

the Utah State Bar, vested with the authority by the Utah Supreme Court, administered all the rules and regulations governing the practice of law in Utah. This includes the Utah Rules of Professional Conduct, as well as the Rules Governing Licensed Paralegal Practitioners.

With the sandbox, the Utah Supreme Court has created a new regulatory body, the Office of Legal Services Innovation, and vested it, under the Utah Supreme Court's oversight, with the authority to oversee new legal business models and services. The focus of this regulatory system is the same as that of the Utah State Bar: protecting consumers from harm. What is different is that the Office of Legal Services Innovation uses an objective-based, risk-based approach to regulation.

HOW DOES UTAH'S SANDBOX WORK?

You are probably now thinking, well, what is risk-based regulation? Isn't that what the Rules of Professional Conduct provide?

Not exactly. The goal of the Rules of Professional Conduct is to protect the public, to prevent harm to any consumer of legal services. Take the current ABA Model Rule 5.4 as an example. This rule strives to protect clients from (1) nonlawyer interference with lawyer independence; (2) nonlawyers encouraging litigation; and (3) nonlawyers engaging in the amorphous "practice of law." However, Rule 5.4 assumes that any alignment of interests between nonlawyers and lawyers is bad and operates in such a way that nonlawyers and lawyers cannot be aligned in ways that may actually benefit the client.

In a presentation at the January 2021 Innovation in Technology Conference, Lucy Ricca, executive

AN INSTRUCTIVE ANALOGY MY EXPERIENCE WITH A NURSE PRACTITIONER

By Judy Perry Martinez

The COVID-19 pandemic has caused many of us to rethink conventional wisdom in a variety of areas, legal and otherwise. For me, one occasion arose last October when I decided to schedule my annual women's health checkup. Because many other women had delayed and then scrambled to get appointments, the "next available" from my gynecologist was not until January 2021. So, I did the unthinkable for someone who had just transitioned to a new specialist three years ago after being with one doctor for close to four decades and through four challenging pregnancies: I decided to try yet another new doctor when seeking an appointment. I went on the local major health care institution's website, selected a name and photo, and spoke with an operator to set the time and place of my next appointment—not in January 2021 but in the very same month that I called. I was delighted that I was able to get in so promptly for my checkup. What I did not know—and was not told until I arrived at the office on the day of my appointment and did not see the name of my "doctor" on the door—was that I was scheduled to see a nurse practitioner. Although I expressed to the receptionist my appreciation for her ensuring that I was aware of the practitioner's professional status and my disappointment that I had not been informed of this status when I scheduled my appointment by phone, once again, I did the unthinkable for me: I decided to go forward that day with the appointment.

As someone who in earlier childbirth years had been at significant risk during pregnancies, had months of bed rest, and even relied during pregnancy on non-FDA-approved drugs for pregnancy that my physician utilized as part of a trial to ensure a safe and timely delivery, the idea of turning to someone other than a licensed physician and board-certified specialist for even routine well care was at the moment a daunting choice. Following my first delivery more than 30 years ago, my confidence in my doctor had been remarkably high, and my trust and confidence only strengthened and our patient-physician bond only grew over the course of a lifetime. So the decision now to step out of that comfort zone was a big one. I weighed the risk of being examined and assessed by someone who was certified to deliver the needed services and licensed as a nurse practitioner versus waiting another season to be seen by my current licensed physician. The risk was mitigated by the fact that the nurse practitioner was in the office of an experienced physician specialist group—although I never laid eyes on nor exchanged a word with a doctor during my visit.

My individual perspective following my appointment with the nurse practitioner was that the care was of the highest quality—not only was an apparently thorough examination undertaken, but the thoughtful approach to the exchange of health information, personal lifestyle inquiries, and challenges presented by the pandemic was not merely

(Continued on page 38)

director of Utah's Office of Legal Services Innovation, explained that Utah's sandbox is grounded in five principles: regulation should be based on risk to the consumer; this risk should be evaluated relative to the current legal services options; regulation should establish probabilistic thresholds for acceptable levels of harm; regulation should be empirically driven; and regulation should be market-based.

For individuals and entities seeking sandbox approval, these steps are required:

1. Tell the Office of Legal Services Innovation what you are proposing.
2. Explain what kinds of risks there might be for consumers.
3. The Office will then recommend to the Utah Supreme Court whether to permit your innovation; the Court is the decision-maker.
4. If the proposal is approved, the Office will tell you what data you must provide and what consumer disclosures you must make.
5. Then, the Office watches for harm.

When an innovator or entity makes a proposal, the Office of Legal Services Innovation and the Utah Supreme Court determine the risk level associated with the proposal. The higher the risk, the more frequent and detailed the reporting requirements will be.

From the observation and reporting of these individuals and entities, the Office of Legal Services Innovation will complete a final outcomes evaluation and report, which will help the Utah Supreme Court decide how to proceed, the possibilities of which could include new regulatory strategies through permanent changes, extension of the sandbox, or even

(Continued from page 37)

professional but appropriately patient and empathetic. My decision to allow a nurse practitioner to be my health care provider for what was a routine annual examination was now bolstered by a positive experience that gave me access to needed services much earlier than I would have received had I waited for my chosen physician to be available to see me. This resulted in several months' peace of mind I would not otherwise have enjoyed.

What I also know post-appointment is that any future decision to continue using nurse practitioners will be backed by data. Outcomes on clinical success and patient safety are important to understand. Not only should anonymized data regarding patient health and safety of at-large populations examined by nurse practitioners be considered, but so should the experience set and any specialized medical training, ethics, and practice methods and standards of the particular professional you have the opportunity to see.

But, then, that is really what this is about, isn't it: having access, opportunity, and choice to get the care and services that you desire, can afford, and can timely secure from a regulated, ethical, and licensed professional and making your decision based on sound, reliable data from trusted sources on which you can rely. That, combined with personal experience and individual perspective, come together in a powerful combination of consumer choice. ■



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additional experiments. To date, 28 applications have been approved.

BUT WHY DO WE NEED THE SANDBOX?

Fundamentally, we need the sandbox to increase access to justice. We have known for some time that our current regulatory approach has failed to serve all members of our society. The *Report on the Future of Legal Services in the United States*, issued in 2016 by the ABA Commission on the Future of Legal Services (<https://tinyurl.com/c74yuphx>), found that (1) the access-to-justice gap is widening, including for both low- and moderate-income individuals; (2) technological advancements and other innovations that could

change the delivery of legal services are not evenly distributed; and (3) public trust and confidence in the legal profession are low, due to a lack of diversity, implicit bias, complexity, and inadequate resources coupled with over-criminalization and mass incarceration.

Utah, like many states, has attempted to increase access to justice through various initiatives, including its licensed paralegal practitioner and online dispute resolution programs, as well as the Utah Courts Self-Help Center. However, as Utah Supreme Court Standing Order No. 15 explains, "real change in Utahns' access to legal services requires recognition that we will never