

California's New Scope of Practice Law for Nurse Practitioners – Part One

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The California Board of Nursing states that a new California law, AB-890 expands the scope of practice rules for nurse practitioners. The law is effective January 1, 2023. To take advantage of the new law, nurses must meet specific California requirements. Nurse practitioners who do meet the requirements may be able to practice “independently,” in some cases.

Nurses who do not meet the requirements must comply with “*Standardized Procedures, the mechanism for Nurse Practitioners to perform functions which would be considered the practice of medicine.*”

What were the standardized procedures that nurse practitioners needed to meet prior to AB 890?

The standardized procedures are those set forth in California law. Standardized procedures mean either of the following:

“(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.”

What duties do nurses perform?

Nursing as defined by the statute means:

“Those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and

the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(3) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.”

Before the passage of the new law nurse practitioners (NPs) could also:

- Order durable medical equipment
- Certify if a patient is disabled
- Approve or modify a plan of treatment or plan of home health care
- Furnish drugs or devices “consistent with the practitioner’s educational preparation or for which clinical competency has been established and maintained,” under physician and surgeon supervision (§ 2836.1). Specific supervision requirements include: “collaboration on the development of the standardized procedure, approval of the standardized procedure, and availability by telephonic contact at the time of patient examination by the nurse practitioner.”
- Furnish or order buprenorphine.

Why was the AB 890 legislation enacted?

According to the California Association of Long Term Care Medicine, the California NP scope of practice law was enacted to help mitigate COVID-19. AB90 was one of many bills introduced nationwide to help healthcare providers respond to the pandemic. Other COVID bills passed in California included bills to:

- Provide minimum personal protective equipment (PPE) requirements
- Expand the ability of pharmacists to give vaccines for COVID-19
- Create statewide peer support specialist standards

AB 890 is still awaiting new rules which will be drafted by the California Board of Registered Nursing (BRN).

What did Assembly Bill (AB) 90 do?

The new law:

- Established Article 8.5 in the Nursing Practice Act – that provides when and how NPs can practice without the use of standardized procedures (sections 2837.103 and 2837.104).
- Established a Nurse Practitioner Advisory Committee within the Board of Registered Nursing. This committee will advise the board about nurse practitioner issues including disciplinary issues.
- “Extended the prohibitions of section 650.01 to NPs practicing independently under section 2837.103 or 2837.104 – which

- *“Makes it a misdemeanor for specified healing arts practitioners to refer a patient to another practitioner/entity for certain services, if the licensee or their immediate family has a financial interest with the person/entity that receives the referral. In this respect, the AB 890 is akin to Stark Law.”*
- Extends “the requirement of section 805 to NPs practicing independently under section 2837.103 or 2837.104. *“Section 805 requires certain peer review organizations to file an “805 report” with the applicable healing arts board, providing information about adverse actions taken against certain healing arts licensees for medical disciplinary cause.”*
- Directs the California Board of Registered Nursing to *“work with the DCA Office of Professional Examination Services on an occupational analysis, an assessment of the competencies tested by the national NP exam, and a determination of whether a supplemental exam is necessary to validate competency for independent practice.”*
- Assigns other duties to the California Board of Registered Nursing to implement the new law.

The First Steps to Understanding Stark Law

In today’s video, we will be introducing you to Stark Law.

What are the nurse practitioner requirements to be eligible to practice independently?

AB 890 essentially provides two ways for nurse practitioners to practice without standard procedures and physician oversight:

Setting specific practices

This part of the bill is effective in 2021 – only after the BRN creates the necessary regulations. The key provisions are that the:

- NP passes a national NP board certification examination.

“The Department of Consumer Affairs, Office of Professional Examination Services (OPES) will complete an occupational analysis of NPs performing the functions in the scope of practice statute and will possibly create an exam to cover aspects of the scope of practice statute if the national NP board certification exams do not cover them.”

- The NP must be properly certified by *“a national certifying body accredited by the National Commission for Certifying Agencies or the American Board of Nursing Specialties and those national certifications need to be recognized by the BRN.”*
- The nurse practitioner must provide documentation to show their training was *“consistent with current BRN standards and any applicable regulations as they specifically relate to requirements for clinical practice hours. Online educational programs that do not include mandatory clinical hours shall not meet this requirement in the new law.”*
- The NP must finish a California transition-to-practice (TTP) requirement of three full-time equivalent years or 4600 hours – according to BRN regulations.

“To expand their practice outside of these settings: “a nurse practitioner must practice within the limits of their knowledge, experience, and national certification and have practiced in good standing for at least three (3) years after meeting the requirements to transition to practice.”

“Nurse practitioners who practice outside of the limited settings listed above “shall consult and collaborate with other healing arts providers based on the clinical condition of the patient to whom health care is provided and establish a plan for referral of complex medical cases and emergencies to a physician and surgeon or other appropriate healing arts providers.”

NPs who complete the above steps and work at one of the following six settings/organizations can, pursuant to AB 90, **practice without standardized procedures or physician supervision:**

- Clinics as defined by the Health and Safety Code
- A health facility as defined by the Health and Safety Code – with exceptions for correctional treatment centers, state hospitals, and other types of facilities.
- A medical group practice, including a professional medical corporation... another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians and surgeons that provides health care services.
- A home health agency.
- A hospice

Each of these settings is defined in more detail in the California statutes.

In response to the COVID pandemic, California passed a law that makes it easier for nurse practitioners to treat patients. The law provides that nurse practitioners who complete specific requirements can practice in a medical group practice and other settings – without the requirement to follow standardized nursing procedures.

7 Reasons Why Nurses Lose Their License

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Did COVID Relax Telemedicine Laws?

In today's video, we discuss whether COVID relaxed telemedicine laws.

Nurse practitioners, medical practices, and other health providers who work with nurse practitioners should contact Cohen Healthcare Law Group, PC to review how California's new AB 890 expands the practice of nursing practitioners. Our experienced healthcare attorneys advise nurse practitioners, doctors, and others about healthcare compliance laws and regulations.

Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.