

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

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This article is a continuation of our discussion about how California law AB 890 makes treating patients easier for nurse practitioners – without physician supervision or the need to comply with “standardized procedures.” In part one, we ended by discussing how NPs could meet the provisions of the new law by working in specific types of settings and organizations. This article continues that discussion by explaining the role of NPs in nursing corporations.

NPs in Nursing Corporations

California law already provided, before AB 890, that nurse practitioners could create nursing corporations:

“2775. A nursing corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are registered nurses are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.”

“With respect to a nursing corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Registered Nursing.”

2776. This section states that violations of the act (indirect or direct attempts to violate the act, and other acts such as aiding in the violation of the nursing corporations statute, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws – will be considered unprofessional conduct and a violation of this chapter.

2777. This provision provides that a nursing corporation is bound by the same statutes and regulations as a person holding a license under this chapter.

2778. This provision states that: *“the name of a nursing corporation and any name or names under which it may render professional services shall contain the words “nursing” or “registered nursing,” and wording or abbreviations denoting corporate existence.”*

2779. Except as provided elsewhere in the Corporations Code; “each shareholder, director and officer of a nursing corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.”

Other provisions pertain to the income of a nursing corporation attributable to professional services rendered while a shareholder is a disqualified person – and what regulates can be adopted and enforced to carry out the objectives of the nursing corporation law.

When AB 890 becomes effective in 2023, a nurse practitioner that meets the new scope of practice requirements (that permit an NP to practice in a setting/organization-specific practice – without standardized procedures) will:

“Be able to practice independently with an additional three years of practicing in good standing (i.e., no discipline against the NP’s BRN RN license or NP certificate) in a setting-specific practice, for a total of six years (i.e., three years in TTP + 3 years practicing in good standing), to practice as an independent NP outside the setting-specific practices.”

AB 890 also provides the following benefits and rights for nurse practitioners:

- **Medical Staff Membership and Voting Rights.** A nurse practitioner will be able to serve on *“organized medical staff and hospital committees and adhere to all applicable medical staff bylaws in healthcare facilities.”* In certain setting/organization practices, an NP will be eligible to attend department meetings. The NP will not be able to vote at a department, division, or other meetings unless their vote relates to the determination of NP privileges, peer review of NP clinical practice, certain licensee employment considerations, or the vote is *“otherwise allowed by the applicable Medical Staff bylaws.”*

If an NP in a nursing corporation is eligible to join an organized medical staff (after January 1, 2023), the nurse practitioner will have the right to vote at all department, divisions, or other meetings.

- **Referrals and evaluation of care.** NPs should refer a patient to a doctor, surgeon, or another licensed health care provider – if the care that a patient need is beyond the skill and experience level of the nurse practitioner. According to the California Association of Long Term Care Medicine, NPs already are required to refer patients if the patient needs help above the skill level of an NP. NPs and other health care providers regularly make authorized referrals – such as *“to a specialist Cardiology clinic for uncontrolled hypertension or Physical Therapy and Occupational Therapy in the Skilled Nursing Facility (SNF) setting for evaluation of a safe discharge.”*

For NPs in Nursing Corporations, NPs in SNFs

Generally, most nurse practitioners who work in a skilled nursing facility (SNF) will be practicing within a setting-specific group – and will not require standardized procedures and physician supervision – once the California BRN creates new regulations. If a nurse practitioner in an SNF wants to create a nursing corporation, *“they will then practice as an independent individual NP or NP group in 2023, under certain conditions.”* Until the new law and new BRN regulations go into effect, nurse practitioners must enter into a written practice agreement with an individual doctor or a physician group:

“Because the regulations governing SNFs require that a physician may not delegate a task when the regulations specify that the physician must perform it personally, which includes the initial comprehensive visit in an SNF during which the physician completes a thorough assessment, develops a plan of care, and writes or verifies admitting orders for the resident.”

Medicare requires that the doctor cannot delegate the initial comprehensive visit in an SNF. Generally, non-physician practitioners may perform other medically necessary visits before and after the physician’s initial comprehensive visit.

AB 890 should enable a better SNF workflow as NPs can practice without physician supervision and standardized procedures – and doctors will have a lighter workload and less paperwork. According to the California Association of Long-Term Care Medicine, *“NPs in California have been working for over 20 years to get full practice authority. While there are still regulatory rules that need to be created, NP practices now have the statute for full practice authority.”*

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What regulations may be needed to implement AB 890?

According to the California BRN:

- The term "transition to practice," will need to be defined. Currently, the term means:

"Additional clinical experience and mentorship provided to prepare a nurse practitioner to practice independently." "Transition to practice" includes, but is not limited to, managing a panel of patients, working in a complex health care setting, interpersonal communication, interpersonal collaboration and team-based care, professionalism, and business management of a practice.

The board shall, by regulation, define minimum standards for transition to practice. Clinical experience may include experience obtained before January 1, 2021, if the experience meets the requirements established by the board.

- The BRN will need to determine process for Nurse Practitioner Advisory Committee to advise the Board on disciplinary matters* This regulation may or may not be necessary depending on the process used
- *"Lower experience requirement to practice under 2837.104 for NPs holding a DNP (if desired*) (*This is not a prerequisite to full implementation of AB 890, as it is within the Board's discretion to determine whether to lower this requirement)."*
- *"Establish certificate to practice under section 2837.104, and corresponding fee for certificate."*
- *"Establish supplemental examination, if deemed necessary."*
- *"The Board may consider whether other portions of AB 890 require a regulation in order to implement, interpret, or make specific any of the statutes in the bill."*

What has the BRN done so far?

Currently, the California Board of Registered Nurses is engaged in developing proposals and regulations to implement AB 890.

Additional considerations by a local medical association

According to the Alameda-Contra Costa Medical Association, there are some additional considerations:

The California Medical Association (CMA) will be closely involved in the implementation of AB 890, monitoring and advocating during the regulatory process at the Board of Registered Nursing and at the Medical Board of California, as necessary.

AB 890 allows Section 103 and 104 NPs to do the following:

- *“Conduct an advanced assessment*
- *Order, perform; and interpret diagnostic procedures, as specified with regard to radiologic and clinical laboratory procedures*
- *Establish primary and differential diagnoses*
- *Prescribe, order, administer, dispense, procure, and furnish therapeutic measures including referrals, pharmacological agents, and nonpharmacological interventions, as specified*
- *Certify disability for state disability benefits*
- *Delegate tasks to a medical assistant.”*

AB 890 requires Section 103 and 104 NPs to do the following:

- *“Verbally inform all new patients in a language understandable to the patient that the nurse practitioner is not a physician;*
- *Post a notice in a conspicuous location accessible to public view that the nurse practitioner is regulated by the BRN, including information about how complaints can be made;*
- *Practice only within the scope of their education and training;*
- *Refer patients to a physician in specified circumstances; and*
- *Carry professional liability insurance.”*

AB 890 Does Not End Physician Supervision. The bill does not prohibit the supervision of NPs – including the two new categories created under AB 890 – or otherwise seek to regulate or modify the operative law regarding the governance of nurse practitioners who do not receive additional training. Current arrangements regarding the practice and supervision of NPs are not regulated or changed by AB 890.

AB 890 Requires Consultation and/or Referral. AB 890 requires “Section 10” NPs to refer cases beyond their training and education to a physician. AB 890 also requires “Section 104” NPs, who are practicing in facilities that may not have a physician on site, to consult with and refer patients to a physician in specified circumstances.

AB 890 Explicitly Protects the “Corporate Bar.” AB 890 specifies that the corporate bar applies to Section 103 and Section 104 NPs. That means entities including hospitals may not hire, employ or otherwise control the Section 103 and Section 104 NPs unless one of the existing exceptions to the corporate bar applies.

California AB 890 expands the ability of nurse practitioners in California to provide patient services without following “standardized procedures” in certain settings and through nurse corporations. The California Board of Registered Nurses is developing regulations to implement the new law.

Nurse practitioners and medical practices should contact Cohen Healthcare Law Group, PC to how to comply with AB 890. Our experienced healthcare attorneys advise doctors, nurses, and other health care providers about healthcare compliance laws and regulations.

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