 ILCS 95/4 (West 2017 Supp.).

Delegation by a physician to a PA or an APRN is also addressed in section 54.5 of the Medical Practice Act (225 ILCS 60/54.5 (West 2017 Supp.), as amended by Public Act 100-863, effective August 14, 2018). Under section 54.5, licensed Illinois physicians may delegate care and treatment responsibilities to a PA through guidelines that are in accord with the Physician Assistant Practice Act of 1987 (the Physician Assistant Practice Act) (225 ILCS 95/1 *et seq.* (West 2016)), and licensed Illinois physicians in active clinical practice may collaborate with an APRN in accordance with the requirements of the Nurse Practice Act (225 ILCS 65/50-1 *et seq.* (West 2016)).

Physician Assistants

The Physician Assistant Practice Act authorizes a licensed PA to perform procedures within the specialty of the collaborating physician and with the collaborating physician exercising the direction and control over the PA necessary to assure that patients receive quality medical care. 225 ILCS 95/4 (West 2017 Supp.). A collaborating physician may delegate tasks or duties to a PA that are: (1) consistent with the PA's education, training, and experience; (2) specific to the practice setting; and (3) implemented and reviewed under a written collaborative agreement established by the physician or physician/physician assistant team. *Id.* §4. Under the Physician Assistant Practice Act, the collaborating physician need not be on-site with the PA, as long as the physician and PA can communicate by telephone or electronic communications. *Id.* §4. Based on these provisions, PAs practice in accordance with a written

collaborative agreement which describes the working relationship of the PA with the collaborating physician and the categories of care, treatment, or procedures to be provided by the PA.[12] *Id.* §4, 7.5.

Subsection 7.5(b) of the Physician Assistant Practice Act (*id.* §7.5(b)) authorizes a collaborating physician to delegate prescriptive authority to a PA as part of a written collaborative agreement. Pursuant to this authority, the written collaborative agreement may include prescription of and dispensing of over the counter medications, legend drugs, and certain controlled substances.[13] *See also* 225 ILCS 60/54.5(g) (West 2017 Supp.), as amended by Public Act 100-863, effective August 14, 2018. Subsection 7.5(c) of the Physician Assistant Practice Act (225 ILCS 95/7.5(c) (West 2017 Supp.)) provides that nothing in this Act shall be construed to limit the delegation of tasks or duties by a physician to other persons, including a licensed practical nurse or a registered professional nurse. Subsection 7.5(c) also states that nothing in this Act shall be construed to authorize a PA to provide health care services required by law or rule to be performed by a physician.

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[12]The services to be provided by a PA shall be those that the collaborating physician is authorized to and generally provides to his or her patients in the normal course of his or her clinical medical practice. 225 ILCS 95/7.5(a) (West 2017 Supp.). The phrase "generally provides to his or her patients in the normal course of his or her clinical medical practice" means services, not specific tasks or duties, the collaborating physician routinely provides individually or through delegation to other persons so that the physician has the experience and ability to collaborate and provide consultation. *Id.* §7.5(a).

[13]A collaborating physician may delegate prescriptive authority for controlled substances but must have a valid, current Illinois controlled substance license and Federal registration with the Drug Enforcement Agency (DEA). A PA must obtain a mid-level practitioner controlled substance license to prescribe controlled substances. 225 ILCS 95/7.5(b) (West 2017 Supp.). Schedule II controlled substances are subject to additional conditions. *Id.* §7.5(b)(3).

Section 7.7 of the Physician Assistant Practice Act (*id.* §7.7) provides greater authority to PAs who practice in hospitals, hospital affiliates, or ambulatory surgical treatment centers. Under this section, PAs in these settings who are granted clinical privileges may provide services without a written collaborative agreement and, when recommended by medical staff, may be granted authority to select, order, and administer medications, including controlled substances.[14] *See id.* §7.7.

Advanced Practice Registered Nurses

The Nurse Practice Act provides for licensure of nurses in three categories: licensed practical nurses, registered professional nurses, and advanced practice registered nurses. *See generally* 225 ILCS 65/50-10 (West 2017 Supp.). An APRN is a registered professional nurse who has met the qualifications for and is licensed as: a certified nurse midwife; a certified nurse practitioner; a certified nurse anesthetist; or a clinical nurse specialist. *Id.* §50-10, 65-30. Physicians may collaborate with APRNs to provide services in the same practice or specialty as the collaborating physician provides in his or her clinical medical practice. 225 ILCS 65/65-35 (West 2017 Supp.); *see also* 225 ILCS 60/54.5(b) (West 2017 Supp.), as amended by Public Act 100-863, effective August 14, 2018.

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[14]Subsection 7.7(c) of the Physician Assistant Practice Act (225 ILCS 95/7.7(c) (West 2017 Supp.)) provides that PAs practicing in a hospital, hospital affiliate, or ambulatory surgical treatment center are not required to obtain a mid-level controlled substance license to order controlled substances. In direct contrast, subsection 7.7(a-5) (*id.* §7.7(a-5)), however, provides that PAs practicing in a hospital affiliate must obtain a mid-level practitioner controlled substance license to prescribe controlled substances, subject to additional conditions for Schedule II controlled substances. Public Act 100-453, effective August 25, 2017, added the language of subsection 7.7(a-5) without striking "hospital affiliate" from the existing language of subsection 7.7(c), which was enacted by Public Act 97-1071, effective August 24, 2012. When two statutory provisions are in conflict, the one which was enacted later should prevail as a later expression of the General Assembly's intent. *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 431, 837 N.E.2d 29, 46 (2005). Thus, the later enacted language of subsection 7.7(a-5) controls, and PAs practicing in a hospital affiliate must obtain a mid-level practitioner controlled substance license to prescribe controlled substances.

Under the Nurse Practice Act, APRNs engaged in clinical practice in collaboration with a physician must have a written collaborative agreement describing the relationship of the APRN and the collaborating physician and the categories of care, treatment, or procedures to be provided by the APRN. 225 ILCS 65/65-35, 65-40 (West 2017 Supp.); *see also* 225 ILCS 60/54.5(b) (West 2017 Supp.). The law does not require the collaborating physician to be personally present at the place where services are rendered by an APRN, as long as the collaborating physician and the APRN are able to communicate, such as by telephone or by electronic communications, as set forth in the written agreement. 225 ILCS 65/65-35(b) (West 2017 Supp.).

An APRN's scope of practice expressly includes, among other things, "[p]rescriptive authority[.]" 225 ILCS 65/65-30(c)(6) (West 2017 Supp.). A collaborating physician may, but is not required to, delegate prescriptive authority to an APRN pursuant to a written collaborative agreement. *Id.* §65-40(a); *see also* 225 ILCS 60/54.5(f) (West 2017 Supp.), as amended by Public Act 100-863, effective August 14, 2018. Prescriptive authority may include prescription of and dispensing of over the counter medications, legend drugs, and controlled substances.[15] 225 ILCS 65/65-40(a) (West 2017 Supp.). Subsection 65-35(e) of the Nurse Practice Act (225 ILCS 65/65-35(e) (West 2017 Supp.)) provides that nothing in this Act shall be construed to limit the delegation of tasks or duties by a physician to other persons,

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[15]A collaborating physician must have a valid, current Illinois controlled substance license and Federal registration to delegate authority to prescribe controlled substances and an APRN must obtain a mid-level practitioner controlled substance license. 225 ILCS 65/65-40(a), (b) (West 2017 Supp.). Additional conditions apply to prescriptions for Schedule II controlled substances. *Id.* §65-40(d).

including a licensed practical nurse or a registered professional nurse. Subsection 65-35(e-5) of the Nurse Practice Act (*id.* §65-35(e-5)) further provides that nothing in this Act shall be construed to authorize an APRN to provide health care services required by law or rule to be performed by a physician, including those acts to be performed by a physician in section 3.1 of the Illinois Abortion Law of 1975 (the Abortion Law) (720 ILCS 510/3.1 (West 2016)).

Like the Physician Assistant Practice Act, the Nurse Practice Act permits APRNs who practice in hospitals, hospital affiliates, or ambulatory surgical treatment centers to be granted broader authority. In those settings, an APRN who is granted clinical privileges may provide services without a written collaborative agreement, and may also be granted the authority to select, order, and administer medications, including controlled substances, to provide certain types of care.[16] 225 ILCS 65/65-35, 65-45 (West 2017 Supp.).

Additionally, section 65-43 of the Nurse Practice Act (225 ILCS 65/65-43 (West 2017 Supp.)) grants full practice authority without a written collaborative agreement to any Illinois-licensed APRN certified as a nurse practitioner, nurse midwife, or clinical nurse specialist who completes (1) at least 250 hours of continuing education or training, and (2) at least 4,000 hours of clinical experience. Section 65-43 of the Nurse Practice Act provides that the scope of practice of an APRN with full practice authority includes the authority to prescribe both legend drugs and, subject to certain limitations, controlled substances. There are limits to

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[16]APRNs practicing in a hospital or ambulatory surgical treatment center are not required to obtain a mid-level controlled substance license. 225 ILCS 65/65-45(a-3) (West 2017 Supp.). APRNs certified as nurse practitioners, nurse midwives, or clinical nurse specialists practicing in a hospital affiliate may also be granted privileges to prescribe controlled substances but must obtain a controlled substance license and additional conditions apply to prescribing Schedule II controlled substances. *Id.* §65-45(c).

the scope of practice of an APRN with full practice authority, however. For example, the scope of practice includes use of only local anesthetic and expressly excludes operative surgery. Additionally, subsection 65-43(e) of the Nurse Practice Act (225 ILCS 65/65-43(e) (West 2017 Supp.)) provides that nothing in the Nurse Practice Act shall be construed to authorize an APRN with full practice authority to provide health care services required by law or rule to be performed by a physician, including but not limited to, those acts to be performed by a physician in section 3.1 of the Abortion Law.

Illinois Abortion Law of 1975

Subsection 2(4) of the Abortion Law (720 ILCS 510/2(4) (West 2016)) currently defines the term "abortion" as:

> *the use of any* instrument, *medicine, drug* or any other substance or device *to terminate the pregnancy of a woman known to be pregnant* with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. (Emphasis added.)

The use of mifepristone, a "medicine" or "drug," to terminate a pregnancy falls within the definition of "abortion" contained in subsection 2(4).

Section 3.1 of the Abortion Law specifies that only physicians may perform abortions but places no limits on the manner in which they do so. This section provides, in pertinent part:

> No abortion shall be performed except by a physician after either (a) he determines that, in his best clinical judgment, the abortion is necessary, or (b) he receives a written statement or oral communication by another physician, hereinafter called the "referring physician", certifying that in the referring physician's best clinical judgment the abortion is necessary.

Opinion No. 09-002

In opinion No. 09-002, issued March 5, 2009, you inquired whether the provisions of the Abortion Law (720 ILCS 510/1 *et seq.* (West 2006)) in effect at that time authorized APCs to dispense mifepristone. It was my opinion that, by placing no express limits on the manner in which physicians perform abortions, section 3.1 of the Abortion Law allows physicians to act in a manner consistent with their medical practices. Because the practice of medicine is guided by the provisions of the Medical Practice Act, the Physician Assistant Practice Act, and the Nurse Practice Act, all of which allowed physicians to delegate authority to APCs, I concluded that a physician may delegate the task of dispensing mifepristone to an APC acting under the physician's supervision.

The pertinent provisions of the Abortion Law have not been amended since the issuance of opinion No. 09-002. However, the General Assembly has amended the three licensing statutes which opinion No. 09-002 considered.

Statutory Amendments Subsequent to the Issuance of Opinion No. 09-002

The recent amendments to the Medical Practice Act, Physician Assistant Practice Act, and Nurse Practice Act have expanded the practice of Illinois APCs. A number of the provisions of these statutes described above are the result of the recent amendments. Among other things, the General Assembly has clarified the extent of physician delegation of prescriptive

authority to APCs for controlled substances[17] and has expanded the authority of Illinois APCs to obtain clinical privileges to practice in a hospital, hospital affiliate, or ambulatory surgical treatment center without a written collaborative agreement or written supervision agreement.[18] The General Assembly has also granted full practice authority without a written collaborative agreement to any Illinois-licensed APRN certified as a nurse practitioner, nurse midwife, or clinical nurse specialist after completing at least 250 hours of continuing education or training and at least 4,000 hours of clinical experience after first attaining national certification. *See* 225 ILCS 65/65-43 (West 2017 Supp.).

As the General Assembly has expanded the practice of APCs, it has also amended the statutory provisions pertaining to physician delegation of tasks or services related to APCs. Specifically, four statutory provisions contain language that address physician delegation of patient care tasks or services: (1) section 54.2 of the Medical Practice Act; (2) subsection 7.5(c)

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[17]*See* Public Acts 96-189, effective August 10, 2009 (amending section 65-40 of the Nurse Practice Act (225 ILCS 65/65-40 (West 2008)) concerning delegation of prescriptive authority for controlled substances to an APN); 96-268, effective August 11, 2009 (amending section 7.5 of the Physician Assistant Practice Act (225 ILCS 95/7.5 (West 2008)) concerning delegation of prescriptive authority to a PA); 97-358, effective August 12, 2011 (amending section 54.5 of the Medical Practice Act (225 ILCS 60/54.5 (West 2010)) concerning delegation of prescriptive authority to APN and PA for controlled substances by topical or transdermal application); 99-173, effective July 29, 2015 (amending section 65-45 of the Nurse Practice Act (225 ILCS 65/65-45 (West 2014)) concerning authority of APN practicing in a hospital affiliate to prescribe controlled substances); 100-453, effective August 25, 2017 (amending section 7.7 of the Physician Assistant Practice Act (225 ILCS 95/7.7 (West 2016)) concerning authority of PA practicing in a hospital affiliate to prescribe controlled substances).

[18]*See* Public Acts 97-358, effective August 12, 2011 (amending section 65-45 of Nurse Practice Act (225 ILCS 65-45 (West 2010)) to allow APN with clinical privileges to practice in a hospital affiliate (previously only in a hospital or ambulatory surgical treatment center) without a written collaborative agreement); 97-1071, effective August 24, 2012 (adding section 7.7 to Physician Assistant Practice Act (225 ILCS 95/7.7) to allow PAs with clinical privileges to provide services in a hospital, hospital affiliate, or ambulatory surgical treatment center without a written supervision agreement); 99-330, §§15, 20, effective January 1, 2016 (amending Nurse Practice Act (225 ILCS 65/50-10 (West 2013 Supp.)) and Physician Assistant Practice Act (225 ILCS 95/4 (West 2012)) to define "hospital affiliate").

of the Physician Assistant Practice Act; (3) section 65-35 of the Nurse Practice Act (225 ILCS 65/65-35 (West 2017 Supp.)); and (4) section 65-43 of the Nurse Practice Act. We must consider the language of these four sections in determining the extent of the APCs' authority under current Illinois law.

ANALYSIS

The primary objective of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Valfer v. Evanston Northwestern Healthcare*, 2016 IL 119220, ¶22, 52 N.E.3d 319, 326 (2016). Legislative intent is best evidenced by the language used in the statute. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶21, 30 N.E.3d 288, 294 (2015). When the meaning of a statute is not clear from the statutory language itself, it is proper to consider the purpose of the enactment and the legislative history of the statute. *Home Star Bank & Financial Services v. Emergency Care & Health Organization, Ltd.*, 2014 IL 115526, ¶24, 6 N.E.3d 128, 135 (2014). Moreover, where an amendment is at issue, it is necessary to compare the statutory language before and after the change, and then weigh the entire statute in light of these considerations. *In re Marriage of Logston*, 103 Ill. 2d 266, 279, 469 N.E.2d 167, 172 (1984).

Subsection 54.2(a) of the Medical Practice Act expressly addresses a physician's delegation of his or her authority to APCs and provides:

> (a) Nothing in this Act shall be construed to limit the delegation of patient care tasks or duties by a physician, to a licensed practical nurse, a registered professional nurse, or other licensed person practicing within the scope of his or her individual

> licensing Act. Delegation by a physician licensed to practice medicine in all its branches to physician assistants or advanced practice registered nurses is also addressed in Section 54.5 of this Act. No physician may delegate any patient care task or duty that is statutorily or by rule mandated to be performed by a physician.[19] (Emphasis added.)

The plain language of subsection 54.2(a) does not address the delegation of the task of dispensing mifepristone (or any other drug) to an APC acting under the supervision of a physician. Because the statutory language does not address the dispensing of mifepristone by an APC, it is appropriate to consider the legislative history of the statute.

The language in subsection 54.2(a) was added by Senate Bill 318, which was enacted as Public Act 96-618, effective January 1, 2010. During the legislative debates on Senate Bill 318 there was no mention of the Abortion Law or whether a physician may delegate the act of dispensing mifepristone under physician supervision. Instead, the discussion during the debates focused primarily on concerns that chiropractors would delegate services typically provided by massage therapists to unlicensed personnel. *See* Remarks of Rep. Saviano, Rep. Coulson, and Rep. Brauer, May 19, 2009, House Debate on Senate Bill No. 318, at 116-122. Thus, nothing in the language of subsection 54.2(a) itself, the legislative history behind its enactment, or the administrative rules adopted in furtherance of the Act (68 Ill. Adm. Code §1285.335 (2018), last amended at 29 Ill. Reg. 18823, effective November 4, 2005), evinces a

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[19]Section 54.5 of the Medical Practice Act, which specifically applies to APCs, does not currently contain language similar to that found in subsection 52.4(a). Subsection 54.5(d) of the Act (225 ILCS 60/54.5(d) (West 2008)) contained language indicating that "[n]othing in this Act shall be construed to limit the delegation of tasks or duties by a physician licensed to practice medicine in all its branches to a licensed practical nurse, a registered professional nurse, or other persons." This language was deleted by Public Act 96-618, effective January 1, 2010, which is the same Public Act that added section 54.2 to the Medical Practice Act.

legislative intent to prohibit a physician from delegating the task of dispensing mifepristone to an APC acting under a physician's supervision.

Similarly, the Physician Assistant Practice Act, which authorizes a physician to delegate prescriptive authority to a PA pursuant to a written collaborative agreement, was amended by Public Act 100-453, effective August 25, 2017, providing in subsection 7.5(c):

> (c) Nothing in this Act shall be construed to limit the delegation of tasks or duties by a physician to a licensed practical nurse, a registered professional nurse, or other persons. Nothing in this Act shall be construed to limit the method of delegation that may be authorized by any means, including, but not limited to, oral, written, electronic, standing orders, protocols, guidelines, or verbal orders. Nothing in this Act shall be construed to authorize a physician assistant to provide health care services required by law or rule to be performed by a physician. (Emphasis added.)

Like the language in the Medical Practice Act, nothing in the plain language of subsection 7.5(c) expressly addresses a physician delegating the task of dispensing mifepristone to a PA acting under the physician's supervision. Further, during legislative debate on Senate Bill 1585, which became Public Act 100-453, there was no discussion regarding whether a physician may delegate the act of dispensing mifepristone under physician supervision. *See* Remarks of Rep. Soto, May 30, 2017, House Debate on Senate Bill No. 1585, at 29; Remarks of Sen. Martinez, April 27, 2017, Senate Debate on Senate Bill No. 1585, at 31-34. Rather, the House sponsor described the bill as a modernization and ten-year extension of the Physician Assistant Practice Act and as a bill intended "to increase patient access to medical care for Medicaid patients, rural Illinoisans, and the underserved areas." *See* Remarks of Rep. Soto, May

30, 2017, House Debate on Senate Bill No. 1585, at 29. Thus, neither the language of subsection 7.5(c) of the Physician Assistant Practice Act, the legislative history behind its enactment, nor the administrative rules adopted under the Act (68 Ill. Adm. Code §1350.55 (2018), last amended at 33 Ill. Reg. 1484, effective January 8, 2009), evinces a legislative intent to prohibit a physician from delegating the task of dispensing mifepristone to a PA acting under a physician's supervision.

Sections 65-35 and 65-43 of the Nurse Practice Act, which address, among other things, the requirements for written collaborative agreements with APRNs, respectively provide:

> (e-5) Nothing in this Act shall be construed to authorize an advanced practice registered nurse to provide health care services required by law or rule to be performed by a physician, including those acts to be performed by a physician in Section 3.1 of the Illinois Abortion Law of 1975. 225 ILCS 65/65-35(e-5) (West 2017 Supp.).[20]
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> (e) Nothing in this Act shall be construed to authorize an advanced practice registered nurse with full practice authority to provide health care services required by law or rule to be performed by a physician, including, but not limited to, those acts to be performed by a physician in Section 3.1 of the Illinois Abortion Law of 1975. 225 ILCS 65/65-43(e) (West 2017 Supp.).

In contrast to the provisions of the Medical Practice Act and the Physician Assistant Practice Act, these sections of the Nurse Practice Act contain specific references to the Abortion Law. As noted above, section 3.1 of the Abortion Law specifies that only physicians

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[20]Before its amendment by Public Act 100-513, subsection 65-35(e) of the Nurse Practice Act paralleled the language currently found in subsection 54.2(a) of the Medical Practice Act and section 7.5 of the Physician Assistant Practice Act. *See* 225 ILCS 65/65-35(e) (West 2016) ("[n]othing in this Act shall be construed to authorize an advanced practice nurse to provide health care services required by law or rule to be performed by a physician").

may perform abortions but places no limits on the manner in which they may do so. It is unclear whether the amendment adding these references to the Abortion Law was meant to change the law and limit the actions APRNs may take with regard to abortion or simply to codify the law as it existed. Thus, it is appropriate to review the legislative history of the amendment.

During legislative debate on House Bill 313, which was enacted as Public Act 100-513 and amended both sections 65-35 and 65-43 of the Nurse Practice Act, the House sponsor described the bill as expanding the Nurse Practice Act to give APRNs the authority to practice independently. *See* Remarks of Rep. Feigenholtz, June 25, 2017, House Debate on House Bill No. 313, at 1-2. Likewise, the Senate sponsor indicated that the bill grants APRNs full practice authority status without a written collaborative agreement upon meeting the specific requirements. Remarks of Sen. Martinez, May 29, 2017, Senate Debate on House Bill No. 313 (Senate Audio Floor Debate CD).

The legislative history thus makes it clear that the amendment was intended to expand APRN authority. When viewed in this context, the references to section 3.1 are properly construed as clarifying that the expansion of APRN practice authority is not intended to go so far as to allow APRNs to independently provide abortion services. Notably, the scope of practice for APRNs with full practice authority includes the authority to prescribe drugs (subject to specific limitations not applicable here) and allows the use of a local anesthetic, but does not include operative surgery. 225 ILCS 65/65-43(c) (West 2017 Supp.). The scope of practice provisions limiting the use of anesthesia and prohibiting operative surgery, standing alone, can be interpreted to place certain surgical abortion services outside the scope of an APRN with full

practice authority, even without a specific reference to the Abortion Law. Without the specific references to section 3.1, however, the provisions expanding APRN authority could be interpreted to allow APRNs to independently prescribe drugs that terminate a pregnancy without physician supervision. It is thus my opinion that the provisions in the Nurse Practice Act referencing section 3.1 of the Abortion Law clarify that APRNs with greater practice authority may not independently provide abortion services. Nothing in the language of these provisions or in their legislative history suggests, however, the intent to prohibit physicians from appropriately delegating the task of dispensing mifepristone to APRNs acting under the physician's supervision. *See* 68 Ill. Adm. Code §1300.430 (2018), last amended at 39 Ill. Reg. 15764, effective November 24, 2015.

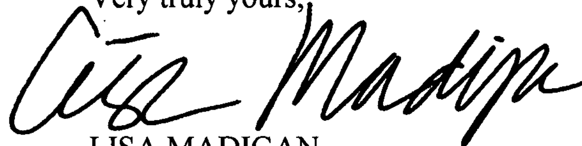
As discussed in opinion No. 09-002, several Illinois statutes, all enacted after the Abortion Law, expressly authorize physicians to delegate certain medical care (including prescribing and dispensing medication) to APRNs and PAs. Nothing in the Abortion Law restricts the ability of physicians to perform abortions in a manner that is consistent with the practice of medicine. As a result, the Abortion Law does not prohibit physicians from undertaking this medical care with the assistance of APCs as allowed under Illinois law. Interpreting section 3.1 of the Abortion Law to prohibit APC assistance would lead to the illogical conclusion that a physician must perform every aspect of patient care, a result clearly irreconcilable with the General Assembly's repeated expansion of APC authority in Illinois, and would criminalize conduct that is otherwise expressly permitted under the Medical Practice Act, the Physician Assistant Practice Act, and the Nurse Practice Act. The General Assembly's recent

enactment of language which significantly expands the practice authority of APRNs, but also clarifies that they may not independently provide abortion services, does not prohibit a physician from delegating the task of dispensing and administering mifepristone to an APC acting under the physician's supervision.

CONCLUSION

Recent statutory amendments to the Medical Practice Act of 1987, the Physician Assistant Practice Act of 1987, and the Nurse Practice Act, do not prohibit a physician from delegating the tasks of dispensing and administering mifepristone and other drugs to an advanced practice clinician acting under the physician's supervision. Consequently, it is my opinion that advanced practice clinicians may continue to dispense and administer mifepristone under the supervision of a physician.

Very truly yours,



LISA MADIGAN
ATTORNEY GENERAL