CAUSE NO. _____

SANDY MCCOY, TERRI DENEUI, and TNP d/b/a TEXAS NURSE PRACTITIONERS, *Plaintiffs*, v. STEPHEN BRINT CARLTON, in his official capacity as the Executive Director of the Texas Medical Board; and KRISTIN BENTON, in her official capacity as the Executive Director of the Texas Board of Nursing, *Defendants*.	IN THE DISTRICT COURT 353rd JUDICIAL DISTRICT TRAVIS COUNTY, TEXAS

ORIGINAL PETITION

Plaintiffs Sandy McCoy, Terri DeNeui, and TNP d/b/a Texas Nurse Practitioners file this Original Petition, Request for Disclosure, and Application for Injunctive Relief against Defendants Stephen Brint Carlton, in his official capacity as the Executive Director of the Texas Medical Board; and Kristin Benton, in her official capacity as the Executive Director of the Texas Board of Nursing. In support of their Petition and Application for Injunctive Relief, Plaintiffs would show the Court the following:

I. EXECUTIVE SUMMARY

Texas requires Plaintiffs Sandra McCoy and Terri DeNeui—nurse practitioners extensively trained, examined, and licensed to diagnose, treat, and prescribe—to first obtain a private physician's permission before they may exercise those very competencies. That permission takes the form of a delegation agreement: a state-mandated contract that imposes extensive burdens on the nurse practitioners

based on a fiction that it will protect patient safety. Each owns her own practice but must maintain delegation agreements with physicians who do not practice with them, simply to see the patients that seek them out. In Dr. DeNeui's case, she must pay $96,000 a year to maintain her delegation agreements. Physicians may cancel these agreements at any time for any reason or no reason; she and Ms. McCoy operate at the risk of losing patients the moment one of their own agreements is terminated. No statute or regulation constrains a physician's decision to grant, withhold, or revoke this permission; no agency reviews it; and no appeal is permitted. The physicians holding this authority are, at the same time, the nurse practitioners' competitors in the delivery of healthcare—a conflict of interest the State has never addressed, let alone resolved.

This delegation scheme is unconstitutional twice over. First, it violates the due course of law guarantee of Article I, Section 19 of the Texas Constitution because it burdens Plaintiffs' right to earn an honest living in the occupation for which the State has already certified them competent. The delegation scheme bears no rational relationship to patient health or safety beyond what the State's own licensure requirements already secure. Second, the scheme violates the separation-of-powers and nondelegation principles of Article III, Section 1 of the Texas Constitution: the Legislature has handed a core police-power function—deciding who may and may not practice within a licensed profession—to private individuals with a financial stake in the outcome. Worse, it has done so without the standards, oversight, or accountability the Texas Constitution demands of any such delegation.

The consequences of this scheme extend well beyond Plaintiffs Sandra McCoy and Terri DeNeui. Plaintiff TNP d/b/a Texas Nurse Practitioners brings this suit on behalf of its members statewide, in a State where 215 of 254 counties are designated healthcare provider shortage areas and ten more are borderline shortage areas. Patients in those counties are underserved not because nurse practitioners lack the training to treat them—Defendants' own licensure requirements confirm this. Rather, Texans lack healthcare providers because a private, unreviewable veto stands between qualified nurse practitioners and the patients who need them. Plaintiffs ask this Court to declare the delegation framework unconstitutional and to enjoin its continued enforcement.

II. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct Level 2 discovery under Rule 190 of the Texas Rules of Civil Procedure.

III. PARTIES

A. PLAINTIFFS

2. ***Sandra McCoy*** is a Family Nurse Practitioner licensed by the state of Texas and a resident of Plano, Texas.

3. ***Terri DeNeui*** is a certified Adult Acute Care Nurse Practitioner licensed by the state of Texas and a resident of Colleyville, Texas.

4. ***TNP d/b/a Texas Nurse Practitioners*** (TNP) is a domestic nonprofit corporation headquartered in Austin, Texas. Its professional membership consists of nurse practitioners throughout the state of Texas. It is dedicated to empowering nurse practitioners to advance the profession and the health of all Texans.

B. DEFENDANTS

5. ***Defendant Stephen Brint Carlton*** is the Executive Director of the Texas Medical Board and is sued in his official capacity. The Medical Board administers and enforces the Medical Practice Act and the statutory physician-delegation framework governing the delegation of medical acts to nurse practitioners. Through the Medical Board, Defendant Carlton administers the statutory and regulatory requirements governing physician delegation, prescriptive authority agreements, and physicians' authority to delegate diagnosing, treating, and prescribing to nurse practitioners.

6. ***Defendant Kristin Benton*** is the Executive Director of the Texas Board of Nursing and is sued in her official capacity. The Board of Nursing is charged with administering and enforcing the Texas Nursing Practice Act, including the licensure and regulation of nurse practitioners. Through the Board of Nursing, the Executive Director administers the statutory and regulatory requirements governing NP licensure, education, certification, and practice, including those provisions recognizing that diagnosing, treating, and prescribing may be performed only when authorized by physician delegation.

7. Because this suit raises a constitutional challenge to statutes, the Attorney General of Texas is required, under Texas Civil Practice and Remedies Code Section 37.006(b), to be served with process at 300 W. 15th Street, Austin, Texas 78701. Plaintiffs request that the Clerk issue citation and service of process upon the Texas Attorney General.

IV. JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court pursuant to Article V, Section I of the Texas Constitution and Section 24.008 of the Texas Government Code. This Court has subject matter jurisdiction pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.001 *et seq.*, because Plaintiffs' rights, legal status, and other legal relations are affected by laws that are constitutionally invalid. This Court has jurisdiction over the requested injunctive relief pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.011, 65.011.

9. Venue is appropriate in Travis County, Texas, pursuant to Sections 15.002(a)(3), 15.005, and 65.023 of the Texas Civil Practice and Remedies Code.

V. STATEMENT OF FACTS

Texas's Physician Delegation Scheme

10. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully realleged here.

11. Nurse practitioners are registered nurses with advanced education and training. Tex. Occ. Code § 301.152; 22 Tex. Admin. Code § 221.1.

12. In order to qualify for a license, Defendants require nurse practitioners to graduate from an education program with curriculum that includes training in "[d]iagnosis and management of diseases and conditions across practice settings[.]" 22 Tex. Admin. Code § 221.3(f)(2).

13. Defendants also require nurse practitioners to complete a minimum of 500 supervised clinical hours beyond those required for the general practice of

nursing, and those hours must be "directly related to the role and population focus area of licensure and include pharmacotherapeutic management of patients." 22 Tex. Admin. Code § 221.3(i); *see also* Tex. Occ. Code § 301.152.

14. This education and training qualifies nurse practitioners to diagnose patients, interpret diagnostic tests, manage treatments, and prescribe certain medications.

15. The practice of nursing is defined as "the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as required by a completed course in an approved school of professional nursing." Tex. Occ. Code § 301.002(2).

16. Because Defendants require nurse practitioners to have completed an education program that includes training in diagnosis, treatment, and prescribing, this scope of practice would, as applied to nurse practitioners, authorize those competencies.

17. However, the statutory definition of the practice of nursing contains an explicit carve-out: "The [practice of nursing] does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures." *Id.*

18. Due to the statutory carve-out, the competencies of diagnosis, treatment, and prescribing are therefore strictly classified as "practicing medicine[.]" *Id.* § 151.002(a)(13).

19. But for the carve-out, a nurse practitioner's acts of diagnosing, treating, and prescribing would fall within "the practice of nursing" under the Nursing Practice Act, and a nurse practitioner performing those acts would therefore be exempt from the Medical Practice Act, including §§ 151.002(a)(13) and 165.152(c), under Tex. Occ. Code § 151.052(a)(4).

20. As a result of this statutory carve-out, nurse practitioners can only diagnose or prescribe medications as "an act delegated by a physician." *Id.* § 301.002(2)(G).

21. The process of physician delegation is outlined in Tex. Occ. Code §§ 157.001–157.101.

22. Physicians may delegate back to nurse practitioners their competencies of diagnosis, treatment, and prescribing only if the nurse practitioner can "properly and safely perform[]" those acts and if she does not hold herself out as authorized to practice medicine. *Id.* § 157.001.

23. Physicians are excused from liability for acts performed pursuant to these delegation agreements. *Id.* §§ 157.004(c), 157.060.

24. Individual physicians are empowered to unilaterally decide whether a nurse practitioner may diagnose, treat, or prescribe. *Id.* § 157.006.

25. Physicians need only register the delegation with the Texas Medical Board by providing identifying information, including the names and license numbers of the physician and nurse practitioner, the date the delegation begins, and the

practice location. 22 Tex. Admin. Code § 169.5. The agreements themselves are not filed with the Medical Board.

26. A prescriptive authority agreement is a specific delegation agreement wherein a physician delegates her authority to prescribing or ordering drugs or devices to a nurse practitioner. Tex. Occ. Code § 157.0512(a).

27. Like delegation agreements, prescriptive authority agreements need not be filed with either the Texas Medical Board or the Texas Board of Nursing. *Id.* § 157.0512.

28. Texas law imposes no requirement that a physician's specialty, training, or practice area relate in any way to the scope of practice of the nurse practitioner to whom he delegates. Tex. Occ. Code §§ 157.001(a), 157.0512(b) (listing eligibility requirements for a delegation agreement, none of which concern the physician's area of practice).

29. There is no geographic proximity requirement between a delegating physician's practice site and the nurse practitioner's practice site. *See id.*

30. Delegating physicians are not required to have any minimum number of years of clinical experience, any board certification, or any particular qualification beyond holding an active medical license. *See id.*

31. Although the law requires "adequate physician supervision" of a delegated nurse practitioner, *id.* § 157.0512(a), that term is not defined anywhere in the Occupations Code or its implementing rules.

32. The only quality-assurance methods Texas law requires are chart review and "periodic" face-to-face meetings between the physician and the nurse practitioner. Tex. Occ. Code § 157.0512(e)(9), (f)(1). Texas law does not specify how many charts must be reviewed, what percentage of a nurse practitioner's patients those charts must represent, or how frequently the required meetings must occur.

33. A physician may delegate prescriptive authority to up to seven nurse practitioners or physician assistants, or their full-time-equivalent, regardless of the size, complexity, or patient acuity of any nurse practitioner's practice. Tex. Occ. Code § 157.0512(c).

34. The law does not require a physician to have ever met, observed, or personally evaluated a nurse practitioner's clinical competence before executing a delegation agreement with her.

35. There are no statutory or regulatory guidelines or required training on a physician's exercise of regulatory oversight of nurse practitioners.

36. The law imposes no notice period, cure period, or transition window before a physician's termination of a delegation agreement takes effect.

37. A nurse practitioner's authority to diagnose, treat, and prescribe ends the moment the agreement is terminated, regardless of how many patients are mid-treatment or how quickly she can secure a replacement agreement.

38. Thus, if a physician terminates a delegation agreement for any reason, the nurse practitioner must cease operations immediately.

39. There is no appeal process for nurse practitioners whose delegation agreements are cancelled by the physician. As a result, these nurse practitioners have no recourse to practice their profession other than to scramble for another physician with whom to contract.

40. Nurse practitioners who, without a physician delegation agreement, perform the competencies in which they are required to be trained are subject to discipline from the Board of Nursing. Tex. Occ. Code § 301.452(b); *see also* 22 Tex. Admin. Code § 221.13. Such disciplinary measures include, but are not limited to, license suspension, revocation, probation, reprimand, and fines. Tex. Occ. Code § 301.453.

41. Those nurse practitioners also face the possibility of felony criminal prosecution. Tex. Occ. Code § 165.152(c).

Impact of the Delegation Scheme

42. The mandatory delegation framework harms Plaintiffs McCoy and DeNeui, as well as TNP's membership statewide, by conditioning their ability to practice on the unreviewable discretion of individual physicians.

Sandra McCoy

43. Ms. McCoy is a past President of TNP.

44. Ms. McCoy has over thirty years' experience as a nurse practitioner, and over sixty years' experience as a registered nurse.

45. But for the statutory carve-out in Tex. Occ. Code § 301.002(2), Ms. McCoy's specialized judgment, skills, knowledge, and experience—already tested

and certified by Defendants through her nurse practitioner licensure—would qualify her to diagnose, treat, and prescribe within the scope of professional nursing, without regard to whether any physician has agreed to delegate that authority to her.

46. Prior to filing this petition, Ms. McCoy had delegation agreements with two physicians.

47. One of Ms. McCoy's agreements ended, causing her to sever relationships with the patients that were tied to that agreement.

48. Ms. McCoy now only has one remaining physician delegation agreement, leaving her one cancellation away from being unable to practice to the full extent of her licensure.

Dr. Terri DeNeui

49. Dr. DeNeui holds the terminal academic degree of a Doctor of Nursing Practice.

50. Dr. DeNeui has over twenty years' experience as a nurse practitioner.

51. But for the statutory carve-out in Tex. Occ. Code § 301.002(2), Dr. DeNeui's specialized judgment, skills, knowledge, and experience—already tested and certified by Defendants through her nurse practitioner licensure—would qualify her to diagnose, treat, and prescribe within the scope of professional nursing, without regard to whether any physician has agreed to delegate that authority to her.

52. Instead, Dr. DeNeui maintains two physician delegation agreements, at a cost of approximately $96,000 annually, simply to exercise the diagnosing, treating, and prescribing competencies for which she is already trained and licensed.

53. Dr. DeNeui's ability to continue practicing to the full extent of her training and licensure remains subject at all times to the unilateral, unreviewable discretion of the physicians with whom she contracts.

TNP d/b/a Texas Nurse Practitioners

54. TNP is a professional association representing licensed nurse practitioners throughout Texas.

55. But for the statutory carve-out in Tex. Occ. Code § 301.002(2), TNP's members—who, like Ms. McCoy and Dr. DeNeui have been tested and certified by Defendants through nurse practitioner licensure—would be qualified to diagnose, treat, and prescribe within the scope of professional nursing, without regard to whether any physician has agreed to delegate that authority to them.

56. Upon information and belief, a number of TNP's members currently maintain one or more physician delegation agreements as a condition of exercising the diagnosing, treating, and prescribing competencies for which they are licensed.

57. Like Dr. DeNeui, many of TNP's members incur significant annual costs to maintain the physician delegation agreements the challenged scheme requires.

58. Like Ms. McCoy and Dr. DeNeui, TNP's members' ability to continue practicing to the full extent of their training and licensure remains, at all times, subject to the unilateral, unreviewable discretion of the physicians with whom they contract, and can be terminated without notice or recourse.

59. TNP has received inquiries and expressions of concern from its members statewide regarding the financial cost, professional instability, and loss of patients caused by the mandatory delegation framework.

Statewide Impact

60. Out of Texas's 254 counties, the Texas Health and Human Services Commission designates 215 as healthcare provider shortage areas.

61. The Texas Health and Human Services Commission designates an additional ten counties as borderline shortage areas.

62. Because of the delegation framework, Texas patients receive diminished care or no care at all.

63. In other states, where the government does not mandate delegation agreements between nurse practitioners and physicians, nurse practitioners are more likely to open their own clinics and do so at higher rates in areas suffering from shortages of healthcare providers.

VI. CAUSES OF ACTION

A. COUNT ONE: ARTICLE I SECTION 19 OF THE TEXAS CONSTITUTION (DUE COURSE OF LAW)

64. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully realleged here.

65. Article I, Section 19 of the Texas Constitution provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land."

66. The right to earn an honest living, free from unreasonable government interference, in the occupation of one's choice is one of the rights secured by the due course of the law of the land guarantee of the Texas Constitution, commonly known as the constitution's "due process" guarantee.

67. Defendants have violated the due process guarantee of the Texas Constitution by implementing an unreasonable interference with Plaintiffs' ability to earn a living as nurse practitioners.

68. Any important, legitimate, or rational governmental interest in patient health and safety is already served by Defendants' requirement that Plaintiffs be trained and licensed to diagnose, treat, and prescribe.

69. Defendants have no other important, legitimate, or rational reason for requiring physician delegation as a prerequisite for Plaintiffs to practice in their chosen livelihood.

70. Even if Defendants have remaining interests, Defendants' implementation of the delegation framework as a whole is so burdensome as to be oppressive in light of those interests.

71. Defendants are presently and unconstitutionally requiring Plaintiffs to enter into private contracts with physicians in order to diagnose, treat, and prescribe—which Defendants already require Plaintiffs to be trained and competent in.

72. The final sentence of Tex. Occ. Code § 301.002(2) provides: "[The practice of nursing] does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures."

73. As applied to nurse practitioners specifically, this provision is unconstitutional. Unlike nurses generally, nurse practitioners are affirmatively required by Defendants to complete advanced education and clinical training in exactly the competencies this sentence excludes—diagnosing, treating, and prescribing.

74. This carve-out of diagnosis, treatment, and prescribing from the scope of professional nursing, as applied to nurse practitioners, bears no real and substantial relationship to patient health or safety. It instead unconstitutionally strips Plaintiffs of the authority to practice to the full extent of the competencies required for their licensure.

B. COUNT TWO: ARTICLE III, SECTION 1 OF THE TEXAS CONSTITUTION (UNCONSTITUTIONAL DELEGATION)

75. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully realleged here.

76. Article III, Section 1 vests the legislative power of the State in the Senate and House of Representatives.

77. This constitutional provision establishes that the essential legislative function of defining who may practice a licensed profession, and under what conditions, is vested in the Legislature and there it must remain.

78. This regulation of occupations and professions is an exercise of the State's police power.

79. The Legislature exercises this authority to regulate nursing by defining the scope of practice and establishing baseline qualifications and competency requirements.

80. The Legislature specifically exercised this authority for nurse practitioners by requiring competency in diagnosing, treating, and prescribing.

81. The Legislature delegates the administration, implementation, and enforcement of nursing standards to the Texas Board of Nursing.

82. However, the Legislature also delegates this exercise of police power to individual physicians.

83. By carving out the diagnosing, treating, and prescribing functions from their scope of practice and then mandating physician delegation, the Legislature has delegated to those physicians the discretion to decide whether nurse practitioners may work as such.

84. The physician's decision to delegate the nurse practitioner's own competencies back to him or her is solely within the physician's discretion and is not subject to any review by the state.

85. A physician's decision to enter into a delegation agreement is unilateral; the physician therefore holds the power over an individual nurse practitioner's ability to practice his or her profession.

86. Physicians face a conflict of interest in their decision to delegate or not. First, physicians stand to gain financially by conditioning their participation in the agreement on payment from the nurse practitioners. Second, physicians may reduce competition in the provision of health care by not entering into delegation agreements. These interests conflict with the purported government interest of patient health and safety.

87. Plaintiffs and other nurse practitioners may be considered competitors to physicians in the provision of health care.

88. The Legislature's unconstitutional delegation of this police power is not narrow in duration, extent, or subject matter. Physicians have complete and total power to determine if and to what extent they will delegate back competencies to a nurse practitioner and are thus able to completely bar the nurse practitioner from her profession.

89. Physicians do not possess special qualifications or training for the exercise of the police power—specifically, determining whether a nurse practitioner may properly and safely perform those very competencies taught to nurse practitioners, by nurse practitioners, so that they may be licensed as nurse practitioners.

90. Through the Legislature's unconstitutional delegation of this police power, physicians exercise the authority to regulate the profession of nursing.

91. The Legislature did not provide sufficient standards to guide the physician in exercising this police power; the Legislature expressly directed the Board

of Medicine to promote the discretion of individual physicians and forbids the adoption of rules that prohibit or restrict the authority except as absolutely necessary.

92. A physician's unilateral decision whether to enter into, maintain, or cancel a delegation agreement does not merely determine whether a nurse practitioner may practice—it determines whether her next act of diagnosing, treating, or prescribing is lawful or a felony.

93. The Legislature has thus empowered a private physician, through an entirely discretionary and unreviewable decision, to define the line between a nurse practitioner's lawful exercise of her licensed competencies and her commission of a criminal offense.

94. Nurse practitioners have no voice, vote, or other role in a physician's decision to enter into, maintain, or cancel a delegation agreement, nor in the criteria, if any, a physician applies in making that decision. Licensed and otherwise qualified nurse practitioners have no recourse if a physician refuses to enter into a delegation agreement with them.

VII. DECLARATORY RELIEF ALLEGATIONS

95. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

96. An actual and substantial controversy exists between Plaintiffs and Defendants as to their legal rights and duties with respect to whether the stripping of nurse practitioners' practice authority via Tex. Occ. Code § 301.002(2) and

imposition of Tex. Occ. Code §§ 157.001–157.101 on nurse practitioners violates the Texas Constitution as applied to nurse practitioners.

97. This case is presently justiciable because the scheme in Tex. Occ. Code § 301.002(2) and Tex. Occ. Code §§ 157.001–157.101 applies to Plaintiffs on its face.

98. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. §37.003, it is appropriate and proper that a declaratory judgment be issued by this Court.

99. The final sentence of Tex. Occ. Code § 301.002(2) is grammatically, functionally, and legally severable from the remainder of that subsection and from the remainder of Chapter 301. *See* Tex. Gov't Code § 311.032(c) (the invalidity of any provision of a statute does not affect the remaining provisions unless the remaining provisions are incapable of being executed independently of the invalid provision).

100. If the final sentence of § 301.002(2) is declared unconstitutional as applied to nurse practitioners, the remainder of that subsection—including subsections (A) through (H)—already encompasses the observation, assessment, intervention, evaluation, treatment-administration, and care-plan functions that constitute diagnosing, treating, and prescribing when performed by a nurse practitioner within her training and licensure. The Legislature would have enacted the remainder of § 301.002(2) without that sentence as applied to nurse practitioners, because the remainder is fully capable of independent execution and continues to serve its purpose of defining the scope of professional nursing for nurses generally.

101. Because the mandatory physician-delegation framework in Tex. Occ. Code §§ 157.001–157.101 exists only to authorize nurse practitioners to perform acts

that the final sentence of § 301.002(2) otherwise excludes from their scope of practice, striking that sentence as applied to nurse practitioners renders the delegation requirement unnecessary, and inapplicable, as to them.

VIII. APPLICATION FOR PERMANENT INJUNCTION

102. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

103. An injunction must issue where a party is acting contrary to law.

104. The final sentence of Tex. Occ. Code § 301.002(2) strips away licensed nurse practitioners' practice authority, and Tex. Occ. Code §§ 157.001–157.101 empowers physicians to delegate that practice authority back to nurse practitioners through paid delegation agreements.

105. The stripping of practice authority from nurse practitioners via the final sentence of Tex. Occ. Code § 301.002(2) and imposition of Tex. Occ. Code §§ 157.001–157.101 on nurse practitioners violates Article I, Section 19 of the Texas Constitution and is contrary to law.

106. The stripping of practice authority from nurse practitioners via the final sentence of Tex. Occ. Code § 301.002(2) and imposition of Tex. Occ. Code §§ 157.001–157.101 on nurse practitioners violates Article III, Section 1 of the Texas Constitution and is contrary to law.

107. Independent of the declaration sought as to the final sentence of Tex. Occ. Code § 301.002(2), Defendants' continued enforcement of the mandatory delegation requirements of Tex. Occ. Code §§ 157.001–157.101 against nurse

practitioners' exercise of diagnosing, treating, and prescribing is itself contrary to law and must be separately enjoined.

108. Should this Court declare the final sentence of § 301.002(2) unconstitutional as applied to nurse practitioners and sever it as such, Defendants would have no remaining statutory basis to condition nurse practitioners' exercise of diagnosing, treating, and prescribing on a physician delegation agreement, because those competencies would then fall within the scope of professional nursing already recognized by the remainder of § 301.002(2).

109. Defendants' enforcement of Tex. Occ. Code §§ 157.001–157.101 against nurse practitioners after such a declaration and severance would itself be without legal authority and would cause Plaintiffs the same imminent and irreparable harm alleged above.

110. Plaintiffs therefore request that any injunction issued by this Court expressly and separately enjoin Defendants from enforcing Tex. Occ. Code §§ 157.001–157.101 against nurse practitioners' exercise of diagnosing, treating, and prescribing, rather than relying on the declaratory judgment alone to accomplish that result.

111. Because the underlying statutes are unconstitutional, Defendants are acting without legal authority.

112. Plaintiffs lack any other adequate remedy at law.

113. Therefore, pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.011 and 65.011, Plaintiffs respectfully request that this Court, following a decision on the

merits, issue permanent injunctions against Defendants, as well as any and all agents, administrators, employees, and other persons acting on behalf of Defendants: (a) enjoining enforcement of the final sentence of Tex. Occ. Code § 301.002(2) against nurse practitioners; and (b) separately and independently enjoining enforcement of the mandatory physician-delegation requirements of Tex. Occ. Code §§ 157.001–157.101 against nurse practitioners' exercise of diagnosing, treating, and prescribing.

IX. ATTORNEYS' FEES

114. Under the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.009, Plaintiffs are entitled to recover "costs and reasonable and necessary attorney's fees as are equitable and just."

115. Plaintiffs seek an award of their reasonable attorneys' fees for the preparation of this suit, prosecution of this suit, and all appeals.

X. REQUEST FOR DISCLOSURE

116. Plaintiffs request that Defendants disclose the information and materials described in Rule 194.2 of the Texas Rules of Civil Procedure.

XI. PRAYER AND CONCLUSION

THEREFORE, Plaintiffs request this Court issue the following relief:

i. A declaration that the implementation of the mandatory delegation framework, as applied to nurse practitioners, violates the due course of law guarantee of Article I, Section 19 of the Texas Constitution;

ii. A declaration that the mandatory delegation framework is an unconstitutional delegation of legislative authority to private parties in violation of Article III, Section 1 of the Texas Constitution;

iii. A declaration that the statutory carve-out in the final sentence of Tex. Occ. Code § 301.002(2)—"[t]he [practice of nursing] does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures"—is unconstitutional as applied to nurse practitioners, and that, upon its severance as applied to nurse practitioners, the mandatory delegation requirements of Tex. Occ. Code §§ 157.001–157.101 no longer apply to Plaintiffs;

iv. An injunction against Defendants, as well as any and all agents, administrators, employees, and other persons acting on behalf of Defendants: (a) enjoining enforcement of the final sentence of Tex. Occ. Code § 301.002(2) against nurse practitioners; and (b) separately and independently enjoining enforcement of Tex. Occ. Code §§ 157.001–157.101 against nurse practitioners' exercise of diagnosing, treating, and prescribing;

v. An award of attorneys' fees and court costs; and

vi. All other relief to which Plaintiffs may show themselves entitled.

Dated: July 22, 2026.

Respectfully submitted,

/s/ Christian G. Townsend

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**pro hac vice motions forthcoming*
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