

**Comments to Board on Pharmacy re Rule 64B16-27.4001 – February 5, 2019**

Good afternoon Mr. Chairman and members of the Board. My name is T.J. Morton and I'm with the Lockwood Law Firm here in Tallahassee. I'm providing comments on behalf of the Florida Pharmacy Association regarding the Board's recently adopted Rule 64B16-27.4001 – specifically, regarding the provisions regarding the definition of “direct supervision”.

As indicated by Mr. Jackson in his comments, the Florida Pharmacy Association has serious concerns regarding the rule's language authorizing pharmacists to remotely supervise pharmacy technicians. Rather than reiterate the health, safety and welfare concerns that have been addressed by Mr. Jackson, my comments will focus on our legal concerns with the new rule.

To put it plainly, we believe the new rule is invalid. We do not believe the Board has been delegated rulemaking authority to define direct supervision in a manner that allows for a pharmacist to remotely supervise a pharmacy technician. Every provision of the Florida Statutes that defines “direct supervision” requires the physical presence of the licensee on the same premises as the supervised individual. Additionally, direct supervision is commonly understood in healthcare professions as meaning on the same physical premises. Conversely, “indirect supervision” and “general supervision” are defined in the Florida Statutes and commonly understood as allowing for the licensee to supervise the individual remotely. If the legislature intended to allow for remote supervision, it would have provided for indirect or general supervision of pharmacy technicians. By defining direct supervision to include remote

supervision, the Board has enlarged, modified or contravened the provisions of section 465.014 – the law implemented by the rule.

Chapter 465 includes several provisions that support this conclusion. First, section 465.014 –the law implemented by the rule - suggests that the Board does not have the authority to define “direct supervision.” While section 465.0155 grants the Board general rulemaking authority to adopt rules relating to standards of practice, this authority is not sufficient to support the new rule. If it were, there would be no reason for the legislature to have included the language in section 465.014 specifically authorizing the Board to adopt rules establishing guidelines to be followed in determining the circumstances under which a licensed pharmacist may supervise more than one pharmacy technician. The inclusion of this language was necessary to grant to the Board the specific rulemaking authority required to adopt a rule regarding pharmacist to pharmacy technician ratios. No such specific rulemaking authority exists to authorize the Board to adopt a rule defining direct supervision – particularly in a manner that allows for a pharmacist to remotely supervise a pharmacy technician. If the legislature intended for the Board to adopt a rule to define direct supervision as something other than on the same physical premises, it would have specifically said so in section 465.014 - just as it did for the rule regarding pharmacist to pharmacy technician ratios.

Further, section 465.003(11)(b) provides that the pharmacy department must be closed anytime a pharmacist is not present and on duty. This statute clearly requires the the physical presence of a pharmacist at a pharmacy. This statute, coupled with the language in section 465.014 which generally establishes a 1:1 pharmacist to technician ratio, strongly indicates that

the legislature never contemplated that a pharmacist could remotely supervise a technician. If the legislature believed that a pharmacist could adequately supervise a technician without being physically present on the premises of the pharmacy, there would be no reason to require the physical presence of a pharmacist at a pharmacy in order for the pharmacy to be open. Instead, the statute would only require the physical presence of a pharmacy technician in order for a pharmacy to be open.

In sum, we believe the fact that direct supervision in Florida Statutes always requires the physical presence of the licensee, the lack of specific authority delegated to the Board to define “direct supervision”, and the requirement that a pharmacist must be physically present in a pharmacy at all times, when taken together, strongly indicate that the legislature intended for a pharmacist to be on the same physical premises as the pharmacy technicians which he or she supervises. We believe the Board’s new rule authorizing remote supervision of pharmacy technicians is an invalid exercise of delegated legislative authority.

For these reasons, and the important health, safety, and welfare concerns raised by Mr. Jackson, the FPA respectfully asks the Board to reconsider the rule and reopen the rulemaking process to address these concerns. While the FPA is prepared to pursue a rule challenge, it is our desire to work collaboratively with the Board in an effort to bring the rule back in-line with the intent of chapter 465.

Thank you for your time and consideration.