PETITION FOR WAIVER PURSUANT TO SECTION 120.542, FLORIDA STATUTES ("VARIANCES AND WAIVERS"), OF RULE 64B8-11.001(2)(f)3

Before the Florida Board of Medicine

Petitioner: National Board of Physicians and Surgeons

July 6, 2026

I. Introduction and Relief Requested

Section 120.542, Florida Statutes, authorizes the Florida Board of Medicine ("the Board") to grant relief from the literal application of an administrative rule when the purpose of the underlying statute has been achieved by other means, and when application of the rule would create a substantial hardship or would violate principles of fairness. The National Board of Physicians and Surgeons ("NBPAS"), on behalf of the Florida-licensed physicians it certifies, respectfully petitions the Board to exercise that authority here.

NBPAS requests a waiver of a single requirement within Rule 64B8-11.001(2)(f)3: *that the comprehensive specialty examination be administered by the recognizing agency.* This Petition for Waiver does not ask the Board to amend Rule 64B8-11.001 or to amend Florida's standards for physician competency, truthful advertising, or patient protection. NBPAS agrees that the Rule serves an important public purpose: ensuring that physicians who represent themselves as board certified have demonstrated specialty competency by passing a comprehensive specialty board examination administered under reliable standards that protect the integrity of the examination process.

NBPAS occupies a unique position among the certifying organizations that seek recognition under Rule 64B8-11.001. Unlike other Board-recognized organizations, NBPAS does not offer initial specialty certification or provide an initial certification pathway to physicians entering new or emerging medical specialties. Rather, NBPAS is the only national certifying organization structured exclusively to provide continuing board certification to physicians who have already achieved specialty board certification by passing a comprehensive specialty board examination.

Because of this unique role, NBPAS falls outside the class of organizations for which the examination-administration requirement was designed, even while fully satisfying the Rule's underlying purpose by other means. Hence, strict application of the Rule unfairly excludes an organization whose physician diplomates have already satisfied the very competency standards the Rule seeks to ensure.

In fact, NBPAS certification fully supports the purpose of Rule 64B8-11.001. Every NBPAS-certified physician has already satisfied the Rule's purpose by completing accredited graduate medical education residency, passing a comprehensive specialty board examination, obtaining initial specialty board certification, maintaining an active and unrestricted medical

license, and meeting NBPAS's continuing certification requirements through ongoing accredited continuing medical education and active clinical practice.

The only requirement not literally satisfied is one of timing of a test: the comprehensive examination was administered before the physician became eligible for NBPAS certification, rather than by NBPAS itself. The competency objective of the Rule has therefore already been achieved and satisfied before NBPAS certification ever occurs. As demonstrated below, strict application of that single requirement now creates a substantial, well-documented economic hardship for Florida physicians and treats identically qualified physicians in a manner significantly different from their peers–the precise circumstances the waiver process under Section 120.542 was enacted to address.

II. The Board's Prior Decision and the Purpose of This Petition

In 2021, NBPAS applied for recognition under Rule 64B8-11.001 so that physicians it certifies could represent themselves as board certified in Florida. The Board concluded that NBPAS did not satisfy Rule 64B8-11.001(2)(f)3 because NBPAS does not itself administer the comprehensive specialty examination:

> *"...the Board hereby finds that the Petitioner, the National Board of Physicians and Surgeons, does not meet the requirements for approval as set forth in Rule 64B8-11.001(2)(f), Florida Administrative Code, because it has failed to demonstrate that it requires the successful completion of a comprehensive examination administered by NBPAS pursuant to written procedures that ensure adequate security and appropriate grading standards."*

NBPAS does not challenge that interpretation, and this Petition does not ask the Board to revisit or modify that decision. This Petition presents a different question under a different statutory authority.

Florida recognizes that administrative rules apply broadly across many circumstances, and that situations arise in which a rule's purpose has already been achieved, or where literal application produces an unintended result without advancing the rule's purpose. Florida enacted Section 120.542 to authorize waivers in precisely those situations. The prior proceeding asked whether NBPAS satisfied the literal language of the Rule. This Petition asks whether the application of one requirement of that Rule should be waived because its competency objective has already been achieved by other means and literal application now creates a substantial hardship and violates principles of fairness. Those are separate questions requiring separate analyses, and nothing in this Petition is intended to disturb the Board's prior interpretation.

III. The Purpose of Rule 64B8-11.001(2)(f)3

Rule 64B8-11.001 establishes the standards for recognizing specialty certifying boards so that physicians may represent themselves as board certified in Florida. Subsection (2)(f)3 helps

ensure that those physicians have demonstrated specialty competency by passing a comprehensive specialty board examination administered under appropriate standards of examination integrity.

The question here is not whether physicians should demonstrate specialty competency through such an examination–they should, and NBPAS does not seek relief from that requirement. The question is whether the examination must be administered *by NBPAS* when every physician seeking NBPAS certification has already passed a comprehensive specialty board examination before becoming eligible.

Unlike organizations that provide initial specialty certification, NBPAS does not determine whether a physician has achieved initial specialty competency. It certifies only physicians who have already done so. Before NBPAS certification, the underlying competency objective of the Rule has already been satisfied; the only open question is whether the examination-administration requirement should continue to apply literally after that objective has already been met. Section 120.542 authorizes the Board to answer that question.

IV. The Purpose of the Rule Has Been Achieved by Other Means

Section 120.542 authorizes a waiver when the purpose of the underlying statute has been achieved by other means by the person subject to the rule. That is the case here. The purpose of Rule 64B8-11.001(2)(f)3 is not to require multiple comprehensive examinations. Its purpose is to ensure that physicians representing themselves as board certified have demonstrated specialty competency through a comprehensive examination, in their chosen specialty, administered with appropriate integrity. Every NBPAS physician has already met that objective by satisfying each of the following before becoming eligible for certification:

- Completing accredited graduate medical education in the applicable specialty;
- Passing a comprehensive specialty board examination;
- Obtaining initial specialty board certification;
- Maintaining an active and unrestricted medical license; and
- Satisfying NBPAS's continuing certification requirements.

NBPAS does not create an alternative pathway to specialty certification, eliminate the examination requirement, substitute different competency standards, or waive residency, licensure, or continuing-education requirements. NBPAS also does not allow physicians to certify in new or different specialties outside of their residencies and initial board certifications. Instead, NBPAS builds upon qualifications physicians have already earned. The distinction between NBPAS and an initial-certification body is therefore one of exam timing, not competency: an initial-certification body establishes competency for the first time at the completion of training and must administer the examination on which it relies; NBPAS certifies physicians only after that determination has already been made by such a body.

The single Rule requirement not literally satisfied–that the examination was administered by another organization earlier in the physician's career rather than by NBPAS–does not change whether the physician has demonstrated specialty competency, nor does it diminish the reliability or integrity of the examination. Granting the waiver would preserve the Rule's purpose while recognizing that, under these unique circumstances, requiring NBPAS to administer the examination no longer advances it. The five requirements above would remain unchanged. Under these circumstances, the purpose of Rule 64B8-11.001(2)(f)3 has been achieved by other means within the meaning of Section 120.542.

V. Literal Application Violates Principles of Fairness

Section 120.542 provides that principles of fairness are violated when the literal application of a rule "affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." That is precisely the effect here.

The NBPAS physicians affected by Rule 64B8-11.001(2)(f)3 are not physicians who avoided examination or failed to demonstrate specialized competency. Each has completed accredited graduate medical education, passed a comprehensive and gold-standard specialty board examination–many on more than one occasion–holds an active and unrestricted Florida medical license, and maintains continuing certification through NBPAS. In every respect bearing on competency and truthful advertising, they are identically trained and situated to physicians certified by an ABMS member board. Both groups are subject to the same advertising rule. Yet one group may represent itself as board certified and the other may not–solely because of the identity of the organization that administered the qualifying examination and the point in the physician's career at which it was taken.

That distinction does not rest on competency, education, residency training, licensure, continuing professional development, or any difference in the ability to practice safely. The disparity is underscored by an inconsistency within the recognized system itself: physicians certified by ABMS member boards before those boards adopted maintenance-of-certification requirements remain recognized as board certified for life, without any further examination. If lifelong recognition without continued testing is acceptable for those physicians, it is difficult to justify denying recognition to NBPAS physicians who have passed the same examinations and who, in addition, continue to satisfy active-practice and continuing-education and certification requirements. The point is not to question the recognition extended to any physician, but to illustrate that the line drawn by literal application of the Rule is applied inconsistently to different physicians and with unfair and harmful results.

The State of Florida recognizes that even well-crafted rules may produce results inconsistent with their purpose when applied to circumstances not fully contemplated when the rule was adopted, and enacted Section 120.542 to address such circumstances. A waiver here would not diminish the Rule; it would preserve the Rule's purpose while relieving only the aspect whose

literal application treats similarly situated physicians differently without advancing the Rule's purpose.

VI. Literal Application Creates a Substantial Hardship

Section 120.542 defines substantial hardship as "a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver." The hardship here is concrete, economic, and well documented in accounts NBPAS has gathered from the Florida-licensed physicians it certifies.

Board certification is relied upon throughout Florida's healthcare system–by hospitals, employers, health systems, insurers, physician staffing agencies, credentialing committees, governmental panels, professional directories, and patients–as a marker of physician qualifications. Although Rule 64B8-11.001(2)(f)3 is, in form, an advertising rule, its effect radiates well beyond advertising: hospital bylaws, payer contracts, and credentialing policies routinely define "board certified" by exclusive reference to State-recognized boards. Because Florida does not recognize NBPAS, its certification is excluded from those definitions with serious economic and professional consequences. The Board does not control private credentialing decisions, but the State's non-recognition of NBPAS is the condition on which many of those private restrictions rest. The resulting hardship to NBPAS-certified physicians takes several documented forms:

Lost employment and income

Florida physicians report being advanced through hiring processes and then rejected–by major health systems, a Florida insurer, hospital medical-staff offices, and corporate employers–for the sole reason that the organization would not accept physicians who were not considered board certified under Florida-recognized standards. Others have lost locum tenens opportunities at rural, underserved Florida facilities, have been removed from state Workers' Compensation evaluation panels and prohibited from serving as expert witnesses (privately and for the State of Florida), with a corresponding loss of income, or remained in lower-paying positions after being disqualified from advancement. These are demonstrated economic losses traceable to Florida's non-recognition of NBPAS.

Forced and unnecessary recertification costs

Physicians with decades of safe practice and current NBPAS certification have been told their hospital privileges would not be renewed, or that insurer contracts would lapse, unless they re-obtained recognized certification. To preserve their employment and patient base, they were compelled to enroll in and personally pay for ABMS recertification programs they did not believe were necessary–incurring direct, significant, quantifiable expense solely because NBPAS certification is not recognized in Florida.

Lost patients and restricted communication of legitimate credentials

Because NBPAS physicians cannot legally represent themselves as board certified, physicians report losing prospective patients who searched for a "board certified" physician and chose someone else, although the physician is in fact certified by NBPAS. Others report carefully wording their materials to avoid enforcement action by the Board for advertising as board certified–direct evidence that literal application of the Rule impedes the truthful communication of genuine credentials and the patient relationships and revenue that follow from it.

Reputational harm

Within hospitals and large health systems, "board certified" functions as shorthand for quality, employability, leadership eligibility, and parity with colleagues. NBPAS certified physicians report that the inability to use the term leads patients, colleagues, and administrators to infer a deficiency in qualifications that does not exist–affecting referrals, professional standing, and opportunities–even though these physicians have passed the same examinations and maintain active licensure and continuing education.

Each category reflects a demonstrated economic or professional hardship within the meaning of Section 120.542. These harms fall directly on the Florida-licensed physicians certified by NBPAS, on whose behalf this petition is brought.

The physicians who described these experiences did so in response to NBPAS's request for examples of the Rule's effect on their practice. Many expressed concern that identifying themselves publicly could expose them to professional retaliation from employers, hospitals, insurers, or credentialing bodies–a concern that itself reflects the untenable position in which the current rule places competent, fully qualified physicians. For that reason, and to protect the confidentiality of those who came forward, NBPAS presents their experiences in aggregate rather than attaching individual statements.

VII. Granting the Waiver Preserves the Rule and Advances the Public Interest

Granting the waiver would preserve, not diminish, the purpose of Rule 64B8-11.001(2)(f)3. Every NBPAS physician would still be required to complete accredited graduate medical education, pass a comprehensive specialty board examination, obtain initial specialty board certification, maintain an active and unrestricted medical license, and satisfy NBPAS's continuing certification requirements. The waiver would not create an alternative pathway to certification, eliminate the examination requirement, reduce Florida's competency standards for newly established medical specialties, or diminish the Board's commitment to protecting the public. It would simply recognize that the Rule's competency objective has already been achieved before NBPAS certification occurs.

The waiver would also advance the public interest the Board is charged with protecting. Florida faces ongoing shortages of physicians, including in primary care and in rural and underserved

communities. Specialists certified through NBPAS—current in their certification and with records free of any quality or disciplinary concern—have been unable to obtain privileges to provide locum coverage at rural and underserved Florida facilities that lacked coverage in their subspecialty. The result has been that patients in those communities were deprived of timely access to needed specialty care despite the availability of qualified physicians.

Experienced, residency-trained physicians have likewise been excluded from helping to meet Florida's workforce needs, and in at least one instance medical students were deprived of training with a high-volume specialist. In another example, a renowned surgical oncologist practicing complex surgery reported repeated exclusion from employment opportunities and recruitment barriers due to lack of Florida-recognized certification status.

In each instance, non-recognition of NBPAS did not make patients safer; it reduced their access to qualified physicians. Allowing physicians who have satisfied the Rule's substantive requirements to accurately represent their qualifications would help keep experienced physicians available to Florida patients while preserving every competency safeguard the Rule was designed to ensure.

Granting this waiver to NBPAS-certified physicians would preserve both the integrity of Rule 64B8-11.001 and the Legislature's intent in enacting Section 120.542.

VIII. Conclusion

The Board previously concluded that NBPAS does not satisfy the literal requirements of Rule 64B8-11.001(2)(f)3 because it does not administer the referenced examination. NBPAS does not challenge that conclusion. This Petition presents a different question under Section 120.542, which authorizes relief when the purpose of the underlying statute has been achieved by other means and when strict application creates a substantial hardship or violates principles of fairness. Each of those circumstances is present here.

Every NBPAS physician has already completed accredited graduate medical education, passed a comprehensive specialty board examination, obtained initial specialty board certification, maintained an active and unrestricted medical license, and satisfied NBPAS's continuing certification requirements. The competency and truthful advertising that the Rule was designed to ensure has therefore already been demonstrated before NBPAS certification. Literal application of the examination-administration requirement now imposes documented economic hardship on Florida physicians and treats them differently from identically qualified peers, without advancing the Rule's purpose.

For these reasons, the National Board of Physicians and Surgeons respectfully requests that the Florida Board of Medicine grant a waiver under Section 120.542, Florida Statutes, of the requirement in Rule 64B8-11.001(2)(f)3 that the comprehensive specialty examination be administered by the recognizing agency, thereby permitting physicians certified by NBPAS in all

specialities who otherwise satisfy Rule 64B8-11.001 to represent themselves as board certified within the State of Florida.

Respectfully submitted,

National Board of Physicians and Surgeons

By: Paul Teirstein, MD, President

Date: July 6, 2026

THE NATIONAL BOARD OF
NBPAS
PHYSICIANS & SURGEONS

July 6, 2026

Morgan Rexford, MPH, Executive Director
Department of Health
Board of Medicine
P.O. Box 6330
Tallahassee, FL 32314-6330

RE: Advertising Application and Petition for Waiver

Dear Ms. Rexford:

The National Board of Physicians and Surgeons (NBPAS) respectfully submits the enclosed materials to the Florida Board of Medicine in support of its request to be recognized as a certifying agency for purposes of advertising as board certified in the State of Florida. This letter and associated materials describe how NBPAS satisfies the criteria set forth in Rule 64B8-11.001, Florida Administrative Code, and include a detailed waiver application addressing the single provision where the Rule's literal language is not met, but its underlying purpose and requirements are fully satisfied.

NBPAS meets the criteria set forth in Rule 64B8-11.001, Florida Administrative Code, as follows:

1. The recognizing agency must be an independent body that certifies members as having advanced qualifications in a particular allopathic medical specialty through peer-reviewed demonstrations of competence in the specialty being recognized.

NBPAS is an independent, nonprofit certifying organization that certifies physicians having advanced qualifications in all allopathic medical specialties and subspecialties offered by the member boards of the American Board of Medical Specialties (ABMS). NBPAS certification criteria were developed and peer-reviewed by its physician-led board of directors. To obtain NBPAS certification, physicians must:

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- Have successfully completed initial ABMS board certification;
- Hold an unrestricted license to practice medicine;
- Complete 50 hours of AMA PRA Category 1 continuing medical education (CME) in their ABMS-certified specialty, every 24 months;
- Maintain appropriate clinical privileges, including additional requirements if prior privileges have been involuntarily revoked; and
- Maintain active hospital privileges for applicable procedural specialties.

2. Specialty recognition must require completion of an allopathic medical residency program approved by either the Accreditation Council of Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada that includes substantial and identifiable training in the allopathic specialty being recognized.

NBPAS certification requires prior successful attainment of initial ABMS board certification, which confirms completion of an approved and accredited medical residency program and all prerequisite education and training.

3. Specialty recognition must require successful completion of a comprehensive examination administered by the recognizing agency pursuant to written procedures that ensure adequate security and appropriate grading standards.

Please see the enclosed waiver application for a detailed explanation of how NBPAS satisfies the purpose and intent of this requirement.

4. The recognizing agency must have been determined by the Internal Revenue Service of the United States to be a legitimate not for profit entity pursuant to Section 501(c) of the Internal Revenue Code.

NBPAS is recognized by the Internal Revenue Service as a tax-exempt 501(c)(3) organization (Federal EIN: 47-2408605).

5. The recognizing agency must have full time administrative staff, housed in dedicated office space which is appropriate for the agency's program and sufficient for responding to consumer or regulatory inquiries.

NBPAS maintains full-time administrative staff and has dedicated office facilities located at 4660 La Jolla Village Drive, Suite 100, San Diego, CA 92122, (858) 228-4161.

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6. The recognizing agency must have written by-laws, and a code of ethics to guide the practice of its members and an internal review and control process including budgetary practices, to ensure effective utilization of resources.

NBPAS maintains written bylaws, a Code of Ethics, and appropriate governance and financial oversight processes to ensure effective utilization of budgetary and organizational resources. Hard copies of bylaws and Code of Ethics are also enclosed with this application. A historical listing of all IRS Form 900s can be found HERE.

In addition, NBPAS meets the education and training verification standards established by the National Committee for Quality Assurance (NCQA) and the Utilization Review Accreditation Commission (URAC), The Joint Commission, (TJC), Det Norske Veritas (DNV), standards relied upon by Medicare, Medicaid, private payors, and hospitals. NBPAS currently certifies more than 15,000 physicians nationwide, over 1,400 in Florida, and its certification is accepted by more than 260 hospitals and health systems nationwide.

Thank you for your time and consideration of this request. We appreciate the Board's review and would be pleased to provide any additional information that may be helpful.

Sincerely,

Paul Teirstein MD

Paul S. Teirstein, M.D.
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Chief of Cardiology, Scripps Clinic
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