



I N S T I T U T E F O R J U S T I C E

April 27, 2020

Via Email and UPS

Governor Tate Reeves
Chief of Staff Brad White Office
of the Governor
P.O. Box 139
Jackson, MS 39205
Brad.White@GovReeves.ms.gov
v.governor@govreeves.ms.gov

Phyllis Johnson
Executive Director
713 Pear Orchard Road, Plaza
II Suite 300
Ridgeland, MS 39157
pjohnson@msbn.ms.gov

Re: Mississippi's restrictions on nurse practitioners during the COVID-19 pandemic

To Governor Reeves, Chief of Staff White, and Executive Director Johnson:

The Institute for Justice has learned that Mississippi is barring nurse practitioners from working in hospitals to assist with the COVID-19 pandemic unless they are supervised by a physician. This supervision requirement is effectively banning many nurse practitioners from offering their services to overburdened hospitals, even as volunteers. Not only is this requirement hurting the State's emergency efforts, it is also completely unnecessary and likely unconstitutional. We thus request that you lift this requirement as soon as possible.

The Institute for Justice (IJ) is a national nonprofit organization that has worked to remove and reduce licensing restrictions for 30 years, including in medical professions. For example, IJ has sued several states regarding their unduly burdensome regulations for certificates of need, telemedicine, and medicine dispensing. In addition, IJ drafts model legislation and advises state legislatures on licensing matters nationwide.



INSTITUTE FOR JUSTICE

We understand that your emergency orders and the work of the Mississippi Nursing Board have resulted in several measures easing barriers to licensure during the pandemic, including measures relating to emergency practice licenses, telemedicine, and waivers allowing out-of-state health professionals to practice in the state. These measures are extremely welcome and speak highly of the State's ability to act quickly during a crisis.

However, there is still more to be done—especially when it comes to nurse practitioners. Under state law and regulations, nurse practitioners can practice only under the supervision of a physician. *See, e.g.*, Miss. Code Ann. § 73-15-20(3). This supervisory restriction is preventing many nurse practitioners from helping with COVID-19 patients in all areas of the state, especially rural and underserved regions. Some physicians are unable to supervise nurse practitioners because of limitations in their medical malpractice insurance, while others cannot take on additional supervisory responsibilities during this chaotic time. In addition, nurse practitioners must usually pay over \$1,000 per month to a physician for supervision. Nurse practitioners want to be able to help now, but they are getting caught in red tape.

The supervision requirement is also unnecessary. Mississippi has one of the strictest regulatory regimes for nurse practitioners in the country.¹ The majority of states do not require career-long supervision for nurse practitioners, and 14 states and the District of Columbia do not require supervision at all.² In addition, multiple studies, including an extensive 2018 report from the Brookings Institute, have found that physicians' supervision of nurse practitioners does not increase quality or safety but just restricts competition, raises prices, and reduces patient access to care.³ During the COVID-19 pandemic, it may also cost lives.

Indeed, the evidence suggests that the only reason for the supervision provision is to protect doctors from competition. Not only is such protectionism irrelevant during the pandemic, but several federal and state courts have held that licensing laws that exist to

¹ E.g., American Association of Nurse Practitioners, State Practice Environment, <https://www.aanp.org/advocacy/state/state-practice-environment>.

² Becker's Hospital Review, 28 states with full practice authority for NPs (Dec. 28, 2019), <https://www.beckershospitalreview.com/hospital-physician-relationships/28-states-with-full-practice-authority-for-nps.html>.

³ E.g., E. Kathleen Adams & Sara Markowitz, *Improving efficiency in the health-care system: Removing anticompetitive barriers for advanced practice registered nurses and physician assistants* (June 2018), <https://www.brookings.edu/research/improving-efficiency-in-the-health-care-system-removing-anticompetitive-barriers-for-advanced-practice-registered-nurses-and-physician-assistants/>; Institute for Justice, *The Costs of Occupational Licensing* (Nov. 2018), <https://ij.org/report/at-what-cost/costs-of-occupational-licensing/>.



I N S T I T U T E F O R J U S T I C E

protect others from competition are unconstitutional. *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008); *Bruner v. Zawacki*, 997 F. Supp. 2d 691 (E.D. Ky. 2014); *Santos v. City of Houston*, 852 F. Supp. 601 (S.D. Tex. 1994); *Moultrie Milk Shed v. City of Cairo*, 206 Ga. 348 (1950); *SmileDirectClub, LLC v. Ga. Bd. of Dentistry*, No. 1:18-CV-02328, 2019 WL 3557892 (N.D. Ga. May 8, 2019); *Peachtree Caskets Direct, Inc. v. State Bd. of Funeral Serv. of Ga.*, No. CIV.1:98-CV-3084-MHS, 1999 WL 33651794 (N.D. Ga. Feb. 9, 1999).

Several other states have already loosened or lifted supervision requirements on nurse practitioners during the pandemic, including Massachusetts, Kentucky, Louisiana, Michigan, New Jersey, New York, Virginia, and Wisconsin. Multiple other states have lifted other restrictions on nurse practitioners as well.⁴

We thus respectfully recommend that you lift the supervisory requirement for nurse practitioners during the pandemic, which would allow them to help overburdened hospitals and needy patients. We also hope that your state will choose to remove these restrictions permanently. If you have any questions, we can be reached at esmith@ij.org and kmorton@ij.org.

Sincerely,

Erica Smith
Senior Attorney
Institute for Justice

Kendall Morton
Special Projects Manager
Institute for Justice, Texas Office

⁴ American Association of Nurse Practitioners, COVID-19 State Emergency Response: Temporarily Suspended and Waived Practice Agreement Requirements, <https://www.aanp.org/advocacy/state/covid-19-state-emergency-response-temporarily-suspended-and-waived-practice-agreement-requirements>.