Finalizing the Path to Independent Practice Authority for Nurse Practitioners in California

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PROFESSIONAL



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An Update on the Board of Registered Nursing's Regulations, Application Process for NPs Seeking Expanded Practice Authority, and Implementation of 805 Reporting Requirements for NPs.

Enacted September 2020, California Assembly Bill ("AB") 890 granted nurse practitioners ("NPs") greater independent practice authority. Specifically, the law created two new categories of NPs who may operate without standardized procedures within a defined scope of practice: 103 NPs (practicing pursuant to Business and Professions Code section 2837.103) and 104 NPs (practicing pursuant to Section 2837.104). (See our prior alert detailing AB 890, available here.)

AB 890 tasked the California Board of Registered Nursing ("BRN") with promulgating regulations (22 C.C.R. § 1480 *et seq*.) to fully implement the new law, which the BRN finalized at the end of last year, and which took effect January 1, 2023. The BRN's regulations set forth minimum "transition to practice" standards for candidates seeking certification as a 103 NP who may work without standardized procedures in certain "group settings" (such as a clinic, hospital, medical group practice, home health agency, or hospice) with at least one physician and surgeon. These standards consist of a minimum of three years or 4,600 hours of clinical practice experience and mentorship, which must meet the following requirements: (1) be completed in California; (2) be completed within five years prior to applying to practice as a 103 NP; (3) be completed after certification as an NP; and (4) be in direct patient care in the category in which the NP seeks certification. Additionally, an NP must practice as a 103 NP for at least three years before becoming eligible to apply for practice as a 104 NP, who may practice without standardized procedures outside of a group setting.

Application to Practice Without Standardized Procedures

Pursuant to the regulations, NPs who meet the requirements of Section 2837.103 may apply to the BRN for an expanded scope of practice, and work without standardized procedures as a 103 NP. The BRN is currently developing the certification application and process, though the application elements are generally set forth in 16 C.C.R. Section 1482.3 (including proof of completion of transition to practice, proof of NP certification by a national certification organization as an NP, and the NP category, such as neonatal, pediatrics, family/individual across the lifespan, etc.). The BRN expects the 103 NP application to be available later this month and will send an email to all NPs and

stakeholders with instructions when the application is finalized.

Given the additional requirement that 104 NPs first practice as a 103 NP for at least three years, the ability to apply for expanded scope of practice without standardized procedures as a 104 NP will not be until 2026, at the earliest.

Medical Staff Membership for NPs and Updated 805 Reporting Requirements

AB 890 permits 103 and 104 NPs to serve on medical staff and hospital committees and, beginning in 2026, 104 NPs will be eligible for medical staff membership. However, AB 890 and the BRN's regulations are silent as to how to read the statute in context with Title 22's requirement that the medical staff "be composed of physicians and, where dental or podiatric services are provided, dentists or podiatrists."[1]

Additionally, AB 890 extended Section 805's reporting requirements to 103 and 104 NPs. [2] Under Section 805, peer review bodies—such as a hospital's medical staff—must file a report with the relevant licensing agency when certain corrective actions are taken against a "licentiate" for a "medical disciplinary cause or reason." AB 890 expanded the definition of "licentiate" to include 103 and 104 NPs. In light of AB 890's updated 805 reporting requirements, the BRN updated its page with FAQs and a health facility reporting form (which is modeled off the Medical Board of California's 805 reporting form for licensed physicians and surgeons). However, the reporting form goes beyond the requirements set forth in AB 890.

As discussed in our prior alert, while AB 890 expanded reporting requirements under Section 805, it did not grant 103 and 104 NPs hearing rights under Section 809.

With the regulations finalized and a process to apply for certification as a 103 NP on the horizon, now is the time for hospitals and their medical staffs to consider how independent practice by NPs may impact their facility's departments and clinical service lines as well as contractual arrangements with 103 NPs. ***The reality is that approaches may vary across different entities and careful thought will need to be given to any potential changes to your governing documents, including but not limited to Medical Staff Bylaws, Rules and Regulations, and policies impacting advanced practitioners.***

[1] 22 C.C.R. § 70703.

[2] AB 890 also extended Section 805.5's requirement for health facilities to check for any Section 805 reports filed against NPs prior to granting or renewing staff privileges.

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