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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By M. Estrada ,Deputy Clerk

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 KERSTIN HELGASON and
13 JAMIE MARIE SORENSON,

14 Petitioners and Plaintiffs,

15 v.

16 THE CALIFORNIA BOARD OF
17 REGISTERED NURSING, and LORETTA
18 MELBY, in her official capacity as Executive
Officer of the California Board of Registered
Nursing,

19 Respondents and Defendants.

No. 25CU000876C

**VERIFIED PETITION FOR WRIT OF
MANDATE (CCP § 1085) AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF (CCP § 1060 and
Gov't Code § 11350(a) and
42 U.S.C. § 1983)**

20 **INTRODUCTION**

21 1. Nearly twenty percent of Californians live in healthcare provider shortage areas. In
22 San Diego County alone, a third of residents live in a primary care shortage area. Mental health is
23 experiencing a similar inflection point. In less than three years, California will have over forty
24 percent fewer psychiatrists than needed.

25 2. Nurse practitioners (NPs) are qualified to meet this demand. Nurse practitioners
26 have both the advanced education and the deep experience necessary to ameliorate this shortage.

27 3. The California Legislature agrees. In 2020, it recognized that NPs were key to
28

1 mitigating healthcare provider shortfalls. However, laws requiring mandatory physician
2 supervision imposed an unnecessary obstacle to unleashing qualified nurse practitioners.
3 Accordingly, the Legislature granted NPs an expanded scope of practice so that they could
4 provide services to the full extent of their training, qualifications, and experience *without*
5 physician supervision.

6 4. Plaintiffs Kerstin Helgason and Jamie Sorenson are licensed psychiatric mental
7 health nurse practitioners who have long provided exceptional care to their California patients.
8 Each has decades of experience, including the dedication and compassion necessary to treat
9 vulnerable populations.

10 5. Ms. Helgason works with adolescents and adults who have suffered childhood
11 abuse. Ms. Sorenson is a 24-year Navy veteran who already worked as an independent provider
12 for sailors while stationed in California. After retiring from the military, she now sees civilian
13 patients. Both Plaintiffs lawfully operate as solo practitioners, under physician supervision as
14 currently required by law.

15 6. Helgason and Sorenson satisfy the statutory requirements for independent
16 practitioner licensure as drafted by the Legislature.

17 7. However, the Board of Registered Nursing has grossly misinterpreted the plain
18 language of the statute and adopted a regulation that directly contradicts the plain language and
19 legislative intent.

20 8. As a result of the Board's regulation, Helgason and Sorenson cannot obtain
21 independent practice authority unless they first turn away their current patients and shut down
22 their long-time practices for several years.

23 9. Forcing well-qualified and experienced nurse practitioners to close their doors is
24 contrary to both the text of the statute and legislative intent. It is also unconstitutional.

25 **JURISDICTION AND VENUE**

26 10. This Court has jurisdiction of this petition for writ of mandate and complaint for
27 declaratory relief pursuant to Sections 1060 and 1085 of the Code of Civil Procedure, and Section
28 11350(a) of the Government Code.

1 11. Subject matter jurisdiction also arises under the Fourteenth Amendment to the
2 United States Constitution and 42 U.S.C. § 1983. This Court has general jurisdiction pursuant to
3 Civ. Proc. Code § 410.10 and has jurisdiction over this complaint for declaratory and injunctive
4 relief pursuant to Civ. Proc. Code § 1060.

5 12. Venue in San Diego County Superior Court is proper under Civ. Proc. Code
6 § 393(b) because part of the cause of action arose in San Diego County; and Civ. Proc. Code
7 § 395(a) because, on information and belief, Defendant Loretta Melby resides in San Diego
8 County.

9 **PARTIES**

10 13. Kerstin Helgason is a resident of Gilroy in Santa Clara County, California. She is a
11 licensed psychiatric mental health nurse practitioner.

12 14. Jamie Sorenson is a resident of Coronado in San Diego County, California. She is
13 a licensed psychiatric mental health nurse practitioner.

14 15. Defendant Loretta Melby is the Executive Officer of the California Board of
15 Registered Nursing. On information and belief, she is a resident of San Diego County, California.
16 She is sued in her official capacity only.

17 16. Defendant California Board of Registered Nursing is the state entity responsible
18 for regulating and licensing the practice of nursing in California. The Board is also responsible
19 for investigating and taking disciplinary actions against licensees.

20 **FACTUAL ALLEGATIONS**

21 **The Legislature Creates Pathways to Independent Practice**

22 17. In most states, nurse practitioners can practice to the full extent of their
23 competencies without having to contract for physician supervision. The ability to practice
24 without expensive physician agreements is called “independent practice authority.” Until
25 recently, California did not authorize independent practice authority.

26 18. In 2020, the California Legislature passed AB 890. It creates two pathways that
27 nurse practitioners may pursue to gain independent practice authority.

28 19. First, the “103 NP,” authorizes nurse practitioners to work without a mandatory

1 physician agreement (known as “standardized procedures”) in certain enumerated group settings,
2 such as a hospital.

3 20. Second, the “104 NP,” authorizes nurse practitioners to operate without
4 standardized procedures outside of group settings, such as a solo practitioner. Bus. & Prof. Code
5 §§ 2837.103 and 2837.104.

6 21. To qualify as a 103 NP, AB 890 requires nurse practitioners to: pass a national
7 nurse practitioner board certification examination; hold certification as a nurse practitioner from
8 an accredited national certifying body; provide documentation that educational training was
9 consistent with standards established by Board; and complete a “transition to practice” of at least
10 4,600 hours (three full-time equivalent years). Cal. Bus. & Prof. Code § 2837.103(a)(1).

11 22. “Transition to practice” means “additional clinical experience and mentorship
12 provided to prepare a nurse practitioner to practice independently.” Cal. Bus. & Prof. Code
13 § 2837.101.

14 23. To qualify as a 104 NP, AB 890 requires the applicant to first satisfy all the
15 requirements of a 103 NP applicant. Bus. & Prof. Code § 2837.104(b)(1).

16 24. The 104 NP must also be licensed as a registered nurse in California and hold a
17 master's degree in nursing or in a clinical field related to nursing or a doctoral degree in nursing.
18 Bus. & Prof. Code § 2837.104(b)(2).

19 25. Finally, the 104 NP must have practiced as a nurse practitioner “in good standing
20 for at least three years, not inclusive of the transition to practice required pursuant
21 to subparagraph (D) of paragraph (1) of subdivision (a) of Section 2837.103.” Bus. & Prof. Code
22 § 2837.104(b)(3).

23 26. The Legislature declared that “the requirements under this article shall not be an
24 undue or unnecessary burden to licensure or practice,” and that the requirements are “intended to
25 ensure the new category of licensed nurse practitioners has the least restrictive amount of
26 education, training, and testing necessary to ensure competent practice.” Bus. & Prof. Code
27 § 2837.100.

28 27. AB 890 was intended to certify nurse practitioners to practice independently

1 outside of a defined healthcare setting after completing a three-year transition to practice and
2 three years practice experience in good standing “according to standardized procedures or
3 protocols with a physician.” Cal. Senate Floor Analysis, AB90, 2019–2020. A true and correct
4 copy of this portion of the legislative history is attached as Exhibit “A.”

5 28. Nurse practitioners practicing pursuant to Bus. & Prof. Code § 2837.103 do not
6 practice “according to standardized procedures,” since they work in a group setting. *See* Code
7 Regs. tit. 16, § 1481(b)(1); Bus. & Prof. Code § 2837.103(a)(2).

8 **The Board of Nursing Imposes an Additional Burden**

9 29. The Board promulgated rules that impose additional burdens not authorized by the
10 statute’s text. Code Regs. tit. 16, § 1482.4(a)(14).

11 30. The Board’s regulation provides that to obtain certification as a nurse practitioner
12 pursuant to Section 2837.104 a nurse practitioner must provide “[p]roof of practice as a nurse
13 practitioner pursuant to Section 2837.103 of the code in good standing for at least three full-time
14 equivalent years or 4600 hours in direct patient care.” Code Regs. tit. 16, § 1482.4(a)(14).

15 31. As the Board explained in a press release, the “[l]aw requires an NP to first work
16 as a 103 NP in good standing for at least 3 years prior to becoming a 104 NP. Therefore, the
17 application to become a 104 NP will not be available until 2026.”

18 32. Under the Board’s regulation, nurse practitioners do not have the option to apply
19 for 104 licensure now—despite the text of AB 890 and unequivocal legislative intent that 104 NP
20 applications be available in 2023.

21 **Impact on Plaintiffs/Petitioners**

22 33. Plaintiff Helgason maintains a private practice as a psychiatric mental health nurse
23 practitioner in Gilroy. She currently provides 40 appointments for patients per week. To lawfully
24 practice, she operates under two sets of standardized procedures with two different physicians,
25 reflecting her different specialties. Helgason pays a fee to each of these physicians.

26 34. After operating her private practice for seven years, Ms. Helgason seeks to operate
27 independent of physician supervision. But for the Board’s requirement that she first practice for
28 three years as a 103 NP, Ms. Helgason meets all other statutory and regulatory requirements to

1 become a 104 NP now. *See* Bus. & Prof. Code § 2837.104 and Code Regs. tit. 16, § 1482.4.

2 35. In order to meet the Board's requirement that she first practice for three years as a
3 103 NP, Ms. Helgason would be forced to close her current business and find a job working in a
4 group setting, where standardized procedures are not required. Bus. & Prof. Code § 2837.103. All
5 of her current patients would be left without care.

6 36. Plaintiff Sorenson maintains a private practice as a psychiatric mental health nurse
7 practitioner in San Diego. She maintains a panel of approximately 330 patients. To lawfully
8 practice, she operates under standardized procedures with one physician in her specialty area. Ms.
9 Sorenson pays a fee to this physician for her collaboration.

10 37. After operating her private practice for four years, Ms. Sorenson seeks to operate
11 independent of physician supervision. But for the Board's requirement that she first practice for
12 three years as a 103 NP, Ms. Sorenson meets all other statutory and regulatory requirements to
13 become a 104 NP now. *See* Bus. & Prof. Code § 2837.104 and Code Regs. tit. 16, § 1482.4.

14 38. In order to meet the Board's requirement that she first practice for three years as a
15 103 NP, Ms. Sorenson would be forced to close her business and find a job in a group setting
16 where standardized procedures are not required. Bus. & Prof. Code § 2837.103. All of her current
17 patients would be left without care.

18 39. Under the Board's regulation, the only path to independent practice for Plaintiffs
19 requires them to shutter their businesses, terminate their relationships with their current patients,
20 and enter into practice in group settings for several years.

21 40. Absent these actions, Plaintiffs have no opportunity to achieve independent
22 practice and instead must pay their supervising physicians and practice with standardized
23 procedures in perpetuity.

24 **DECLARATORY RELIEF ALLEGATIONS**

25 41. The challenged regulation, Code Regs. tit. 16, § 1482.4, is inconsistent and in
26 conflict with the statute and is not reasonably necessary to effectuate the purpose of the statute.
27 The Board's interpretation of the statute is arbitrary and capricious.

28 42. Thus, the challenged regulation is invalid.

1 43. Applying the challenged regulation to Plaintiffs and those similarly situated violate
2 the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

3 44. Additionally, applying the challenged regulation to Plaintiffs and those similarly
4 situated violates the Due Process Clause of the Fourteenth Amendment to the United States
5 Constitution.

6 45. An actual and substantial controversy exists between Plaintiffs and Defendants as
7 to the parties' respective rights and responsibilities. Plaintiffs assert that Code Regs. tit. 16,
8 § 1482.4 is an invalid regulation and violates their rights under the Fourteenth Amendment to the
9 United States Constitution. Defendants continue to enforce the invalid regulation against
10 Plaintiffs by imposing invalid and unconstitutional burdens on them.

11 **INJUNCTIVE RELIEF ALLEGATIONS**

12 46. Plaintiffs have no plain, speedy, and adequate remedy at law to address the
13 continuing invalidity of Code Regs. tit. 16, § 1482.4 and the consequent violations of their
14 constitutional rights under color of state law. Plaintiffs' injuries would not be adequately
15 remedied by pecuniary compensation, it would be extremely difficult to ascertain the amount of
16 compensation that would afford adequate relief, and injunctive relief is necessary to prevent a
17 multiplicity of judicial proceedings. Civ. Proc. Code §§ 526(a)(1)–(2) and 526(a)(4)–(6).

18 47. Plaintiffs have a substantial likelihood of succeeding on the merits of their claims
19 as the challenged regulation is invalid and violates the Equal Protection and Due Process Clauses
20 of the Fourteenth Amendment to the United States Constitution.

21 48. An injunction restraining Defendants from enforcing the challenged regulation will
22 serve the public interest. An injunction will not prevent Defendants from performing their official
23 functions and responsibilities. In fact, it will allow them to do so in accordance with legislative
24 intent, Plaintiffs' constitutional rights, and the rule of law.

25 ///

1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **For Writ of Mandate Compelling All Respondents to**
4 **Follow Their Duty under Bus. & Prof. Code § 2837**
5 **(Mandamus—CCP § 1085)**
6 **by all Petitioners against all Respondents**

7 49. Plaintiffs incorporate and reallege each and every allegation set forth in paragraphs
8 1–48 of this Complaint.

9 50. Code of Civil Procedure Section 1085 permits this Court to issue a writ of mandate
10 to compel actions required of the State of California, state agencies, and state officers.

11 51. Bus. & Prof. Code § 2837 requires Respondents to pass regulations effectuating
12 the purpose of the statute.

13 52. Thus, Respondents are under a clear and present duty not to pass regulations that
14 are in conflict and inconsistent with the purpose of the statute.

15 53. Petitioners have a clear, present, legal right to enforce Respondents' performance
16 of their duties. Furthermore, Petitioners have a beneficial interest in practicing as 104 NPs within
17 the authority granted to them by the Legislature under Bus. & Prof. Code § 2837.104.

18 54. With the adoption of Code Regs. tit. 16, § 1482.4, Respondents have failed to
19 perform their legal duties resulting from their respective offices, trusts, and stations, in a manner
20 in full compliance with Bus. & Prof. Code § 2837.

21 55. Issuance of a writ of mandate, compelling Respondents to perform their duties
22 resulting from their respective offices, trusts, and stations, in a manner in full compliance with
23 Bus. & Prof. Code § 2837 is required because there exists no plain, speedy, and adequate remedy
24 in the ordinary course of law which would protect Petitioners' rights and interests, and it would
25 be extremely difficult to determine how much compensation would afford adequate relief.

26 **SECOND CAUSE OF ACTION**

27 **For Invalidity under the Administrative Procedures Act**
28 **(Cal. Gov't Code § 11350(a))**
by all Plaintiffs against all Defendants

56. Plaintiffs incorporate and reallege each and every allegation set forth in paragraphs
1–48 herein.

1 57. The California Administrative Procedure Act provides that any interested person
2 may obtain a declaration as to the validity of any regulation through an action for declaratory
3 relief. Gov't Code § 11350(a).

4 58. Plaintiffs Helgason and Sorenson are interested persons for the same reasons they
5 are beneficially interested in the issuance of a writ of mandate. *Supra* ¶ 53.

6 59. For a regulation to be valid or effective, it must be consistent and not in conflict
7 with the statute and reasonably necessary to effectuate the purpose of the statute. Gov't Code
8 § 11342.2.

9 60. The Board's regulation, Code Regs. tit. 16, § 1482.4, is inconsistent with and
10 conflicts with the statute. It is not reasonably necessary to effectuate the purpose of the statute,
11 and in fact, it impedes that purpose.

12 61. The regulation is arbitrary and capricious and is not supported by substantial
13 evidence.

14 62. The regulation directly conflicts with the legislative intent and findings of the
15 statute, and the statute's text. *See* Bus. & Prof. Code § 2837.100.

16 63. A judicial determination of rights and responsibilities arising from this actual
17 controversy is necessary and appropriate at this time.

18 **THIRD CAUSE OF ACTION**
19 **For violation of the Equal Protection Clause**
20 **(42 U.S.C. § 1983)**
21 **by all Plaintiffs against Defendant Melby**

22 64. Plaintiffs incorporate and reallege each and every allegation set forth in paragraphs
23 1–48 herein.

24 65. Plaintiffs are citizens of the United States or persons within the jurisdiction thereof
25 under 42 U.S.C. § 1983.

26 66. Defendant Melby is a person under 42 U.S.C. § 1983.

27 67. The Equal Protection Clause of the Fourteenth Amendment to the United States
28 Constitution guarantees all citizens "equal protection of laws."

29 68. The government violates equal protection when it classifies citizens irrationally.

1 69. All classifications must have a rational relationship to a legitimate government
2 interest.

3 70. Code Regs. tit. 16, § 1482.4 creates a distinction between 103 NPs working in
4 group settings without standardized procedures and nurse practitioners who practice with
5 standardized procedures in private practice.

6 71. Only 103 NPs working in group settings can ever achieve independent practice
7 authority.

8 72. Nurse practitioners working with standardized procedures—such as Plaintiffs—are
9 not eligible for independent practice authority.

10 73. Nurse practitioners working with standardized procedures are forced to close their
11 existing businesses and work in a group setting for at least three years. Only then are they eligible
12 to return to their existing businesses.

13 74. This different treatment of two similarly situated groups bears no rational
14 relationship to protecting the health or safety of patients or the community

15 75. Because the Board’s classification is not rationally related to any legitimate
16 government interest, it violates the Equal Protection Clause.

17 **FOURTH CAUSE OF ACTION**
18 **For violation of the Due Process Clause**
19 **(42 U.S.C. § 1983)**
20 **by all Plaintiffs against Defendant Melby**

21 76. Plaintiffs incorporate and reallege each and every allegation set forth in paragraphs
22 1–48 herein.

23 77. The Due Process Clause of the Fourteenth Amendment to the United States
24 Constitution protects the right of citizens to pursue a chosen profession free from unreasonable
25 government interference.

26 78. Plaintiffs are citizens of the United States or persons within the jurisdiction thereof
27 under 42 U.S.C. § 1983.

28 79. Defendant Melby is a person under 42 U.S.C. § 1983.

 80. No citizen may be deprived of his or her right to pursue a chosen profession unless

1 the restriction is rationally related to a legitimate government interest.

2 81. Code Regs. tit. 16, § 1482.4's requirement that 104 NP applicants first practice as
3 103 NPs is not rationally related to a legitimate government interest.

4 82. Plaintiffs' current private practices mirror the independent practice authority 104
5 NP licensure provides, with the addition of their paying a physician for standardized procedures.

6 83. There is no further relevant experience related to health and safety or any other
7 legitimate government interest to be gained by requiring Plaintiffs to close their businesses and
8 enter a group setting practice for several years.

9 84. Requiring nurse practitioners in private practice to terminate their current patient
10 relationships further exacerbates California's provider shortage and deprives people of access to
11 much-needed mental health care.

12 85. Because the Board's classification is not rationally related to any legitimate
13 government interest, it violates the Due Process Clause.

14 **RELIEF SOUGHT**

15 Whereas Plaintiffs respectfully request the Court enter judgment against the Defendants as
16 follows:

- 17 A. For this Court to issue a writ of mandate and/or prohibition compelling Respondents to
18 follow their duty under Bus. & Prof. Code § 2837 by commanding Respondents, their
19 agents, employees, officers, and representatives from enforcing or attempting to enforce
20 Code Regs. tit. 16, § 1482.4(a)(14) to the extent it conflicts with the plain language of
21 Bus. & Prof. Code § 2837.104, now and in the future.
- 22 B. A declaration that Code Regs. tit. 16, § 1482.4(a)(14), on its face and as applied to
23 Plaintiffs, is invalid under Gov't Code § 11342.2;
- 24 C. A declaration that Code Regs. tit. 16, § 1482.4(a)(14), on its face and as applied to
25 Plaintiffs, violates the Equal Protection Clause of the Fourteenth Amendment to the
26 United States Constitution;
- 27 D. A declaration that Code Regs. tit. 16, § 1482.4(a)(14), as applied to Plaintiffs, violates the
28 Due Process Clause of the Fourteenth Amendment to the United States Constitution;

- 1 E. A permanent injunction pursuant to Civ. Proc. Code § 525 *et seq.*, restraining Defendants
2 and Defendants’ officers, agents, affiliates, servants, successors, employees, and all other
3 persons in active concert or participation with Defendants from enforcing Code Regs. tit.
4 16, § 1482.4(a)(14) against Plaintiffs and all others;
- 5 F. Judgment for Plaintiffs and against Defendants for the enforcement of an important right
6 affecting the public interest;
- 7 G. An award to Plaintiffs of reasonable attorney fees, costs, and expenses, pursuant to 42
8 U.S.C. § 1988, Civ. Proc. Code § 1021.5, and any other applicable authority, for bringing
9 and maintaining this action;
- 10 H. Any such further relief as the Court deems just and proper.

11
12 DATED: December 23, 2024.

13 Respectfully submitted,

14 Pacific Legal Foundation

15 /s/ Donna G. Matias
16 DONNA G. MATIAS

17 /s/ Samantha R. Romero
18 SAMANTHA R. ROMERO

19 *Attorneys for Petitioners and Plaintiffs*
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VERIFICATION

I, KERSTIN HELGASON, am a Plaintiff in the above-entitled proceeding. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (Civ. Proc. Code §§ 1060 and 1085; Gov't Code § 11350(a); and 42 U.S.C. § 1983) and know its contents. I am informed and believe and, on that ground, allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

EXECUTED on Dec. 20, 2024, at Gilroy, Cal.

By ky
KERSTIN HELGASON

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VERIFICATION

I, JAMIE SORENSON, am a Plaintiff in the above-entitled proceeding. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (Civ. Proc. Code §§ 1060 and 1085; Gov't Code § 11350(a); and 42 U.S.C. § 1983) and know its contents. I am informed and believe and, on that ground, allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

EXECUTED on Dec. 20, 2024, at Coronado, Cal.

By  _____
JAMIE SORENSON

Exhibits Index

Exhibit A: Senate Rules Committee on AB 890

EXHIBIT A

THIRD READING

Bill No: AB 890
Author: Wood (D), et al.
Amended: 8/28/20 in Senate
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 7-1, 8/8/20
AYES: Glazer, Chang, Archuleta, Dodd, Hill, Leyva, Wilk
NOES: Pan
NO VOTE RECORDED: Galgiani

SENATE APPROPRIATIONS COMMITTEE: 4-2, 8/20/20
AYES: Portantino, Hill, Leyva, Wieckowski
NOES: Bates, Jones
NO VOTE RECORDED: Bradford

ASSEMBLY FLOOR: 61-1, 1/27/20 - See last page for vote

SUBJECT: Nurse practitioners: scope of practice: practice without standardized procedures

SOURCE: Author

DIGEST: This bill authorizes a certified nurse practitioner (NP) to practice independently, without standardized procedures or protocols with a physician, in a defined healthcare setting, after completing a three-year transition to practice and authorizes a certified NP, beginning January 1, 2023, to practice independently outside of a defined healthcare setting after completing a three-year transition to practice and three years practice experience in good standing according to standardized procedures or protocols with a physician.

Senate Floor Amendments of 8/28/20 specify that the advisory committee established in this bill consists of four qualified NPs, two physicians and surgeons with demonstrated experience working with NPs, and one public member; and update language exempting facilities operated by the California Department of

Corrections and Rehabilitation from having independently practicing nurse practitioners.

Senate Floor Amendments of 8/25/20 clarify the healthcare settings where a nurse practitioner is not authorized to practice independently, add “procure” to the functions an NP may perform, clarify the radiologic procedures a nurse practitioner may do, add chaptering language, and make minor, technical revisions.

ANALYSIS:

Existing law:

- 1) Establishes the Board of Registered Nursing (BRN) to provide for the licensure and regulation of the practice of nursing and authorizes the BRN to issue a certificate to practice as an NP. (Business and Professions Code (BPC) §§ 2700 et seq.)
- 2) Establishes the qualifications for initial certification as an NP and requires an applicant to have a valid and active registered nursing license; possess a master’s degree in nursing, a master’s degree in a clinical field related to nursing, or a graduate degree in nursing; and completion of an NP program approved by the BRN. (BPC § 2835.5)
- 3) Requires the NP to function within the scope of practice as specified in the nursing practice act, as it applies to all registered nurses. (16 CCR § 1485)

This bill:

- 1) Requires the BRN to establish a Nurse Practitioner Advisory Committee (Committee) to advise and make recommendations to the BRN on all matters relating to NPs. Specifies that the Committee consists of four qualified NPs, two physicians and surgeons with demonstrated experience working with nurse practitioners, and one public member.
- 2) Defines a “transition to practice” as additional clinical experience and mentorship provided to prepare a nurse practitioner to practice independently and 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 and requires the BRN, by regulation, to define minimum standards for transition to practice and clinical experience may include experience obtained before January 1, 2021, if the experience meets the requirements established by the BRN.

- 3) Authorizes an independently practicing NP to perform specified functions, in a defined healthcare setting, if the NP has successfully passed a national NP-board certification examination; holds a certificate from a national certifying body recognized by the BRN; provides documentation that educational training was consistent with standards established by the BRN and; completed a transition to practice program in California consisting of a minimum of three full-time equivalent years of practice or 4,600 hours. Authorizes an NP who meets these requirements to practice in an outpatient health facility, except for a correctional treatment center or a state hospital; a health facility including a general acute care hospital; a county hospital; a medical group practice, including a professional medical corporation, as specified, another form of corporation controlled by physicians, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians that provide healthcare services; and a licensed hospice facility.
- 4) Authorizes a certified NP to conduct an advanced assessment and establish primary and differential diagnoses; order, perform, and interpret diagnostic procedures (for radiologic procedures, a NP can order diagnostic procedures and utilize the findings or results in treating the patient, and perform or interpret clinical laboratory procedures permitted to do so under the Clinical Laboratory Improvement Act); prescribe, order, administer, dispense, procure, and furnish therapeutic measures and; after performing a physical examination, certify disability; and, delegate tasks to a medical assistant.
- 5) Requires an NP practicing independently inside and outside of a defined healthcare setting to verbally inform all new patients in a language understandable to the patient, that an NP is not a physician, and for Spanish speakers, the NP must use the phrase “enfermera especializada”.
- 6) Requires an NP practicing independently in a defined healthcare setting to refer a patient to a physician or other licensed health care provider if a situation or condition of a patient is beyond the education and training of the NP.
- 7) Requires an NP practicing independently in all settings to have professional liability insurance appropriate for the practice setting.
- 8) Prohibits entities in a defined healthcare setting, from interfering with, controlling or otherwise directing professional judgement of an NP functioning pursuant to the provisions of this bill.
- 9) Authorizes an NP, beginning January 1, 2023, to practice independently, outside of a defined healthcare setting and perform the same tasks as outlined

- in 4) above, if the NP meets all of the requirements for independent authority in a defined healthcare setting and if the NP has practiced as an NP in good standing for at least three years, not inclusive of the transition to practice; and, authorizes the BRN to charge a fee in an amount sufficient to cover the reasonable regulatory cost of issuing the certificate
- 10) Prohibits an NP authorized to practice independently outside of a defined healthcare setting from practicing beyond the scope of their clinical and professional education and training including specific areas of concentration and only practice within the limits of their knowledge of experience and national certification. Requires an NP authorized to practice independently outside of a defined healthcare setting to consult and collaborate with other healing arts providers based on the clinical condition of the patient to whom health care is provided and under specified circumstances. Requires an NP authorized to practice independently outside of a defined healthcare setting to establish a plan to refer complex medical cases and emergencies to a physician and surgeon or other appropriate healing arts providers.
 - 11) Requires the BRN to request the Department of Consumer Affairs Office of Professional Examination Services (OPES), or an equivalent organization, to perform an occupational analysis by January 1, 2023, of NPs performing the functions specified in 4) above. Requires the BRN, with the OPES to assess the alignment of competencies tested in the national NP certification examination. Requires the BRN, if the assessment identifies additional competencies, to identify and develop a supplemental examination that properly validates identified competencies, and requires the examination process to be regularly reviewed consistent with existing law, as specified.
 - 12) Adds chaptering language, and makes technical changes.
 - 13) States legislative intent that the requirements of this bill shall not be an undue or unnecessary burden to licensure or practice and the requirements are intended to ensure the new category of licensed NPs have the least restrictive amount of education, training, and testing necessary to ensure competent practice.

Background

Nurse Practitioners. An NP is a registered nurse (RN) who possesses additional preparation and skills in physical diagnosis, psycho-social assessment, and management of health-illness needs in primary health care. An NP has earned a postgraduate nursing degree, such as a Master's or Doctorate degree, and has

obtained a certificate from a national certifying body. The BRN sets the educational standards for NP certification and education program approval. This bill would require the NPs to obtain the masters or doctoral education in person, and would prohibit online education for those NPs seeking to practice independently under the provisions of this bill. Applicants for a nationally accredited certification as NPs must also pass a national certifying examination.

This bill establishes three types of practicing NPs in California: (1) NP practicing according to standardized protocols or procedures with a physician; (2) NP practicing independently, without standardized protocols and procedures, in a defined healthcare setting after completing a transition to practice; and, (3) NP practicing independently, without standardized protocols and procedures, in a defined healthcare setting after completing a transition to practice and after three years practice experience according to standardized procedures and protocols.

Board of Registered Nursing. Currently, NPs are certified and regulated under the BRN. The BRN is comprised of nine members, which include five RNs and four public members. This bill requires the BRN to establish a Nurse Practitioner Advisory Committee under the BRN. This Committee will be required to include NPs as well as physicians with demonstrated experience working with NPs. This bill will not alter the current regulatory structure for those NPs that wish to maintain their current physician supervision for practice.

Standardized procedures and supervision. In order to practice now, NPs must have physician supervision and operate under specified procedures and protocols, which are developed collaboratively by nurses, physicians, and the administration of an organized health care system. The BRN and the Medical Board of California have jointly promulgated guidelines for standardized procedures (CCR, tit. 16, § 1474). While supervision by a physician is required for NPs to provide patient care, that supervision does not require the physical presence of a physician. Under the current supervision requirements, an NP is not authorized to provide care to a patient that is outside of that NPs training or experience, and nothing contained in this bill would not change that prohibition.

Other States. Fourteen states plus the District of Columbia permit NPs to practice independently, 14 other states grant authority to practice independently after some form of a transition to practice, and 22 others including California, have a restricted practice requiring some form of physician supervision.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, this bill will result in indeterminate fiscal impact to the BRN to cover the cost of new committee members' per diems, reimbursement for travel costs to participate on the committee, and to establish the standards for the transition to practice in regulations, but likely absorbable within existing resources. Other additional costs to the BRN may include the review of applications for out-of-facility certificates and any associated oversight for licensees practicing independently. Fees and assessments from licensees may offset ongoing enforcement and administration costs. Estimated costs of \$140,000 every five years for OPES to perform the occupational analysis and estimated costs up to \$25,000 to the Department of Justice for increased workload to consult with the BRN in establishing minimum standards for NPs and to handle any new caseloads with the expansion of an existing crime.

SUPPORT: (Verified 8/28/20)

AARP

All for Health, Health for All, Inc.

American Chronic Pain Association

American Nurses Association/California

Asian Business Association

Association of California Healthcare Districts

Association of California Nurse Leaders

Association of Community Human Service Agencies

Bay Area Council

Black Women for Wellness Action Project

California Alliance of Child and Family Services

California Assisted Living Association

California Association for Health Services At Home

California Association for Nurse Practitioners

California Association of Alcohol and Drug Program Executives, INC.

California Association of Health Facilities

California Association of Public Hospitals and Health Systems

California Association of Social Rehabilitation Agencies

California Commission on Aging

California Consortium of Addiction Programs and Professionals

California Council of Community Behavioral Health Agencies

California Hospital Association

California Naturopathic Doctors Association

California Orthopedic Association

California Pan-ethnic Health Network

California Pharmacists Association
California School Nurses Organization
California School-Based Health Alliance
California Special Districts Association
California State Association of Counties
CaliforniaHealth+ Advocates
Capitol City Black Nurses Association
Casa Pacifica
Chapcare Medical and Dental Health Center
Community Clinic Association of Los Angeles County
District Hospital Leadership Forum
Emergency Nurses Association
Essential Access Health
Fred Finch Youth and Family Services
Govern for California
Growing Healthy Together
Hathaway-Sycamores
Health Alliance of Northern California
Health Center Partners of Southern California
Institute for Justice
Laguna Family Health Center
Latino Coalition for a Healthy California
LeadingAge California
LGBTQ Center Orange County
Local Health Plans of California
Los Angeles LGBT Center
Mental Health America
Mental Health America of California
Mental Health America of Los Angeles
NARAL Pro-choice California
National Association of Pediatric Nurse Practitioners-Los Angeles Chapter
National Association of Pediatric Nurse Practitioners-Orange County Chapter
National Association of Pediatric Nurse Practitioners-San Francisco Bay Area
Chapter
National Association of Pediatric Nurse Practitioners-San Joaquin Valley Chapter
National Black Nurses Association
North Coast Clinics Network
Planned Parenthood Affiliates of California
Progressive Health Services
Providence St. Joseph Health

Redwood Community Health Coalition
Rural County Representatives of California
Safe Harbor, Inc.
San Diego Center for Children
San Francisco AIDS Foundation
San Francisco Chamber of Commerce
San Francisco Department of Public Health Advanced Practice Providers
San Gabriel Valley Economic Partnership
Saratoga Area Senior Coordinating Council
SEIU California State Council
Senior Care Clinic Medical House Calls
Silicon Valley Leadership Group
South Coast Community Services
Steinberg Institute
Tarzana Treatment Centers, INC.
Tenet Healthcare Corporation
United Nurses Associations of California/Union of Health Care Professionals
University of California
Western United Dairies
Western United Dairymen

OPPOSITION: (Verified 8/28/20)

American Congress of Obstetricians & Gynecologists - District IX
American Society of Plastic Surgeons
Board of Registered Nursing
California Academy of Child and Adolescent Psychiatry
California Chapter American College of Cardiology
California Chapter of the American College of Emergency Physicians
California Medical Association
California Psychiatric Association
California Rheumatology Alliance
California Society of Dermatology & Dermatologic Surgery
California Society of Plastic Surgeons
Los Angeles County Medical Association
Medical Board of California
Osteopathic Physicians and Surgeons of California
San Diego Psychiatric Society
Union of American Physicians and Dentists
Numerous Individuals

ARGUMENTS IN SUPPORT: A broad coalition of stakeholders write in support, noting that under this bill, NPs would provide the same care that they do today, simply without the supervisory requirement. Supporters state that allowing NPs to utilize the full extent of their education and training by granting full practice authority provides significant benefits like high-quality care, more primary care providers, and cost savings. According to supporters, research shows that NPs provide comparable quality care to physicians, even without physician oversight and that patients managed by an NP have lower rates of hospitalization and ER visits than those managed by physicians. Supporters say that “Because of the shortage of primary care physicians in rural and underserved areas, NPs are critical to closing the provider gap in our highest-need regions... A 2017 survey found nearly 70% of NPs were accepting new Medi-Cal patients, compared to 55% of primary care physicians. Additionally, 54% of NPs were accepting uninsured patients, compared to 32% of primary care physicians.” Supporters also say that “in order to meet the increased demand for behavioral health services, a sufficient workforce must be in place. AB 890 represents an important strategy, when adopted with other recommendations, to help more Californians receive timely, quality care for their needs.”

ARGUMENTS IN OPPOSITION: Opponents are concerned that this bill enables NPs to do what is essentially the independent practice of medicine which brings a significant risk to patients because the bill does not establish clear boundaries for when care should be transferred to a physician. According to opponents, nurses do not have sufficient medical training and clinical expertise to practice outside of a collaborative agreement and their training is not equivalent to physicians who offer essential diagnostic and medical expertise to patients. Opponents are concerned that AB 890 will not improve access to care, but will instead create more fragmentation and, ultimately, jeopardize patient safety. Opponents believe that NPs are an important part of health care delivery teams working in conjunction with supervising physicians but do not have sufficient education and training to examine and diagnose completely independent of physicians and such a practice puts patients at risk. According to opponents, studies have shown that independent NPs order far more testing than physicians, and this drives up health care costs.

The California Medical Association (CMA) writes that “AB 890 grants NPs the ability to practice medicine without an equivalent competency review to physicians; diminishing the quality of care for and lowering the standards for licensed individuals practicing medicine in the state.” According to CMA, “While the appearance of this transition of practice is to resemble a residency program, it is not. The ‘transition to practice’ does not have any oversight. No common

learning objectives. No criteria for who may provide oversight during the transition. And no competency post ‘transition’ to ensure the [NP] has achieved competency of common learning objectives.” CMA also writes that “the bar on the corporate practice of medicine prohibits lay entities from hiring or employing physicians... The corporate practice of medicine bar is just one of many consumer protections laws, including those related to fraud and abuse, that apply to physicians to ensure that the patient's best interests are foremost in the practice of medicine. AB 890 must also comply with these important consumer protections.” According to CMA, in states where NPs have been granted the ability to practice independent of physician supervision, NP independence has not resulted in greater numbers of NPs or greater access to care in medically underserved areas. CMA believes that “AB 890 allows for NPs to practice medicine with no statutory limitations on their scope of practice and without completing the necessary education and training that the Legislature has deemed as essential for physicians to practice medicine safely.”

ASSEMBLY FLOOR: 61-1, 1/27/20

AYES: Aguiar-Curry, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Cooley, Cooper, Megan Dahle, Daly, Eggman, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wicks, Wood

NOES: Voepel

NO VOTE RECORDED: Arambula, Brough, Cervantes, Chen, Choi, Cunningham, Diep, Flora, Fong, Frazier, Lackey, Mathis, Melendez, Nazarian, Ramos, Reyes, Salas, Rendon

Prepared by: Elissa Silva / B., P. & E.D. /
8/29/20 13:52:15

**** END ****