

May 24, 2013

Betsy Houchen, RN, MS, JD  
Executive Director  
Ohio Board of Nursing  
17 South High Street, Suite 400  
Columbus, Ohio 43215

SYLLABUS:

2013-018

R.C. 4723.43(B) does not authorize a certified registered nurse anesthetist (CRNA) to order or prescribe a preoperative or postoperative medication to be administered by another licensed healthcare professional, such as a registered nurse (RN) or licensed practical nurse (LPN).



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section  
Office 614-752-6417  
Fax 614-466-0013

30 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215  
[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

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OPINION NO. 2013-018

Betsy Houchen, RN, MS, JD  
Executive Director  
Ohio Board of Nursing  
17 South High Street, Suite 400  
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Dear Executive Director Houchen:

We have received your request for an opinion concerning the authority of a certified registered nurse anesthetist (CRNA) to prescribe a medication to be administered by another licensed healthcare professional. Specifically, you ask whether R.C. 4723.43(B) authorizes a CRNA to order or prescribe a preoperative or postoperative medication to be administered by another licensed healthcare professional, such as a registered nurse (RN) or licensed practical nurse (LPN). You explain that no physician, podiatrist, or dentist will be ordering or prescribing the medication and that the CRNA will write the order or prescription for the drug to be administered. Before answering your specific question, it is helpful to give a brief overview of the law governing nurses and their prescriptive authority.

### **The Practice of Nursing**

R.C. Chapter 4723 and 11A Ohio Administrative Code Chapters 4723-1 through 4723-27 govern the practice of nursing and establish the Board of Nursing.<sup>1</sup> *See* 1998 Op. Att’y Gen. No. 98-

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<sup>1</sup> The Board of Nursing is created pursuant to R.C. 4723.02. The Board is delegated the duty of administering and enforcing R.C. Chapter 4723, the chapter governing nurses. R.C. 4723.06. Among other things, the Board’s duties relate to the examination and licensing of nurses and the approval of nursing education programs, R.C. 4723.06(A)(1)-(8), issuing and renewing certificates of authority to practice in various nursing specialties, R.C. 4723.06(A)(11), issuing and renewing certificates to prescribe, R.C. 4723.06(A)(13), and approving the classroom and clinical study required to be eligible for a certificate to prescribe, R.C. 4723.06(A)(14). The Board has authority to adopt rules for various purposes, including establishing requirements for licensure and certificates issued by the Board, and to “adopt other rules necessary to carry out the provisions of [R.C. Chapter 4723].” R.C. 4723.07; *see* 1998 Op. Att’y Gen. No. 98-035, at 2-206. By statute, the Attorney General is authorized to give legal advice to state officers and boards “in all matters relating to their official duties.” R.C. 109.12.

035, at 2-206 (describing statutory powers of the Board of Nursing). These chapters govern RNs, LPNs, CRNAs, clinical nurse specialists (CNSs), certified nurse-midwives (CNMs), and certified nurse practitioners (CNP). R.C. 4723.01 (defining various types of nurses); 11A Ohio Admin. Code 4723-4-01 (same); 11A Ohio Admin. Code 4723-8-01 (same); *see* 2005 Op. Att’y Gen. No. 2005-012, at 2-120 (describing the types of nurses governed by R.C. Chapter 4723, the Board of Nursing’s role, and prescriptive authority for certain advanced practice registered nurses). An RN uses “specialized knowledge, judgment and skill derived from the principles of biological, physical, behavioral, social, and nursing sciences.” R.C. 4723.01(B); *see* 11A Ohio Admin. Code 4723-4-03; 11A Ohio Admin. Code 4723-4-07. An LPN provides “to individuals and groups nursing care requiring the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences at the direction of a licensed physician, dentist, podiatrist, optometrist, chiropractor, or registered nurse.” R.C. 4723.01(F); *see* 11A Ohio Admin. Code 4723-4-04; 11A Ohio Admin. Code 4723-4-08; *see also* 1998 Op. Att’y Gen. No. 98-035, at 2-206 to 2-207 (describing the roles of RNs and LPNs). CRNAs, CNSs, CNMs, and CNPs are known as “advanced practice registered nurses.” R.C. 4723.01(O); 11A Ohio Admin. Code 4723-8-01(A). Advanced practice registered nurses “may provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience.” R.C. 4723.43; *see* 11A Ohio Admin. Code 4723-4-05 (outlining standards relating to competent practice as a CRNA, CNS, CNM, or CNP); 11A Ohio Admin. Code 4723-8-02.

Your question concerns a particular type of advanced practice registered nurse, the CRNA. In order to become a CRNA, an individual must apply to the Board of Nursing and meet the following criteria: 1) be a registered nurse, 2) submit documentation demonstrating that the applicant has met certain educational requirements, 3) submit documentation demonstrating that the applicant has passed a particular certification examination, and 4) submit an affidavit swearing to additional personal information and information relevant to the applicant’s experience in the practice of nursing. R.C. 4723.41(A).<sup>2</sup> Once the individual has met these criteria and paid a required fee, the Board of Nursing will issue its certificate of authority to practice as a CRNA. R.C. 4723.42(A). Because your question concerns a CRNA’s authority to prescribe medications, we must examine the law governing the prescriptive authority of nurses.

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Thus, this opinion considers the authority of CRNAs to prescribe medication as that authority relates to the official duties of the Board of Nursing.

<sup>2</sup> Different procedures may govern CRNAs practicing in another jurisdiction and desiring to practice in Ohio. *See* R.C. 4723.41(B); 11A Ohio Admin. Code 4723-8-09.

### Nurses' Authority to Prescribe

A “prescription” is a “written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.” R.C. 4729.01(H). In order to be valid, a prescription “must be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of his/her professional practice.” 11A Ohio Admin. Code 4729-5-30(A). A prescriber is an “individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual’s professional practice” and includes a dentist; a CNS, CNM, or CNP who holds a certificate to prescribe issued under R.C. 4723.48; an optometrist, a physician, a physician’s assistant who holds a certificate to prescribe issued under R.C. Chapter 4730; and a veterinarian.<sup>3</sup> R.C. 4729.01(I). “Prescriber” also means any person authorized by the Revised Code to prescribe dangerous drugs as part of their professional practice. 11A Ohio Admin. Code 4729-5-01.

The General Assembly has enacted a comprehensive statutory scheme detailing how certain advanced practice registered nurses acquire prescriptive authority through “certificates to prescribe” issued by the Board of Nursing. R.C. 4723.48-50. Pursuant to R.C. 4723.50(A), the Board of Nursing has adopted rules in Ohio Admin. Code Chapter 4723-9 that implement the provisions of R.C. Chapter 4723 pertaining to certificates to prescribe.<sup>4</sup>

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<sup>3</sup> Although the definitions of “prescription” and “prescriber” are contained in R.C. Chapter 4729 (pharmacists; dangerous drugs) and 11A Ohio Admin. Code Chapter 4729-5 (pharmacists administrative provisions), they are applicable to R.C. Chapter 4723. “It is a general axiom of statutory construction that once words have acquired a settled meaning, that same meaning will be applied to a subsequent statute on a similar or analogous subject.” *Brennaman v. R.M.I. Co.*, 70 Ohio St.3d 460, 464, 639 N.E.2d 425 (1994), *clarified*, 71 Ohio St. 3d 1211, 643 N.E.2d 138 (1994), *limited on other grounds by Groch v. GMC*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, at ¶147. The subject is similar here because in both R.C. Chapter 4729 and R.C. Chapter 4723 the General Assembly describes the duties of professionals in the medical field and how those duties relate to orders for drugs to be used by individuals. Additionally, the definition of “prescriber” in R.C. 4729.01 specifically includes nurses certified to prescribe medications under R.C. 4723.48 and thus, there is an obvious connection between the two chapters.

<sup>4</sup> “It is well established that administrative rules enacted pursuant to statutory authority have the force and effect of law unless unreasonable or in clear conflict with a statutory provision.” 2011 Op. Att’y Gen. No. 2011-040, at 2-329 (citing *State ex rel. Celebrezze v. Nat’l Lime & Stone Co.*, 68 Ohio St. 3d 377, 382, 627 N.E.2d 538 (1994), and *Youngstown Sheet & Tube Co. v. Lindley*, 38 Ohio St. 3d 232, 234, 527 N.E.2d 828 (1988)). The Board of Nursing has authority to adopt rules “necessary to carry out the provisions of [R.C. Chapter 4723].” R.C. 4723.07. Therefore, in examining whether a CRNA has been granted the authority to prescribe medications, we look to both Chapter 4723 and the administrative rules enacted by the Board of Nursing.

R.C. 4723.48(A) states that a CNS, CNM, or CNP who seeks authority to prescribe drugs and therapeutic devices may apply to the Board of Nursing for a “certificate to prescribe.” A “certificate to prescribe” is the certificate issued by the Board of Nursing that “authorizes the holder of the certificate to prescribe drugs and therapeutic devices in collaboration with one or more physicians or podiatrists.” 11A Ohio Admin. Code 4723-9-01(A). Initially, the certificate to prescribe is issued as an externship certificate, allowing a nurse to obtain experience in prescribing drugs and therapeutic devices by participating in an externship program under the supervision of one or more physicians. R.C. 4723.48; 11A Ohio Admin. Code 4723-9-01(G), (H). After completing that externship, the holder of the externship certificate may apply for a new certificate to prescribe, and upon receipt of that certificate, the nurse can prescribe drugs and therapeutic devices in collaboration with one or more physicians or podiatrists. R.C. 4723.48(A); 11A Ohio Admin. Code 4723-9-06.

In order to obtain a certificate to prescribe from the Board of Nursing, a nurse must make an application and include evidence of holding a current, valid certificate of authority to practice as a CNS, CNM, or CNP; evidence of successfully completing a course of study in advanced pharmacology and related topics; a fee; and any additional information the Board of Nursing requires pursuant to its rules. R.C. 4723.482; *see* 11A Ohio Admin. Code 4723-9-05. The course of study a nurse must complete in advanced pharmacology and related topics is specifically delineated by statute and must include, for example, instruction in advanced pharmacology that includes pharmacokinetic principles and clinical application and the use of drugs and therapeutic devices in the prevention of illness and maintenance of health; instruction on the fiscal and ethical implications of prescribing drugs and therapeutic devices; instruction on the state and federal laws that apply to the authority to prescribe; instruction that is specific to schedule II controlled substances; and any additional instruction required pursuant to the rules adopted by the Board of Nursing. R.C. 4723.482(B); 11A Ohio Admin. Code 4723-9-02; *see* 11A Ohio Admin. Code 4723-9-11; 11A Ohio Admin. Code 4723-9-13.<sup>5</sup>

Once a CNS, CNM, or CNP obtains a certificate to prescribe, they are subject to certain standards and conditions governing their authority to prescribe. For example, they are limited in the types of drugs and devices they can prescribe, R.C. 4723.481(A), their prescriptive authority cannot exceed the prescriptive authority of the collaborating physician or podiatrist, R.C. 4723.481(B), and they can prescribe schedule II controlled substances only in certain circumstances, R.C. 4723.481(C). *See* 11A Ohio Admin. Code 4723-9-10; 11A Ohio Admin. Code 4723-9-09 (standards of prescribing for nurses with a certificate to prescribe).

R.C. Chapter 4723 establishes a committee on prescriptive governance, composed of one CNS, one CNM, one CNP, a member of the Board of Nursing who is at a minimum an RN, four physicians, one pharmacist member of the State Board of Pharmacy, and one pharmacist actively

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<sup>5</sup> Different procedures may govern applicants who are practicing as a CNS, CNM, or CNP in another jurisdiction. R.C. 4723.482 (C), (D); 11A Ohio Admin. Code 4723-9-04(B), (C); 11A Ohio Admin. Code 4723-9-05(B); 11A Ohio Admin. Code 4723-9-06(B).

engaged as a clinical pharmacist in Ohio. R.C. 4723.49. CRNAs are not represented on this committee. The committee on prescriptive governance is in charge of developing recommendations regarding the authority to prescribe drugs and therapeutic devices pursuant to a certificate to prescribe issued under R.C. 4723.48. R.C. 4723.492. The committee submits recommendations to the Board of Nursing as necessary for the Board to adopt rules. *Id.*

These statutes and rules just discussed apply to the procedures a CNS, CNM, or CNP must follow to obtain a certificate to prescribe. None of those procedures enable a CRNA to obtain a certificate to prescribe. Thus, we must look to other sections in R.C. Chapter 4723 to determine whether a CRNA is granted authority to prescribe medications.

### **Scope of Practice for a CRNA**

R.C. 4723.43(B) governs the scope of practice of CRNAs. Specifically, it states:

(B) A nurse authorized to practice as a certified registered nurse anesthetist, with the supervision and in the immediate presence of a physician, podiatrist, or dentist, may administer anesthesia and perform anesthesia induction, maintenance, and emergence, and may perform with supervision preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified registered nurse anesthetist is not required to obtain a certificate to prescribe in order to provide the anesthesia care described in this division.

The physician, podiatrist, or dentist supervising a certified registered nurse anesthetist must be actively engaged in practice in this state. When a certified registered nurse anesthetist is supervised by a podiatrist, the nurse's scope of practice is limited to the anesthesia procedures that the podiatrist has the authority under [R.C. 4731.51] to perform. A certified registered nurse anesthetist may not administer general anesthesia under the supervision of a podiatrist in a podiatrist's office. When a certified registered nurse anesthetist is supervised by a dentist, the nurse's scope of practice is limited to the anesthesia procedures that the dentist has the authority under [R.C. Chapter 4715] to perform.

R.C. 4723.43(B). We direct our focus to the first paragraph of R.C. 4723.43(B), which lists the functions a CRNA may perform. Several of these functions, such as "administer anesthesia," "anesthesia induction, maintenance, and emergence," "preanesthetic preparation and evaluation," "postanesthesia care," and "clinical support functions," are largely undefined by statute or administrative rule. To aid our discussion, we will generally describe these terms here.

“Anesthesia” means “loss of sensation resulting from pharmacologic depression of nerve function or from neurologic dysfunction.”<sup>6</sup> *Stedman’s Medical Dictionary for the Health Professions and Nursing* 74-75 (5th ed. 2005). Anesthesia may be “local, topical, general, or regional, depending on the affected area.” *Id.* “Administer” is defined in various provisions in the Revised Code and the Ohio Administrative Code, and although there is some variation, generally means “the direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.” R.C. 3719.01; see 11A Ohio Admin. Code 3793:2-1-05(I)(1)(a); 11A Ohio Admin. Code 3793:4-1-02(PP)(1)(a); 11A Ohio Admin. Code 4731-23-01; 11A Ohio Admin. Code 4731-24-01; 11A Ohio Admin. Code 5122-24-01. Thus, to “administer anesthesia,” as used in R.C. 4723.43(B), means to apply a drug to a person that causes that person to experience a loss of sensation.

“Induction” refers to “[t]he period from the start of anesthesia to the establishment of a depth of anesthesia adequate for a surgical procedure.” *Stedman’s Medical Dictionary for the Health Professions and Nursing* 736 (5th ed. 2005). “Maintenance” is the “maintaining of a patient undergoing general anesthesia in an unconscious state for the duration of surgery by injecting small boluses or by infusing an injectable drug, or by administering [certain drugs].” *McGraw Hill Concise Dictionary of Modern Medicine* 392 (2006). “Emergence” refers to “[a] stage in recovery from general anesthesia that includes a return to spontaneous breathing, voluntary swallowing, and normal consciousness.” *Stedman’s Medical Dictionary for the Health Professions and Nursing* 466 (5th ed. 2005). Thus, a CRNA that performs “anesthesia induction, maintenance, and emergence” carries out functions necessary to these three stages of anesthesia.

“Preanesthetic” simply means “[b]efore anesthesia,” *id.* at 1177, and thus “preanesthetic preparation and evaluation” means preparing and evaluating the patient before anesthesia is administered. The prefix “post” means “after” or “behind,” *id.* at 1167, and thus “postanesthesia care” is that care given to a patient after anesthesia is administered.<sup>7</sup> Finally, “clinical” means “founded on

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<sup>6</sup> The term “anesthesia,” and other terms relating to anesthesia, have been defined in a number of places in the Revised Code and the Ohio Administrative Code. See, e.g., R.C. 2305.234(A)(13), (14) (defining “deep sedation” and “general anesthesia”); R.C. 4730.091(A) (defining “local anesthesia”); 11A Ohio Admin. Code 3701-83-15(C) (defining “anesthesia”); 11A Ohio Admin. Code 4731-25-01(C), (D), (E), (F), (H), (J), (M), (N) (defining “deep sedation/analgesia,” “general anesthesia,” “local anesthesia,” “minimal sedation (anxiolysis),” “moderate sedation/analgesia,” “regional anesthesia,” “topical anesthesia,” and “tumescant local anesthesia”); 11A Ohio Admin. Code 4761-3-01(R), (S), (T), (U) (defining “minimal sedation,” “moderate sedation/analgesia,” “deep sedation/analgesia,” and “general anesthesia”); 11A Ohio Admin. Code 4774-1-01(B) (defining “general anesthesia,” “deep sedation,” “moderate sedation,” and “minimal sedation”); 11A Ohio Admin. Code 5101:3-5-11(A)(1) (defining “general anesthesia”).

<sup>7</sup> *Taber’s Cyclopedic Medical Dictionary* 125 (22nd ed. 2013) describes patient care in the preoperative and postoperative setting:

actual observation or treatment of patients as distinguished from data or facts obtained from other source” or pertaining to “a clinic.” *Taber’s Cyclopedic Medical Dictionary* 501 (22nd ed. 2013). Therefore, clinical support functions must relate to those functions a CRNA may perform that support the observation and treatment of patients or that support the clinic itself.

The duties listed in R.C. 4723.43(B) are not without limitation. A CRNA may only administer anesthesia and perform anesthesia induction, maintenance, and emergence with the “supervision and in the immediate presence of a physician, podiatrist, or dentist.” A CRNA may perform preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions, consistent with the nurse’s education and certification only “with supervision” and in accordance with rules adopted by the Board. Under R.C. 4723.01(M), “supervision” means that a CRNA is under “the direction” of a podiatrist, dentist, or physician, and, “when administering anesthesia, the certified registered nurse anesthetist is in the immediate presence of the podiatrist, dentist, or physician.” *See also* Ohio Admin. Code 4723-8-01. After authorizing these functions, the statute then states “[a] certified registered nurse anesthetist is not required to obtain a certificate to prescribe in order to provide the anesthesia care described in this division.” R.C. 4723.43(B).

### **A CRNA’s Prescriptive Authority**

Now that we have examined the statutory scheme governing nurses, their prescriptive authority under R.C. Chapter 4723 and the corresponding rules, and the scope of practice of a CRNA under R.C. 4723.43(B), we turn to your question. You have asked whether R.C. 4723.43(B) authorizes a CRNA to order or prescribe medication to be administered by another licensed healthcare professional. Based on a plain reading of R.C. 4723.43 as well as the entire statutory scheme

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*Preoperative:* Before induction of anesthesia, contact lenses, hearing aids, dentures (partial plates as well as full sets), wristwatches, and jewelry are removed. The anesthesiologist or nurse-anesthetist interviews and examines the patient briefly, assessing general respiratory and cardiovascular health. The patient is questioned regarding compliance with prescribed operative fasting.... Baseline vital signs are assessed and recorded. An ECG, CBC, serum chemistries and urinalysis are ordered for many general surgeries unless results of recent tests are available. Allergies, previous surgeries, and any untoward responses to anesthetic agents are reviewed, along with any special patient restrictions....

*Postoperative:* During emergence from general anesthesia, the patient’s airway is protected and vital signs monitored. Level of consciousness, status of protective reflexes, motor activity, and emotional state are evaluated. The patient is reoriented to person, place, and time; this information is repeated as often as necessary.... The mental status and level of consciousness of each patient should be carefully observed for changes. Patients’ eyeglasses and hearing aids are returned to them as soon as possible.... Prescribed analgesics are administered, and comfort measures, breathing exercises, abdominal support, and position changes are provided.

governing a nurse's authority to prescribe, we conclude that R.C. 4723.43(B) does not authorize CRNAs to order or prescribe medication to be administered by another licensed healthcare professional.

R.C. 4723.43(B) does not provide a mechanism for CRNAs to acquire prescriptive authority. It simply lays out a CRNAs scope of practice and authorizes a CRNA to administer anesthesia and perform anesthesia induction, maintenance, and emergence only with supervision and in the immediate presence of a physician, podiatrist, or dentist. In addition, a CRNA may perform preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions, consistent with the nurse's education and certification, and in accordance with the rules adopted by the Board of Nursing, only with supervision. These functions do not necessarily include writing prescriptions. As noted above, a "prescription" is a "written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs." R.C. 4729.01(H). The functions listed in R.C. 4723.43(B) do not discuss making written, electronic, or oral orders for drugs.

The last sentence of the first paragraph of R.C. 4723.43(B) states "[a] certified registered nurse anesthetist is not required to obtain a certificate to prescribe in order to provide the anesthesia care described in this division." It has been suggested that this language grants a CRNA the authority to prescribe medication. This language, however, is clearly qualified and limited when read in the context of the entire statute. *See State v. Dickerson*, 45 Ohio St. 3d 206, 209, 543 N.E.2d 1250 (1989), *cert. denied*, 494 U.S. 1090 (1990) ("when asked to interpret a statute, a court should consider the statute in its entirety"). The purpose of this language is to convey the understanding that a CRNA is not required to obtain a certificate to prescribe in order to perform the anesthesia care described in R.C. 4723.43(B) because the anesthesia care described in R.C. 4723.43(B) does not require that a CRNA prescribe medications. Rather, the anesthesia care described in R.C. 4723.43(B) is the general care that CRNAs provide in their scope of practice. This care consists of administering anesthesia, performing anesthesia induction, maintenance, and emergence, and performing preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions.

We recognize that some of the terms found in R.C. 4723.43(B), such as "postanesthesia care," or "clinical support functions" might be construed to include the authority to prescribe. For example, it could be asserted that "postanesthesia care" includes writing prescriptions to support a patient after anesthesia has been administered and therefore a CRNA does not need a certificate to prescribe in order to provide that "postanesthesia care." Such a result, however, would be incompatible with the entire statutory and regulatory scheme, discussed above, that authorizes advanced practice registered nurses other than CRNAs to obtain certificates to prescribe. Where the General Assembly has chosen to grant prescriptive authority to advanced practice registered nurses, it has enacted language granting this authority explicitly and unequivocally. *See* R.C. 4723.48-.50

Moreover, the fact that under R.C. 4723.43(B) a CRNA may only perform the listed duties in the immediate presence of or with supervision of a physician, podiatrist, or dentist also supports the conclusion that a CRNA is not granted prescriptive authority. There is no need for a CRNA to

prescribe medications where that CRNA is already working under the direction of a medical professional that has the authority to prescribe.

Divisions (A), (C), and (D) of R.C. 4723.43 support this reading of division (B). The scope of practice for a CNM is described as follows:

(A) A nurse authorized to practice as a certified nurse-midwife, in collaboration with one or more physicians, may provide the management of preventive services and those primary care services necessary to provide health care to women antepartally, intrapartally, postpartally, and gynecologically, consistent with the nurse's education and certification, and in accordance with rules adopted by the board of nursing.

No certified nurse-midwife may perform version, deliver breech or face presentation, use forceps, do any obstetric operation, or treat any other abnormal condition, except in emergencies. Division (A) of this section does not prohibit a certified nurse-midwife from performing episiotomies or normal vaginal deliveries, or repairing vaginal tears. *A certified nurse-midwife who holds a certificate to prescribe issued under [R.C. 4723.48] may, in collaboration with one or more physicians, prescribe drugs and therapeutic devices in accordance with [R.C. 4723.481].*

R.C. 4723.43(A) (emphasis added). The scope of practice for a CNP is described as follows:

(C) A nurse authorized to practice as a certified nurse practitioner, in collaboration with one or more physicians or podiatrists, may provide preventive and primary care services, provide services for acute illnesses, and evaluate and promote patient wellness within the nurse's nursing specialty, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. *A certified nurse practitioner who holds a certificate to prescribe issued under [R.C. 4723.48] may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with [R.C. 4723.481].*

When a certified nurse practitioner is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under [R.C. 4731.51] to perform.

R.C. 4723.43(C) (emphasis added). The scope of practice for a CNS is described as follows:

(D) A nurse authorized to practice as a clinical nurse specialist, in collaboration with one or more physicians or podiatrists, may provide and manage the care of individuals and groups with complex health problems and provide health care services that promote, improve, and manage health care within the nurse's nursing specialty, consistent with the nurse's education and in accordance with rules adopted by the board. *A clinical nurse specialist who holds a certificate to prescribe issued under [R.C. 4723.48] may, in collaboration with one or more physicians or*

*podiatrists, prescribe drugs and therapeutic devices in accordance with [R.C. 4723.481].*

When a clinical nurse specialist is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under [R.C. 4731.51] to perform.

R.C. 4723.43(D) (emphasis added).

These provisions declare, in pertinent part, that CNSs, CNMs, and CNPs, respectively, who hold certificates to prescribe issued under R.C. 4723.48 "may," in collaboration with a physician (or for CNSs and CNPs, podiatrists as well) "prescribe drugs and therapeutic devices in accordance with [R.C. 4723.481]." R.C. 4723.43 (A), (C), (D). Thus, R.C. 4723.43(A), (C), and (D) explicitly state CNSs, CNMs, and CNPs with certificates to prescribe "may ... prescribe drugs and therapeutic devices."

In the case of a CRNA, however, the statute declares that a CRNA "is not required to obtain" a certificate to prescribe when providing "the anesthesia care described in this division." R.C. 4723.43(B) does not state that CRNAs may prescribe drugs and therapeutic devices as it does for CNSs, CNMs, and CNPs. The specific language used to denote that CNSs, CNMs, and CNPs may prescribe drugs and therapeutic devices when holding a certificate to prescribe highlights that no such language is employed when referring to CRNAs. Had the General Assembly intended to authorize a CRNA to prescribe medications in R.C. 4723.43(B), it would have done so by means of express language, thereby eliminating all doubt in that regard. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the General Assembly intended a particular result, "it would not have been difficult to find language which would express that purpose," having used language elsewhere that plainly and clearly compelled that result). Granting nurses the authority to prescribe drugs and therapeutic devices is clearly a matter of great magnitude and the General Assembly conferred that authority explicitly upon CNSs, CNMs, and CNPs. It is unlikely that the General Assembly would chose to grant CRNAs the same authority, yet not state it explicitly.

In addition, as described in detail above, the General Assembly enacted a comprehensive scheme regulating nurses who may prescribe drugs. We must conclude, therefore, that the General Assembly did not intend that nurses who are not certified by the Board of Nursing to prescribe drugs could do so without a specific statutory provision granting them that authority. *See* 2000 Op. Att'y Gen. No. 2000-023, at 2-160 (advising that where the General Assembly enacted a comprehensive scheme regulating persons who administer drugs, the General Assembly must not have intended that a person not licensed or certified to administer a drug may be authorized to do so solely at the request of a licensed physician). *See Fort Hamilton-Hughes Mem. Hosp. Ctr. v. Southard*, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903 (1984) ("[i]t is a basic doctrine of construction that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others"); *NACCO Indus. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997), *cert. denied*, 522 U.S. 1091 (1998) ("Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another"). Now that we have concluded that R.C. 4723.43 does not authorize CRNAs to prescribe medications and therapeutic devices, we will turn to

other provisions of R.C. Chapters 4723 and 4729 and the Ohio Administrative Code that support this conclusion.

The terms, “licensed health professional authorized to prescribe drugs” and “prescriber,” are defined in R.C. 4729.01(I). They are defined to include *only* dentists; CNSs, CNMs, and CNPs who hold certificates to prescribe; optometrists; physicians (including podiatrists); physicians assistants holding a certificate to prescribe under R.C. Chapter 4730; and veterinarians. R.C. 4729.01(I); *see* 11A Ohio Admin. Code 4729-5-15(D) (listing those people authorized to write prescriptions and indicating only advanced practice registered nurses who have a certificate to prescribe may write prescriptions). A CRNA is not included among those professionals listed in the definitions of “licensed health professional authorized to prescribe drugs” and “prescriber” in R.C. 4729.01(I). The fact that a CRNA is not listed in these definitions means that a CRNA is not a “licensed health professional authorized to prescribe drugs” or a “prescriber” under the statute. Similarly, Ohio Admin. Code 4723-8-02(C) states: “[o]nly a certified nurse-midwife, certified nurse practitioner, or clinical nurse specialist authorized under [R.C. 4723.48] may prescribe drugs.” A CRNA is not listed among those the Board has determined are authorized to prescribe drugs, once again indicating that a CRNA does not have that authority.

R.C. 4723.50(A) authorizes the Board of Nursing to adopt rules relating to “the authority of clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners to prescribe drugs and therapeutic devices.” The Revised Code does not, however, specifically authorize the Board of Nursing to adopt rules relating to a CRNA’s authority to prescribe. Had the General Assembly intended that CRNAs be permitted to prescribe medications, it would have explicitly granted the Board of Nursing the power to regulate the prescriptive authority of a CRNA.

R.C. 4723.28 gives authority to the Board of Nursing to impose sanctions against a CNS, CNM, or CNP who holds a certificate to prescribe issued under R.C. 4723.48, but who does not prescribe medications in accordance with R.C. 4723.481. R.C. 4723.28(B)(29). R.C. 4723.28 makes no mention of imposing sanctions against a CRNA for any failure of the CRNA when prescribing medications. It is unlikely that the Board of Nursing would not be granted explicit authority to sanction CRNAs who prescribe medication outside of their authority when the Board is granted such authority to sanction CNSs, CNMs, or CNPs.

CNSs, CNMs, and CNPs who hold certificates to prescribe are limited in the exercise of their prescriptive authority. For example, under R.C. 4723.481, CNSs, CNMs, and CNPs are not permitted to prescribe certain kinds of drugs and their prescriptive authority may not exceed the prescriptive authority of the collaborating physician or podiatrist. R.C. 4723.481(A)-(C); *see also* R.C. 3719.06(A)(2) (limiting CNSs, CNMs, or CNPs in their ability to prescribe certain types of controlled substances). Were we to read R.C. 4723.43(B) as granting a CRNA the authority to prescribe drugs, that authority would be virtually unchecked, as no provision in R.C. Chapter 4723 imposes specific limitations on a CRNA’s ability to prescribe drugs.

R.C. 4723.44 prohibits a CRNA, CNS, CNM, or CNP from “[p]rescrib[ing] drugs or therapeutic devices unless the nurse holds a current, valid certificate to prescribe issued under [R.C.

4723.48].” R.C. 4723.44(C)(5). Because R.C. 4723.48 only permits CNSs, CNMs, and CNPs to apply to the Board of Nursing for a certificate to prescribe and there is no process by which a CRNA can obtain a certificate to prescribe, R.C. 4723.44’s prohibition applies to CRNAs without exception.

R.C. 4723.151 prohibits a nurse from prescribing medical measures. It does not prohibit, however, a CRNA, CNS, CNM, or CNP from practicing within their scope of practice under R.C. 4723.43. As noted above, the scope of a CRNA’s practice under R.C. 4723.43(B) does not include prescribing drugs or therapeutic devices, and thus R.C. 4723.43(B) does not except a CRNA from the prohibition in R.C. 4723.151. R.C. 4723.151 also provides that it does not prohibit CNSs, CNMs, or CNPs who hold certificates to prescribe from prescribing drugs and therapeutic devices in accordance with their certificate. It does not provide any such exception for CRNAs who prescribe drugs or therapeutic devices. Thus, the prohibition contained in R.C. 4723.151 applies to CRNAs without exception, which means they are prohibited from prescribing medical measures.

Finally, the legislative history also supports the conclusion that a CRNA does not have authority to prescribe. In 2000, the General Assembly passed Am. Sub. H.B. 241, which created the statutory scheme discussed above governing certificates to prescribe. 1999-2000 Ohio Laws, Part I, 1731 (Am. Sub. H.B. 241, eff. May 17, 2000). This bill laid out the “procedures by which a nurse practicing as a nurse-midwife, certified nurse practitioner, or clinical nurse specialist may receive authority to prescribe drugs and therapeutic devices in any area of Ohio.” Ohio Legislative Service Comm’n, Final Bill Analysis, Am. Sub. H. B. 241 (Content and Operation) (May 17, 2000). When H.B. 241 was originally introduced in the General Assembly, however, it contained provisions for CRNAs to receive prescriptive authority through the certificate to prescribe program as well. H.B. 241, 123rd Gen. A. (as introduced) (March 10, 1999). The Ohio Legislative Service Commission’s Bill Analysis for H.B. 241 as introduced stated that the bill “[p]rovides that the Board of Nursing may issue a certificate to prescribe drugs and therapeutic devices to a certified nurse-midwife (CNM), certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA), or clinical nurse specialist (CNS) who meets the bill’s requirements and has successfully completed a course of study in advanced pharmacology.” Ohio Legislative Service Comm’n, Analysis of H.B. 241, 123rd Gen. A. (as introduced). The final version of Am. Sub. H.B. 241, however, deleted references granting a CRNA the ability to obtain a certificate to prescribe. 1999-2000 Ohio Laws, Part I, 1731, 1784 (Am. Sub. H.B. 241, eff. May 17, 2000). CRNAs were no longer included in the certificate to prescribe program. Thus, it appears from the legislative history that the General Assembly intentionally excluded CRNAs from the categories of advanced practice registered nurses that could be given authority to prescribe. In fact, the Legislative Service Commission, in its final bill analysis of Am. Sub. H. B. 241 states, “[a] certified registered nurse anesthetist is not eligible to receive prescriptive authority.” Ohio Legislative Service Comm’n, Final Bill Analysis, Am. Sub. H. B. 241 (Content and Operation) (May 17, 2000).

### **Conclusion**

For the reasons discussed above, it is my opinion, and you are hereby advised, that R.C. 4723.43(B) does not authorize a certified registered nurse anesthetist (CRNA) to order or prescribe a

preoperative or postoperative medication to be administered by another licensed healthcare professional, such as a registered nurse (RN) or licensed practical nurse (LPN).

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE  
Ohio Attorney General