

**IN THE CIRCUIT COURT OF MISSOURI
19TH JUDICIAL CIRCUIT
COLE COUNTY**

MARCY MARKES,

Plaintiff,

v.

ANDREW BAILEY, in his official
capacity as Attorney General of Missouri,
DOROTHY M. MUNCH, IAN L.
FAWKS, JEFFREY D. CARTER, JADE
D. JAMES-HALBERT, NAVEED
RAZZAQUE, MARC K. TAORMINA,
TOM WERDENHAUSE, in their official
capacities as members of the Missouri
Board of Registration for the Healing Arts,
JULIE MILLER, TREVOR J. WOLFE,
MARGARET BULTAS, BONNY KEHM,
COURTNEY OWENS, in their official
capacities as members of the Missouri
Board of Nursing,

Defendants.

Court File No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Marcy Markes is a licensed Family Nurse Practitioner with over thirty years of nursing experience. She has extensive experience owning and operating clinics that provide specialized allergy, asthma, and immunotherapy services to vulnerable populations.

2. By law, Ms. Markes must contract with a physician to see patients at her clinic and provide the care that she is specifically licensed to deliver. Because of this

mandate, Ms. Markes must pay a physician \$52,800 per year—an artificial cost imposed by Missouri law—just to engage in the very work she is uniquely qualified to perform.

3. Missouri stands as an outlier, isolated from the prevailing national understanding. Across most of the country, nurse practitioners (NPs) like Ms. Markes are highly trained professionals who can safely and effectively deliver primary and specialty care, including diagnosing illnesses, prescribing medications, and managing chronic conditions—without a physician’s oversight in non-hospital settings. Not so in Missouri.

4. Here, NPs must secure a “collaborative practice agreement” (CPA) with a physician in order to practice. Mo. Stat. § 334.104. These CPAs erect needless barriers to care, worsen provider shortages, and strip NPs like Ms. Markes of their state and federal constitutional rights—all while protecting physicians' economic interests.

5. Ms. Markes brings this challenge to vindicate her constitutional rights under the Missouri Constitution’s Gains of Industry and Due Process Clauses (Art. I, §§ 2 and 10) and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to Missouri Statutes Sections 527.010 et seq. (declaratory judgments), and Missouri Supreme Court Rule 87.01 et seq. (declaratory judgments) and Rule 92.01 et seq. (injunctions).

7. Subject matter jurisdiction arises under the Missouri Constitution (Art. I, §§ 2 and 10), the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983.

8. Venue is proper under Missouri Constitution Article IV, Sections 12 and 20, as defendants, Andrew Bailey, in his official capacity as Attorney General of Missouri; the Missouri Board of Nursing; and the Board of Registration for the Healing Arts are located in the county, and a substantial part of the events giving rise to the claims occurred in this county.

PARTIES

9. Plaintiff Marcy Markes is a resident of Columbia, Missouri. She is the owner of Allergy & Asthma Educational Specialists, LLC d/b/a Columbia Allergy & Asthma Specialists, a Missouri limited liability company organized in 2007.

10. Defendant Andrew Bailey is the Attorney General of Missouri. In his official capacity, he is responsible for performing the duties prescribed by law before or on behalf of state boards, such as the Board of Registration for the Healing Arts or the Board of Nursing. Mo. Stat. § 27.020(2). He is also responsible for enforcing Missouri's laws and has the authority to bring actions for the unauthorized practice of medicine if an NP operates without a CPA. Mo. Stat. §§ 334.010, 334.250. Mr. Bailey is sued in his official capacity.

11. Defendants Dorothy M. Munch, Ian L. Fawks, Jeffrey D. Carter, Jade D. James-Halbert, Naveed Razzaque, Marc K. Taormina, and Tom Werdenhouse are members of the Missouri Board of Registration for the Healing Arts. The Board is the state entity responsible for establishing and enforcing licensing requirements for physicians in Missouri. This includes initiating disciplinary proceedings to enforce the prohibition against unlicensed persons providing health care services and treatments. Mo. Stat.

§§ 334.010 et seq.; Mo. Code Regs. tit. 20, § 2150–5.100. The members of the Board of Registration for the Healing Arts are sued in their official capacities.

12. Defendants Julie Miller, Trevor J. Wolfe, Margaret Bultas, Bonny Kehm, and Courtney Owens are members of the Missouri Board of Nursing. The Board is the state entity responsible for regulating and licensing the practice of nursing in Missouri, including the duty to discipline licensed nurses for violations of state law. Mo. Stat. §§ 335.016 et seq.; Mo. Code Regs. tit. 20, § 2200–4.200. The members of the Board of Nursing are sued in their official capacities.

FACTUAL ALLEGATIONS

13. Missouri suffers from a critical shortage of healthcare providers, particularly in rural and underserved areas. A vast majority of the state's geography constitutes “physician deserts,” where residents lack adequate access to primary care, leading to poorer health outcomes and increased costs.

Missouri’s Collaborative Practice Scheme

14. Missouri regulates nursing under Chapter 335 of the Missouri Statutes. Advanced practice registered nurses (APRNs), including NPs, are registered nurses with advanced education, training, and certification in specialized areas such as primary care, acute care, or specialty services. Mo. Stat. § 335.011 et seq.

15. NPs are licensed to diagnose and treat patients, prescribe medications, and order diagnostic tests. Yet Section 334.104 requires them to enter into CPAs with physicians to perform these functions outside of a hospital, even though they fall squarely within the APRNs' scope of practice under Missouri law.

16. CPAs are written agreements that delegate authority to an APRN to administer, dispense, or prescribe drugs and treatments consistent with the nurse's skill, training, and competence. Mo. Stat. § 334.104.1.

17. Although an NP is required to enter a CPA in order to practice outside of a hospital setting, physicians are not required to enter into one.

18. Physicians may choose to collaborate with no more than six full-time equivalent APRNs, physician assistants, or assistant physicians combined. Mo. Stat. § 334.104.8. This statutory cap sharply limits the pool of potential collaborators.

19. That scarcity drives up prices. According to a 2019 national survey in the *Journal of Nursing Regulation*, physicians charged APRNs anywhere from \$6,000 to \$50,000 per year simply to maintain a CPA.¹

20. CPAs also impose onerous operational requirements on NPs. NPs must submit a minimum of 10% of patient charts for review by the collaborating physician, or 20% if the patients are being prescribed medication. If the NP treats any acutely or chronically ill patients, the collaborating physician must be physically present at least once every two weeks. Additionally, NPs must undergo one month of continuous onsite supervision by the collaborating physician before treating patients without the physician present. Mo. Stat. §§ 334.104.3(11), 9–11. These mandates force NPs to subordinate their practice efficiency and autonomy to physicians' availability, resulting in operational disruptions and delayed patient care.

¹ Dr. Brendan Martin & Dr. Maryann Alexander, *The Economic Burden and Practice Restrictions Associated With Collaborative Practice Agreements: A National Survey of Advanced Practice Registered Nurse*, 9 J. NURSING REG. 22 (Jan. 2019).

21. At the same time, compliance with these requirements is poorly enforced. CPAs are not filed with the state, and there is no mechanism to ensure that the collaborating physician actually performs chart reviews or supervisory duties.

22. Any changes to CPA regulatory requirements must have joint approval from the physician-dominated State Board of Registration for the Healing Arts and the Board of Nursing—creating a “competitor's veto” over NP Practice. Mo. Stat. § 334.104.4.

23. During COVID-19, Missouri temporarily waived CPA requirements, including the 75-mile proximity rule, chart review mandates, and continuous supervision—demonstrating that these restrictions are not essential to safe care.

24. In 2024, the state permanently removed the 75-mile rule and now allows waiver applications for other geographic limits.

25. An APRN practicing without a CPA faces severe penalties: professional discipline by the Missouri Board of Nursing (Mo. Stat. § 335.066.3); charges of unauthorized practice of medicine by the Board of Registration for the Healing Arts (Mo. Stat. § 334.010); and criminal prosecution for a class D felony by the attorney general (Mo. Stat. § 334.250.1). Penalties include up to seven years in prison and fines up to \$10,000 for each patient seen by the APRN. Mo. Stat. §§ 558.002.1(1), 558.011.1(4).

Impact on Plaintiff Marcy Markes

26. Plaintiff Marcy Markes is a licensed Family Nurse Practitioner with a Bachelor of Science in Nursing (1992) and Master of Science in Nursing (1999) from the University of Missouri Sinclair School of Nursing. She is certified by the American Nurses Credentialing Center and has over thirty years of nursing experience in intensive care units,

cardiac labs, thoracic units, clinical research, and the specialty of allergy, asthma, and immunology care.

27. Since 2007, Ms. Markes has owned and operated Columbia Allergy and Asthma Specialists (Columbia), a clinic providing specialized care in allergy immunotherapy, asthma management, biologic treatments, atopic dermatitis, eosinophilic esophagitis, alpha 1 antitrypsin deficiency, and nasal polyps, among other disease processes related to allergic and immunologic disease states.

28. Columbia provides care to approximately 6,500 patients per year.

29. Columbia also trains the next generation of providers, serving as a precepting site for students from the University of Missouri Medical School, the University of Missouri Sinclair School of Nursing, the Moberly Area Community College Licensed Practical Nurse program, and the Fayette University Registered Nurse to Bachelor of Science in Nursing program.

30. To lawfully provide care at Columbia within her scope of practice, Ms. Markes must maintain a CPA with a collaborating physician.

31. Maintaining compliance with the CPA scheme has repeatedly disrupted her practice. When a collaborating physician withdrew or declined to renew a CPA, Columbia's operations were interrupted, revenue declined, and patients lost access to care.

32. CPA fees—totaling up to \$52,800 annually for minimal physician involvement—further strain her clinic's resources and prevent her from hiring additional NPs to meet demand.

33. Without the CPA requirement, Ms. Markes would expand Columbia’s services, hire additional providers, and increase affordable care for patients in Missouri.

34. If Ms. Markes provides services within her scope of practice—such as diagnosing, treating, or prescribing medications—without a valid CPA, she faces severe penalties, including disciplinary action by the nursing board, healing arts board, and criminal prosecution by the attorney general.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Missouri Statute Section 334.104 violates the Gains of Industry Clause of the Missouri Constitution (Mo. Const. Art. I, § 2)

35. Plaintiff incorporates by reference paragraphs 1–34.

36. Article I, § 2 of the Missouri Constitution guarantees that “all persons have a natural right to . . . the enjoyment of the gains of their own industry.”

37. Missouri’s CPA scheme deprives Ms. Markes of that right by imposing restrictions unrelated to public health or safety that arbitrarily limit her ability to practice to the full extent of her training, education, and licensure as an NP.

38. But for the CPA scheme, Ms. Markes would enjoy the gains of her own industry without paying a physician tens of thousands of dollars annually for nominal oversight.

39. The CPA scheme lacks evidence of any benefit to patient safety or quality of care. Instead, it imposes substantial burdens: exorbitant collaboration fees, operational disruptions, and the threat of forced clinic closures. Restrictions reduce access to care—

especially in underserved areas— by raising patient costs, increasing travel distances, and suppressing competition.

40. By depriving Ms. Markes of her fundamental right to pursue a lawful calling and profession through measures that are arbitrary, protectionist, and unrelated to any legitimate government interest, the CPA scheme violates Article I, Section 2 of the Missouri Constitution.

SECOND CAUSE OF ACTION

Missouri Statute Section 334.104 violates the Due Process Clause of the Missouri Constitution (Mo. Const. Art. I, § 10)

41. Plaintiff incorporates by reference paragraphs 1–40.

42. Article I, Section 10 of the Missouri Constitution prohibits deprivation of life, liberty, or property without due process.

43. The CPA scheme deprives Ms. Markes of her liberty and property interests in practicing her profession by requiring her to enter into costly and burdensome agreements with physicians—agreements that provide no demonstrable benefit to the health, safety, and welfare of Missourians.

44. These requirements are arbitrary and irrational. They erect barriers that worsen Missouri’s healthcare provider shortage, limit access to care, and raise costs for patients. Even assuming a general state interest in health or safety, the mandatory CPA scheme bears no rational connection to that interest.

45. But for the CPA scheme, Ms. Markes would lawfully practice her profession without the needless and irrational obligation to pay a physician tens of thousands of dollars annually for nominal oversight.

46. Because the CPA scheme is not rationally related to any legitimate government interest, it violates Ms. Markes' right to due process under Article I, Section 10 of the Missouri Constitution.

THIRD CAUSE OF ACTION

Missouri Statute Section 334.104 violates the Due Process Clause of the United States Constitution (U.S. Const. amend. XIV, § 1)

47. Plaintiff incorporates by reference paragraphs 1–46.

48. The Fourteenth Amendment to the United States Constitution prohibits deprivation of life, liberty, or property without due process. U.S. Const. amend XIV. This protection encompasses the right to pursue a lawful occupation—a right deeply rooted in this Nation's history and tradition as a fundamental aspect of economic liberty and personal autonomy.

49. The CPA scheme deprives Ms. Markes of that liberty by conditioning her ability to practice on securing and maintaining a CPA, even though she is fully qualified, licensed, and trained to provide care within her scope of practice.

50. The scheme imposes substantial financial and operational burdens without providing any demonstrable benefit to patient health or safety.

51. Its primary effect is to protect physicians from competition, thereby restricting patient access to affordable, high-quality care—particularly in Missouri's many physician shortage areas.

52. But for the CPA scheme, Ms. Markes would lawfully and independently provide care without the irrational and unnecessary mandate of paying a physician tens of thousands of dollars annually for nominal oversight.

53. Defendants, under color of law, enforce this scheme, violating 42 U.S.C. § 1983.

54. Because the CPA scheme is not rationally related to any legitimate government interest, it violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

55. A declaration that Missouri Statute Section 334.104, on its face and as applied to Plaintiff, violates the Gains of Industry Clause of Section 2 of Article I of the Missouri Constitution.

56. A declaration that Missouri Statute Section 334.104, on its face and as applied to Plaintiff, violates the Due Process Clause of Section 10 of Article I of the Missouri Constitution.

57. A declaration that Missouri Statute Section 334.104, on its face and as applied to Plaintiff, violates the Due Process Clause of Section 1 of the Fourteenth Amendment of the United States Constitution.

58. A permanent injunction enjoining Defendants and Defendants' officers, agents, affiliates, servants, successors, employees, and all other persons in active concert or participation with Defendants from enforcing Missouri Statute Section 334.104 against Plaintiff and all others.

59. An award to Plaintiffs of reasonable attorney fees, costs, and expenses, pursuant to 42 U.S.C. § 1988 and any other applicable authority, for bringing and maintaining this action.

60. Any such further relief as the Court deems just and proper.

DATED: August 20, 2025.

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

/s/ Marc Ellinger
Marc Ellinger
Mo. Bar No. 40828
Ellinger Bell
308 East High Street, Suite 300
Jefferson City, MO 65101
Telephone: 573-750-4100
mellinger@ellingerlaw.com

/s/ Donna G. Matias
Donna G. Matias
Cal. Bar. No. 154268*
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Telephone: 916-419-7111
DMatias@pacificlegal.org

/s/ Brandon C. Beyer
Brandon C. Beyer

Minn. Bar. No. 0403249*
Pacific Legal Foundation
3100 Clarendon Boulevard, Suite 1000
Arlington, VA 22201
Telephone: 202-888-6881
BBeyer@pacificlegal.org

Attorneys for Plaintiff

** Pro Hac Vice Application filed
simultaneously*