ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: June 18, 2019

TO: Ruby Jason, Oregon State Board of Nursing

FROM: Thomas W. Cowan, Senior Assistant Attorney General
Business Activities Section

SUBJECT: Ketamine Opinion

The Board has asked for an opinion responding to the following inquiry:

"Whether the statutory language authorizing the practice of the CRNA (Certified Nurse Anesthetist) is intended to include the infusion of Ketamine at a sub-anesthetic dose in the following scenarios:

1. In a practice clinic owned and operated by the CRNA with referral of patients by a practitioner licensed to diagnose and prescribe treatment for TRD (Treatment-Resistant Depression) and/or PTSD (Post-Traumatic Stress Disorder).

2. In medical collaboration with an anesthesiologist in a practice operated as either a hospital, ambulatory care setting, or office practice owned by an anesthesiologist." (Attachment 1)

The Board's inquiry was further refined to clarify that, as to both of these scenarios, it should be assumed that the patient presented with a proper referral from a qualified health care provider and on-going mental health/PTSD therapy. The CRNA would then determine the dose and frequency of the infusions. (Attachment 2).

Given the broad spectrum of issues raised in the above inquiry this memo will focus on CRNA authority to provide care for a patient, currently diagnosed and receiving treatment for TRD or PTSD from a mental health provider, and having been referred to the CRNA for Ketamine infusion therapy.

Short response: probably yes, with limitations.

There are three statutory platforms supporting the practice of certified registered nurse anesthetists. (CRNA) They are ORS 678.255 (ambulatory surgical center services), ORS 678.275 (hospital services), and ORS 678.278 (office services). While these settings are unique

in certain respects, for purposes of this inquiry they have relevant commonalities. Each of these practice settings require the CRNA to assess the health status of the patient as it relates to the risk associated with anesthetic management, and to determine and administer an appropriate anesthesia plan.

As to assessment, all of the above-mentioned platforms contemplate a contextualized assessment to support the anesthesia plan. Regardless of practice setting each patient shall receive an assessment of their ("health status…as that status relates to the relative risks associated with anesthetic management…" ORS 678.255(2)(a)). While this type of assessment is attendant to all CRNA services, it is relevant to this inquiry to note what the assessment is not. It is not an effort to diagnose a patient with TRD or PTSD viz-a-vis differential mental health diagnosis. Nor is it an evaluation of other treatment efficacy or viability. It is understood from the parameters of this inquiry, patients presenting to CRNAs have received a TRD or PTSD diagnosis by a mental health care provider, have had their treatment options evaluated, and with the benefit of that care are referred to the CRNA for Ketamine infusion therapy.

Regarding the determination and administration of an anesthesia plan, OAR 851-052-0000(4) defines such plan to mean "a plan of intervention by a CRNA for services and anesthesia care within the CRNA scope of practice." Given that this inquiry is predicated on a sub-anesthetic dose, there is pressure placed on the orientation of the anesthesia plan. The Board has addressed "scope of practice" in OAR 851-052-0010(6). While the majority of this rule appears to support the customary application of anesthesia, (6)(g) acknowledges "performing analgesia… management for a patient requiring relief of acute or chronic pain." Whether the manifestations of TRD or PTSD in a patient's life can be described reasonably as pain is a medical determination, as opposed to legal. If it is not, then there does not appear to be the necessary scope to support a CRNA Ketamine practice as described above. For purposes of further discussion we will assume the answer to the pain question is yes, and of a type calling for analgesia management.

The more sophisticated question becomes, what does appropriate Ketamine treatment look like when conducted by a CRNA? A patient presenting to a CRNA for Ketamine treatment for TRD or PTSD will have a documented diagnosis and proper referral ordering Ketamine. The CRNA will prepare an anesthesia plan which will articulate the interventions anticipated to provide services and anesthesia care as defined in OAR 851-052-0000(3). This care contemplates the use of sedation, analgesia, or anesthesia appropriate to the practice setting. As noted above, the CRNA undertakes the administration of Ketamine pursuant to initial and ongoing patient assessment. This assessment is oriented to both the risks of, and tolerance to the anesthesia plan, for which a CRNA would have received appropriate education and training. What is not clear is the CRNA's foundation in evaluating "dosing" or "frequency" of infusion as those issues relate to the patient's mental health condition and symptoms responsiveness to Ketamine infusion. Unlike traditional anesthesia practice, the question is not how the patient is tolerating sedation, but how is the patient's psychological condition responding to an analgesic agent.

The answer to this question lies in the appropriate level of consultation with the referring practitioner. Presumably, their expertise would be necessary to evaluate a patient's TRD or PTSD response to Ketamine treatment.