California Board of Registered Nursing
California Department of Consumer Affairs

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Categories and Scope of Practice of Nurse Practitioners, Requirements for a Nurse Practitioner Pursuant to Business and Professions Code sections 2837.103 and 2837.104, and Notice to Consumers

Section(s) Affected: Amend the title of Article 8, Division 14, Title 16, amend sections 1480 and 1481, and add sections 1482.3, 1482.4, and 1487 to Title 16, California Code of Regulations (CCR)

Specific Purpose of Each Adoption, Amendment, or Repeal:

1. Background/Introduction:

Pursuant to Business and Professions Code (BPC) section 2700 *et seq*., the Board of Registered Nursing (Board) licenses registered nurses (RN), and certifies advanced practice nurses, which include certified nurse-midwives (CNM), nurse practitioners (NP), registered nurse anesthetists (CRNA), clinical nurse specialists (CNS), and public health nurses (PHN). In addition to licensing and certification, the Board establishes approval requirements for California nursing programs and reviews nursing school criteria for both prelicensure programs and NP programs; receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. As of 2022, the Board licenses over 486,000 RNs and certifies over 32,000 NPs.

BPC section 2715 authorizes the Board to amend or adopt regulations in accordance with the Administrative Procedure Act that may be reasonably necessary to enable it to carry the Nursing Practice Act (Act) into effect. BPC section 2836 authorizes the Board to establish categories of NPs and standards for advanced levels of nursing practice.

Nurse practitioners (NP) are highly regulated professionals who are bound by an ethical code of conduct, a complex network of overlapping regulations tied to their specific practice facility, and licensure and professional certification standards requiring these professionals to achieve and maintain a minimum level of competency promoting quality of care and patient safety. According to BPC section 2835.5, an NP is an RN who has additionally earned a postgraduate nursing degree, such as a Master's or Doctorate degree and obtained a certificate from the Board.

As outlined in 16 CCR 1481,[1] there are several categories in which an NPs can specialize. These specialty categories include:

(1) Family/individual across the lifespan.

(2) Adult-gerontology, primary care, or acute care.

(3) Neonatal.

(4) Pediatrics, primary care, or acute care.

(5) Women's health/gender related.

(6) Psychiatric-Mental Health across the lifespan.

According to BPC section 2725, the RN scope of practice is defined as functions, including basic healthcare, that help people cope with or treat difficulties in daily living that are associated with their actual or potential health or illness problems, and that require a substantial amount of scientific knowledge or technical skill. Their scope of practice includes, but is not limited to, bedside care, the administration of drugs, skin tests, immunization techniques, the withdrawal of blood, and the observation of patient conditions. In California, NPs are RNs for purposes of licensure, their statutory scope is essentially the same, except for clinical competency that is gained through additional preparation and skill through advanced education.

Both RNs and NPs may perform additional medical procedures beyond their nursing scopes through standardized procedures. According to BPC section 2725(c), standardized procedures are policies and protocols formulated by organized health care systems for the performance of standardized procedure functions. They are developed collectively by nurses, physicians, and the administration of an organized health care system. Standardized procedures are the codification of the functions nurses may provide beyond the ordinary nursing scope. They are based on the competence of the nurses providing the procedures and include record, referral, and requirements of the healthcare setting, among other patient protections.

In September 2020, Governor Gavin Newsom signed Assembly Bill (AB) 890 (Wood, Chapter 265, Statutes of 2020) into law which created two new categories of NPs that could function independently within a defined scope of practice without standardized procedures. The bill also defined education, training, national certification, regulatory, and medical staff governance requirements for these two NP categories.

As outlined in the bill's Assembly Floor Bill Analysis[2], California's current workforce is not equipped to adequately address the Legislature and Administration's goals to increase coverage, access, and affordability to healthcare for all Californians. Less than half of the 139,000 licenses physicians in California are actively engaged in providing

[1] Regulation sections are all in Title 16, unless otherwise specified.

[2] California State Legislature. (2020, August 31). *California Assembly Floor Analysis - 8/31/2020*. California Legislative Information. Retrieved from https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB890

patient care. Of this number, only 32% are primary care physicians. The distribution of physicians also varies greatly by region with the San Joaquin Valley, Inland Empire, and rural areas suffering the greatest shortages. While several initiatives, including loan forgiveness and expanded residency programs, have focused on improving this situation, California cannot train enough interested primary care physicians and needs to engage in additional strategies to meet the state's workforce needs.

The California Future Health Workforce Commission, representing thought leaders from business, health, employment, labor, and government, spent a year looking at how to improve California's ability to meet workforce demands. One of their top recommendations was to allow full practice authority for NPs.[3] AB 890 aimed to accomplish that goal by creating two new categories of NPs.

In this document, the Board refers to these new categories as 103 NPs (as outlined in BPC section 2837.103) and 104 NPs (as outlined in BPC section 2837.104). For NPs to be eligible to practice under these two categories, the Board's existing regulatory categories and standards need to be amended to reflect the changes imposed by the passage of AB 890.

To develop the proposed regulatory language, Board staff performed widespread outreach and engagement. Board staff received extensive input on the proposed language from Board members, Board advisory committee members, and Board stakeholders.

- In November 2020, Board staff contacted the Department of Consumer Affairs (DCA) Office of Professional Examination Services (OPES) in accordance with BPC section 2837.105. Board staff also started to develop the Nurse Practitioner Advisory Committee (NPAC) application, in accordance with BPC section 2837.102, and distributed it to the Board's Listservs of all NPs. Board staff also asked the Medical Board of California and the Osteopathic Medical Board of California to send the application to their Listservs for physicians and surgeons.

- In December 2020, Board members identified a committee to select the NPAC members during their meeting.

- In February 2021, Board members also appointed six of the seven members of the NPAC.

- In February 2021, the Board's Advanced Practice Registered Nursing Advisory Committee discussed implementation of AB 890. The main topics addressed were the 103 NP, 104 NP, transition to practice requirement, and OPES

[3] *Meeting the Demand for Health*. (2019, February). California Future Health Workforce Commission. Retrieved from https://futurehealthworkforce.org/wp-content/uploads/2019/03/MeetingDemandForHealthFinalReportCFHWC.pdf

examination plan.

- In March 2021, the Board appointed the seventh member of the NPAC at a special Board meeting.

- In April 21, 2021, the NPAC held its first meeting.

- In May 2021, Board staff presented a draft NPAC charter that was approved by the full Board. The Board also selected members to serve on the four subcommittees focused on the implementation of the 101 NP, the transition to practice requirement, the 103 NP, and the 104 NP.

- In July 2021, the Board held a third NPAC meeting to give the public an opportunity to provide input and have access to the NPAC members working within the committees to develop regulations. DCA OPES also distributed material during this time and the Board updated its website to provide details and clarification on AB 890 to consumers.

- In August 2021, Board staff emailed participating subject matter experts and scheduled OPES Linkage Study Workshops. The Board's legal counsel provided an overview of AB 890 at the August Board meeting, which was webcast and posted on the Board's website for future public viewing.

- In October 2021, the NPAC held an Interested Parties meeting, during which members presented draft regulatory language on the transition to practice requirement and solicited input from the public.

- In November 2021, the sixth NPAC meeting was held, during which Board staff presented draft regulatory language and received feedback. The NPAC recommended revised draft language to the Board. At the November full Board Meeting, Board staff presented the language, and the Board approved preparation of the rulemaking package.

- In February 2022, Board members determined that establishing new naming conventions for the 103 NP and 104 NP were unnecessary and might cause confusion when assisting consumers. Board staff reworked the proposed regulatory language and incorporated public comments.

- In May 2022, NPAC members recommended the Board adopt the new version of the regulatory language with revisions made during the NPAC meeting in response to public comment. Board staff presented the newly revised version to the Board on May 18, 2022, and the Board approved regulatory language.

Stakeholders, including NPs interested in applying to become a 103 NP or a 104 NP, industry associations, and community-based organizations, all contacted the Board

regarding the implementation of AB 890 and expressed a wide range of views. Their input has been incorporated, as appropriate.

2. Problem Being Addressed/Purpose of the Amendments

AB 890 amends sections 650.01, 805, and 805.5 of, and adds Article 8.5 (commencing with section 2837.100) to Chapter 6 of Division 2 of, the BPC, relating to healing arts. Changes to the Board's regulations are necessary to implement AB 890. As outlined in BPC section 2837.104 and 2837.104, AB 890 created two new classifications of NPs that are allowed to practice without the use of standardized procedures. The Board is authorized to certify that applicants are approved for the expanded practice.

This proposal will:

- Amend the title of Article 8 of Division 14, Title 16 from "Standards for Nurse Practitioners" to "Nurse Practitioners"
- Amend section 1480 to establish a definition for the term group setting
- Amend section 1481 to change title from "Categories of Nurse Practitioners" to "Categories and Scope of Practice of Nurse Practitioners"
- Amend section 1481 to establish the two new categories that NPs can apply for and the corresponding scope of practice
- Add section 1482.3 to establish the requirements for NP to be certified pursuant to BPC section 2837.103
- Add section 1482.4 to establish the requirements for NP to be certified pursuant to BPC section 2837.104
- Add section 1487 to establish the requirements for an NP to provide a notice to consumers

3. Anticipated Benefits of the Regulatory Action:

This regulatory action will implement AB 890 and benefit the health and safety of all Californians by expanding access to healthcare for more Californians.

From a public health standpoint, the shortage of primary care physicians in rural and underserved areas means that NPs are a critical component to closing the provider gap in California's highest-need regions. Allowing NPs to utilize the full extent of their education and training by granting full practice authority is anticipated to result in high-quality care, more primary care providers, and cost savings to the patient. This includes being eligible to serve on medical staff and hospital committees, order durable medical

equipment, home health care, hospice, and physical and occupational therapy, as well as certify disability.

From an administrative standpoint, the Board is providing an orderly means of applying for the new certification categories that will streamline the application process.

Factual Basis/Rationale

Article 8, Division 14, of Title 16, of the CCR

Title

The Board proposes to amend the title of Article 8 of Division 14, Title 16 from "Standards for Nurse Practitioners" to "Nurse Practitioners."

The purpose of the amendment is to accurately capture the subject matter of the regulations which address more than just standards for NPs.

Section 1480, Definitions

Subdivision (k)

The Board proposes to amend subdivision (k) to define "group setting" as "one of the settings or organizations set forth in BPC section 2837.103(a)(2) of the code in which one or more physicians and surgeons practice with a nurse practitioner without standardized procedures."

The purpose of the definition is to clarify within the regulations the settings NPs may practice in pursuant to BPC section 2837.103(a)(2), which includes:

(1) A clinic, as defined in section 1200 of the Health and Safety Code.
(2) A health facility, as defined in section 1250 of the Health and Safety Code, except for (i) a correctional treatment center, as defined in Section 1250(j)(1) of the Health and Safety Code or (ii) a state hospital, as defined in Section 4100 of the Welfare and Institutions Code.
(3) A facility described in Chapter 2.5 (commencing with section 1440) of Division 2 of the Health and Safety Code.
(4) A medical group practice, including a professional medical corporation, as defined in Section 2406 of the code, 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.
(5) A home health agency, as defined in Section 1727 of the Health and Safety Code.
(6) A hospice facility licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code.

This regulation section points to the statutory explanation for settings or organizations in which one or more physicians and surgeons practice with a 103 NP and a 104 NP. Because the term is otherwise ambiguous, a definition was deemed necessary to avoid confusion.

Section 1481, Categories of Nurse Practitioners

Title

The Board proposes to amend the title of section 1481 to provide, "Categories and Scope of Practice of Nurse Practitioners."

The purpose of the amendment is to clarify the content of the regulation now sets forth an expanded scope of practices for NPs.

This amendment is necessary because the Board proposes to add the conditions under which NPs can apply for an expanded scope of practice. Amending the title of the regulation is necessary for clarity and to accurately capture the subject matter of the regulation.

Subdivision (b)

The Board proposes to add subdivision (b) to provide "Nurse Practitioners who have met the additional training and experience requirements can apply for expanded scope of practice, and work without standardized procedures, under these two categories."

The purpose of this amendment is to establish the requirements that apply to NPs who wish to apply for an expanded scope of practice pursuant to BPC sections 2837.103 and 2837.104.

This amendment is necessary to implement sections 2837.103 and 2837.104. Existing language in section 1480 sets forth the subject matter categories in NPs which may practice. The Board proposes to add subdivision (b) to set forth the circumstances under which NPs who have met additional training and experience requirements as set forth in BPC sections 22837.103 and 2837.104 can apply to the Board for an expanded scope of practice.

Subdivision (b)(1)

The Board proposes to add subdivision (b)(1) to provide "A nurse practitioner practicing pursuant to section 2837.103 of the code may perform the functions listed in section 2387.103(c) of the code without standardized procedures only in a group setting and, in the category, listed in subdivision (a) of this regulation in which the applicant is certified as a nurse practitioner pursuant to Section 2837.103 of the code."

The purpose of this subdivision is to establish the circumstances under which an NP can perform the functions set forth in BPC section 2837.103(c).

This amendment is necessary to establish the regulatory framework for NPs to work without standardized procedures as set forth in BPC section 2837.103. "Group setting" is defined in section 1480(k) as "one of the settings or organizations set forth in Section 2837.103(a)(2) of the code in which one or more physicians and surgeons practice with a nurse practitioner without standardized procedures." The Board locates subdivision (b)(1) in section 1481 to conveniently correlate the expanded scope of practice with the subject matter categories in subdivision (a) so it is clear to the regulated public these categories of practitioners are further divided into those who work with standardized procedures and without standardized procedures as set forth in section 2837.103(a)(2).

Subdivision (b)(2)

The Board proposes to add subdivision (b)(2) to provide "A nurse practitioner practicing pursuant to section 2837.104 of the code may perform the functions listed in section 2387.104(c) of the code without standardized procedures, inside or outside of a group setting, only in the category listed in in subdivision (a) of this regulation in which the applicant is certified as a nurse practitioner pursuant to section 2837.104 of the code."

The purpose of this subdivision is to establish the circumstances under which an NP can perform the functions set forth in BPC section 2837.104(b)(1).

This amendment is necessary to establish the regulatory framework for NPs to work without standardized procedures as set forth in BPC section 2837.103 and increases the areas that these functions can be performed including outside of a group setting. The Board locates subdivision (b)(2) in section 1481 to conveniently correlate the expanded scop of practice with the subject matter categories in subdivision (a) so it is clear to the regulated public these categories of practitioners are further divided into those who work standardized procedures and without standardized procedures as set forth in section 2837.103(a)(A-F).

Subdivision (c)

The Board proposes to strike "his or her" and insert "their" in subdivision (c).

The purpose of the amendment is to make the subdivision gender neutral.

The amendment to this subdivision is necessary to comply with guidance contained in Assembly Concurrent Resolution No. 260 of 2018 (ACR 260). In ACR 260, the Legislature resolved that state agencies should "… use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other

guidance." Changing gendered terms to gender-neutral terms parallels other efforts throughout the state.

Section 1482.3, Requirements for a Nurse Practitioner Certification Pursuant to Business and Professions Code Section 2837.103.

Subdivision (a)

The Board proposes to adopt subdivision (a) to establish the requirements for an NP desiring to obtain certification pursuant to BPC section 2837.103.

The purpose of the amendment is to make clear what qualifications and criteria a prospective 103 NP must meet to obtain certification.

This subdivision is necessary to establish NPs must hold active and valid certifications as NPs and submit a completed application that includes the elements set forth in subdivisions (a)(1)-(14).

Since this is an expanded scope of practice, an NP must already be certified by the Board and meet the following qualifications outlined in BPC section 2835.5:

- Hold a valid and active registered nursing license issued by the Board.
- Possess a master's degree in nursing, a master's degree in a clinical field related to nursing, or a graduate degree in nursing.
- Satisfactorily complete a nurse practitioner program approved by the Board.

As outlined in 16 CCR 1483, to obtain certification as an NP in California, an individual must submit the following information to the Board:

- A NP Certification or Temporary NP Certification application containing:
    - Demographic data, California RN license number, RN education information, National NP professional certification information, if necessary.
    - The name of the graduate NP education program or post-graduate nurse practitioner education program.
    - An official sealed transcript with the date of graduation or post-graduate program completion, nurse practitioner category, credential conferred,
    - The specific courses taken to provide sufficient evidence the applicant has completed the required course work including the required number of supervised direct patient care clinical practice hours.
- Any relevant application fee(s) outlined in 16 CCR Section 1417.

In addition to being certified as an NP in California, an applicant for a 103 NP must also pass a national nurse practitioner board certification exam that validates the NPs educational preparation, knowledge attainment, and professional expertise. This is verified through primary source data to decrease incidences of fraud. It also requires

that the NP must have direct patient care experience in the same specific field of nursing that they intend to practice as a 103 NP.

Additionally, an applicant for a 103 NP must complete a transition to practice, which is defined in BPC 2837.101(c) as additional clinical experience and mentorship provided to prepare a nurse practitioner to practice independently. This 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.

In further defining the minimum standards for a transition to practice, as well as all other requirements, pursuant to BPC 2837.100, the Board balanced the need for patient protection with the legislative intent spelled out in BPC 2837:

> It is the intent of the Legislature that the requirements under this article shall not be an undue or unnecessary burden to licensure or practice. The requirements are intended to ensure the new category of licensed nurse practitioners has the least restrictive amount of education, training, and testing necessary to ensure competent practice.

An NP must receive formal attestation from a physician, surgeon, 103 NP or 104 NP who practices in the same practice area (as is currently listed in regulation 1481 (a)) that the 103 NP is pursuing and who is familiar with the NP's background and work experience that a transition to practice of a minimum of three full-time equivalent years of practice or 4600 hours was completed.

Requiring a formal attestation allows a mentor at an equal or higher level to observe the planning, supervision, implementation, and evaluation of the care provided to each patient to confirm the NP's competency. This is a critical step because although all NPs have the same scope of practice, this practice is based on competence and not all NPs have the same type and amount of education and experience. Therefore, the number of functions in which an NP is competent at could vary.

Furthermore, the attestation must be from someone in the same practice area as the applicant because a physician practicing in pediatrics may not have the experience and knowledge to recognize subtle nuances that would prove or disprove competency of an NP pursuing Adult-gerontology, primary care, or acute care nursing at a 103 NP level.

The Board is creating an application within the current BreEZe online licensing system where the NP may apply to become certified as a 103 NP or 104 NP by providing the information outlined in proposed 16 CCR 1482.3 and 1482.4. The estimated completion date for the application is January 2023.

Once the application is completed by the NP, an email notification will be sent out to the providers that were included on the NPs application as being able to validate the

applicant met the transition to practice requirement. The Board will then verify the providers who will then be able to attest to the information provided by the 103 or 104 NP applicant.

Subdivisions (a)(1)-(10)

In these subdivisions, the Board requests: the applicant's full legal name, other name(s) applicant has used or has been known by; their physical address; their mailing address, if different than the applicant's physical address; their email address, if any, their telephone number, their birthdate (month, day, and year); their California registered nurse license number issued by the Board; and their California nurse practitioner certification number issued by the Board. This information enables Board staff to verify their identity and their possession of RN and NP licenses. Their contact information may have changed since the issuance of their RN and NP licenses and the Board utilizes their contact information to send notices and mailings to the applicant regarding their application.

The Board collects the applicant's social security number or Individual Taxpayer Identification Number because this is required by BPC section 30(a)(1). The Board is also required by BPC sections 29.5, 30, and 494.5 to collect SSNs for child support and taxation reasons.

Subdivision (a)(11)

The Board asks for the date of passage of the Board's national nurse practitioner board certification examination to determine whether the applicant satisfies BPC section 2837.103(a)(1)(A). The Board verifies the information through the entity that administered the exam to ensure its accuracy.

Subdivision (a)(12)

The Board asks for proof the NP holds an NP certification by a national certification organization accredited by the National Commission for Certifying Agencies or the Accreditation Board for Specialty Nursing Certification (ABSNC) as a nurse practitioner in the category listed in section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to BPC section 2837.103. The Board asks for this information to determine whether the applicant satisfies BPC section 2837.103(a)(1)(B). The Board verifies the information through the entity that issued the certification to ensure its accuracy.

Subdivision (a)(13)

The Board asks for proof the NP has completed a transition to practice with submission to the Board of one or more attestations of a physician or surgeon, a nurse practitioner practicing pursuant to BPC section 2837.103, or a nurse practitioner practicing pursuant

to BPC section 2837.104. The subdivision provides any physician or surgeon, a nurse practitioner practicing pursuant to BPC section 2837.103, or a nurse practitioner practicing pursuant to BPC section 2837.104 submitting an attestation must specialize in the same specialty area or category listed in 16 CCR 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to BPC section 2837.104 and must not have a familial or financial relationship with the applicant.

Subdivision (a)(13) sets forth a requirement applicants must satisfy to obtain a 103 expanded scope of practice as outlined in BPC section 2837.103 (a)(1)(D). As discussed above, under BPC section 2837.101(c), "transition to practice" means additional clinical experience and mentorship provided to prepare a nurse practitioner to practice independently. It 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 statute requires the Board by regulation, to define minimum standards for transition to practice. This subdivision implements this requirement.

The pathway to reach the status of a 103 NP includes additional transition to practice requirements which are to be attested by a physician, surgeon, a 103 NP, or a 104 NP who practice in the same field that the 103 NP is pursuing and who is familiar with the NP's background and work experience. For reasons discussed below, the subdivision also requires that the attestor not have a familial or financial relationship with the applicant.

Subdivision (a)(13)(A)(i)-(iv)

In subdivision (a)(13)(A), the Board defines transition to practice to mean 4600 hours or three full-time equivalent years of clinical practice experience and mentorship in the categories set forth in subdivisions (a)(13)(A)(i) through (iv). The Board's adopts this definition to be consistent with BPC section 2837.103(a)(1)(D).

The Board requires the transition to practice to be completed in California in subdivision (a)(13)(A)(i) to comply with BPC 2837.103(a)(1)(D) which requires the 4600 hours of practice to occur in California. Each state board of nursing has their own practice act and can have different standards for licensure and scopes of practice for NPs. Additionally, states have varying practice authorities consisting of Full Practice Authority, Reduced Practice Authority and Restricted Practice Authority. Completing the three years within California will ensure the NP has obtained clinical experience and mentorship in accordance with California's rules and regulations to prepare them for their transition from a Restricted Practice Authority to Full Practice Authority within the scope of their National Certification.

The Board requires the transition to practice to be completed within five years prior to the date the applicant applies for certification as a nurse practitioner pursuant to BPC section 2837.104 in subdivision (a)(13)(A)(ii) because healthcare is a rapidly evolving

field, and the NP must be aware of current best practices, community standards of care, and research. Therefore, recent clinical practice is of the utmost importance in seeking to establish the qualifications to practice without standardized procedures. Based on the knowledge and experience of the NPAC members, the NPAC subcommittee determined that the 4600 hours or three years of full-time equivalent clinical practice should be within the five years preceding the application for 103 NP status.

The Board requires the transition to practice to be completed after certification by the Board of Registered Nursing as a nurse practitioner in subdivision (a)(13)(A)(iii). This was recommended by the NPAC to ensure the NP has completed the requisite education and training to be competent to practice. BPC section 2732 states that no person shall engage in the practice of nursing without being actively licensed in California.

In subdivision (a)(13)(A)(iv), the Board requires the transition to practice to be completed in direct patient care in the role of a nurse practitioner in the category listed in 16 CCR 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to BPC section 2837.104 of the code. This is because an NP's national certification correlates to the program concentration or specialty focus area the NP specialized in during their graduate education. This will also help to confirm competent practice by ensuring there is alignment between the NP's area of specialty while in school and the NP's area of specialty while in practice.

Subdivision (a)(13)(B)

As clarified in subdivision (a)(13)(B), "financial interest" shall have the same meaning as in Section 650.01(b)(2) of the code, [4], and "familial" shall include the members of

[4] BPC 650.01, as amended pursuant to AB 890:
…(b)…(2) A "financial interest" includes, but is not limited to, any type of ownership interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the licensee refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect financial relationship between a licensee and the referral recipient including, but not limited to, an arrangement whereby a licensee has an ownership interest in an entity that leases property to the referral recipient. Any financial interest transferred by a licensee to any person or entity or otherwise established in any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the licensee. For purposes of this paragraph, "direct or indirect payment" shall not include a royalty or consulting fee received by a physician and surgeon who has completed a recognized residency training program in orthopedics from a manufacturer or distributor as a result of their research and development of medical devices and techniques for that manufacturer or distributor. For purposes of this paragraph, "consulting fees" means those fees paid by the manufacturer or distributor to a physician and surgeon who has completed a recognized residency training program in orthopedics only for their ongoing services in making refinements to their medical devices or techniques marketed or distributed by the manufacturer or distributor, if the manufacturer or distributor does not own or control the facility to which the physician is referring the patient. A "financial interest" shall not include the receipt of capitation payments or other fixed amounts that are prepaid in exchange for a promise of a licensee to provide specified health care services to specified beneficiaries. A "financial interest" shall not

"immediate family."[5] Using this BPC section for definitions was deemed relevant because this code section was also part of AB 890. Having the attestation made by a person who is not an immediate family member nor has a financial interest in the applicant's receiving a 103 NP certification is necessary because professional ethics and objectivity need to be maintained.

Subdivision (a)(14)

The Board requires a statement be signed under penalty of perjury that all the information contained in the application is true and correct. This is necessary to ensure the information being submitted is accurate and that the person attesting understands the penalty for providing information that is not correct to the best of their knowledge. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications: "The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith."].)

The Board relies upon applicants' self-reported information in evaluating license applications. Signing under penalty of perjury protects consumers because it helps ensure that only applicants who meet statutory and regulatory requirements, as demonstrated by their application materials, will be eligible for the heightened scope of practice, and that only qualified applicants receive certification.

Section 1482.4, **Requirements for a Nurse Practitioner Certification Pursuant to Business and Professions Code Section 2837.104.**

The Board proposes to adopt subdivision (a) to establish the requirements for an NP desiring to obtain certification pursuant to BPC section 2837.104.

The purpose of the amendment is to make clear what qualifications and criteria a prospective 104 NP must meet to obtain certification.

include the receipt of remuneration by a medical director of a hospice, as defined in Section 1746 of the Health and Safety Code, for specified services if the arrangement is set out in writing, and specifies all services to be provided by the medical director, the term of the arrangement is for at least one year, and the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between parties.

[5] BPC 650.01, as amended pursuant to AB 890:
…(b)…(3) For the purposes of this section, "immediate family" includes the spouse and children of the licensee, the parents of the licensee, and the spouses of the children of the licensee.

This subdivision is necessary to establish NPs must hold active and valid certifications as NPs pursuant to BPC section 2837.103 and submit a completed application that includes the elements set forth in subdivisions (a)(1)-(15).

According to BPC section 2837.104, in order to obtain certification as a 104 NP, an individual must satisfy the following two requirements:

1) Possess a National Certification from a national certifying body accredited by the National Commission for Certifying Agencies (NCAA) or the American Board of Nursing Specialties (ABNS) and recognized by the Board in 16 CCR 1481;

and

2) Practice as a certified 103 NP in good standing for at least 3 full time equivalent years or having spent 4600 hours practicing in direct patient care in a 103 NP capacity.

Subdivisions (a)(1)-(10)

In these subdivisions, the Board requests: the applicant's full legal name, other name(s) applicant has used or has been known by; their physical address; their mailing address, if different than the applicant's physical address; their email address, if any, their telephone number, their birthdate (month, day, and year); their California registered nurse license number issued by the Board; and their California nurse practitioner certification number issued by the Board. This information enables Board staff to verify their identity and their possession of RN and NP licenses. Their contact information may have changed since the issuance of their RN and NP licenses and the Board utilizes their contact information to send notices and mailings to the applicant regarding their application.

The Board collects the applicant's social security number or Individual Taxpayer Identification Number because this is required by BPC section 30(a)(1). The Board is also required by BPC sections 29.5, 30, and 494.5 to collect SSNs for child support and taxation reasons.

Subdivision (a)(11)

The Board asks for the date of passage of the Board's national nurse practitioner board certification examination to determine whether the applicant satisfies BPC section 2837.103(a)(1)(A). The board verifies the information through information received from the entity that administered the exam to ensure its accuracy.

Subdivision (a)(12)

The Board asks for proof the NP holds an NP certification by a national certification organization accredited by the National Commission for Certifying Agencies or the Accreditation Board for Specialty Nursing Certification (ABSNC) as a nurse practitioner in the category listed in section 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to BPC section 2837.103. The Board asks for this information to determine whether the applicant satisfies BPC section 2837.103(a)(1)(B). The Board verifies the information through information received from the entity that issued the certification to ensure its accuracy.

Subdivision (a)(13)

The Board asks for proof the NP has completed a transition to practice with submission to the Board of one or more attestations of a physician or surgeon or a nurse practitioner practicing pursuant to BPC section 2837.104. The subdivision provides any physician or surgeon or a nurse practitioner practicing pursuant to BPC section 2837.104 submitting an attestation must specialize in the same specialty area or category listed in 16 CCR 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to BPC section 2837.104 and must not have a familial or financial relationship with the applicant.

Subdivision (a)(13)(A)(i)-(iv)

In subdivision (a)(13)(A), the Board defines transition to practice to mean 4600 hours or three full-time equivalent years of clinical practice experience and mentorship in the categories set forth in subdivisions (a)(13)(A)(i) through (iv). The Board's adopts this definition to be consistent with BPC section 2837.103(a)(1)(D).

The Board requires the transition to practice to be completed in California in subdivision (a)(13)(A)(i) to comply with BPC 2837.103(a)(1)(D) which requires the 4600 hours of practice to occur in California. Each state board of nursing has their own practice act and can have different standards for licensure and scopes of practice for NPs. Additionally, states have varying practice authorities consisting of Full Practice Authority, Reduced Practice Authority and Restricted Practice Authority. Completing the three years within California will ensure the NP has obtained clinical experience and mentorship in accordance with California's rules and regulations to prepare them for their transition from a Restricted Practice Authority to a Full Practice Authority within the scope of their National Certification.

The Board requires the transition to practice to be completed within five years prior to the date the applicant applies for certification as a nurse practitioner pursuant to BPC section 2837.104 in subdivision (a)(13)(A)(ii) because healthcare is a rapidly evolving field, and the NP must be aware of current best practices, community standards of care, and research. Therefore, recent clinical practice is of the utmost importance in seeking

to establish the qualifications to practice without standardized procedures. Based on the knowledge and experience of the NPAC members, the NPAC subcommittee determined that the 4600 hours or three years of full-time equivalent clinical practice should be within the five years preceding the application for 103 NP status.

The Board requires the transition to practice to be completed after certification by the Board of Registered Nursing as a nurse practitioner in subdivision (a)(13)(A)(iii). This was recommended by the NPAC to ensure the NP has completed the requisite education and training to be competent to practice. BPC section 2732 states that no person shall engage in the practice of nursing without being actively licensed in California.

The Board requires the transition to practice to be completed in direct patient care in the role of a nurse practitioner in the category listed in 16 CCR 1481(a) in which the applicant seeks certification as a nurse practitioner pursuant to BPC section 2837.104 of the code in subdivision (a)(13)(A)(iv). This is because an NPs national certification correlates to the program concentration or specialty focus area the NP specialized in during their graduate education. This will also help to confirm competent practice by ensuring there is alignment between the NP's area of specialty while in school and the NPs area of specialty while in practice.

Subdivision (a)(13)(B)

The Board defines financial interest as having the same meaning as in BPC section 650.01(b)(2), and "familial" shall include the members of "immediate family" as used in BPC section 650.01(b)(3).

These definitions are necessary to maintain consistency in the implementation of the updated sections now in statute.

Having the attestation made by a person who is not an immediate family member nor has a financial interest in the applicant's receiving a 103 NP certification is necessary because professional ethics and objectivity need to be maintained.

Subdivision (a)(14)

The Board proposes to adopt subdivision (a)(14) to provide "Proof of practice as a nurse practitioner pursuant to Section 2837.103 of the code in good standing for at least three full-time equivalent years or 4600 hours in direct patient care.

(A) For purposes of this subdivision, "practice as a nurse practitioner pursuant to Section 2837.103 of the code in good standing" means practice conducted under a current, active, and unrestricted license. "Unrestricted" means the applicant was not subject to a disciplinary action by the board, including probation, suspension or public reproval.

(B) For an applicant who holds a Doctorate of Nursing Practice degree (DNP), "practice as a nurse practitioner pursuant Section 2837.103 of the code in good standing" also includes any hours of direct patient care that the applicant provided in the course of their doctoral education so long as the direct patient care is both (i) in the applicant's area of National Certification specified in subdivision (a)(12) and (ii) provided during the doctoral part of the applicant's doctoral education and not credited towards the applicant's master's degree.

The purpose of this subdivision is to require applicants to submit proof the applicant practiced as a nurse practitioner in good standing for at least three full-time equivalent years or 4600 hours in direct patient care. This requirement is necessary because BPC section 2837.104 requires NPs wishing to be certified as a 104 NP to have practiced as a nurse practitioner in good standing for at least three years or 4600 hours in patient care.

Subdivision (a)(14)(A) makes this statutory requirement specific by defining "practice as a nurse practitioner pursuant to Section 2837.103 of the code in good standing." This requirement is necessary because a 104 NP may encounter more challenges and patient responsibility within their increasingly independent role. The Board determined that time in good standing excludes any duration that the applicant may have spent under probation or discipline by the Board. If the NP engaged in any conduct that endangered the public, and therefore, resulted in disciplinary action, this would disqualify the applicant from certification as a 104 NP. The applicant may reapply after they have completed three full-time equivalent years or 4600 hours in good standing, proving themselves to be safe practitioners.

Subdivision (a)(14)(B) further makes specific the definition of "practice as a nurse practitioner pursuant to Section 2837.103 of the code in good standing" for applicants who hold a Doctorate of Nursing (DNP) degree. These individuals will be able to apply any hours of direct patient care completed during their doctoral education if the direct patient care pertained to the applicant's area of national certification and was earned during the doctoral part of the applicant's doctoral education and not applied towards their master's degree completion.

This language is necessary to allow DNPs to obtain credit of their experience gained in the applicant's practice area during their doctoral education experience and apply it to the 4600 hours needed to progress from a 103 NP to a 104NP. This recommendation came from the NPAC in response to BPC 2837.104(b)(1)(C) which provided the Board with discretion to lower the 4600 hour requirement for a NP who holds a Doctorate of Nursing Practice degree based on the practice experience gained in the course of their doctoral education experience.

The language allows a 104 NP applicant that has a doctoral level education to apply all direct patient care clinical hours above what would be required to complete a Master's

degree toward this requirement. The NPAC determined that any further reduction in the hour requirement could not be justified.

Subdivision (a)(15)

The Board requires a statement be signed under penalty of perjury that all the information contained in the application is true and correct. to ensure the information being submitted is accurate and that the person attesting understands the penalty for providing information that is not correct to the best of their knowledge. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications: "The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith."].)

The Board relies upon applicants' self-reported information in evaluating license applications. Signing under penalty of perjury protects consumers because it helps ensure that only applicants who meet statutory and regulatory requirements, as demonstrated by their application materials, will be eligible for the heightened scope of practice, and that only qualified applicants receive certification.

Subdivision (b)

The Board proposes to adopt subdivision (b) to provide "Within 90 days of certification by the Board of Registered Nursing, a nurse practitioner practicing pursuant to section 2837.104 of the code shall have a written protocol for consultation and a written plan for referrals, pursuant to section 2837.104(c)(2) of the code and shall make that referral plan available to patients on request. If the written plan calls for referrals to a specific individual, the plan must include that individual's acknowledgment and consent to the referrals."

The purpose of this subdivision is to implement the requirements in section 2837.104(c)(2) and (c)(3) that 104 NPs shall: (1) consult and collaborate with other healing arts providers based on the clinical condition of the patient to whom health care is provided and (2) establish a plan for referral of complex medical cases and emergencies to a physician and surgeon or other appropriate healing arts providers.

This subdivision is necessary because section 2837.104(c)(2) requires physician consultation in the enumerated circumstances in the statute. Section 2837.104(c)(3) requires the 104 NP to establish a plan for referral of complex medical cases and emergencies to a physician and surgeon or other appropriate healing arts providers. It requires the 104 NP to have an identified referral plan specific to the practice area, that includes specific referral criteria. The referral plan requires the 104 NP to address specified elements.

This subdivision additionally requires 104 NPs to prepare a written protocol for such consultation and referral because a patient under their care may require a specialized treatment or intervention in the case of an emergent or worsening condition. This prior agreement allows for ease of consult or transfer to a higher level of care and ensures that there is minimal to no delay in service to the patient. 90 days was seen by the NPAC and Board as a reasonable timeframe in which to develop that protocol.

The Board requires 104 NPs to make referral plans available on patients' request because the patient may prefer a specific provider or may believe that a particular type of health care practitioner is the type of provider that best suits their needs.

The Board requires if the written plan calls for referrals to a specific individual, the plan must include that individual's acknowledgment and consent to the referrals because this ensures that this is an agreed-upon relationship and both providers are comfortable with the services that will be provided.

Section 1487, Notice to Consumers

The Board proposes to adopt section 1487 to provide a notice to consumers. Subdivisions (a) through (c) state the requirements applicable to such notices.

The Board excepts NPs working in the Department of Corrections from the requirements because section 2837.103(h) provides "any health care setting is operated by the Department of Corrections and Rehabilitation is exempt from this section."

Subdivision (a)

The Board proposes to adopt subdivision (a) to establish the text, required size, and location requirements for a notice to consumers.

This subdivision is necessary because BPC sections 2837.103(e) and 2837.104(e) require NPs to post a notice in a conspicuous location accessible to public view that the NP is regulated by the Board of Registered Nursing. The notice must include the Board's telephone number and the internet website where the NP's license may be checked and complaints against the NP may be made.

The Board requires a 48-point Arial because this size font ensures a sign will be readable from many feet away, such as a patient sitting in the lobby of a health care facility. The Board selected Arial font because, as a sans serif font, it is easier to read than serif fonts such as Times New Roman or exotic or hard to read script-style fonts. It is also readily available across many computer platforms. This font style and size was selected because the full notice will fit on an 8 ½ x 11 piece of paper, which is easily printed by any office printer. It is large enough to allow for reading across a waiting room and will be visible to patients when prominently displayed in the office.

By “conspicuous location,” the Board means a place likely to be viewed by patients, such as in the lobby or a door leading into an examination room. The requirement for posting the telephone number and internet website is also pursuant to statute and provides different mechanisms for consumers to reach the Board.

Subdivision (b)

The Board proposes to adopt subdivision (b) to provide “Verbally inform all new patients in a language understandable to the patient that a nurse practitioner is not a physician and surgeon. For purposes of Spanish language speakers, the nurse practitioner shall use the standardized phrases “*enfermera especializada*” or “*enfermero especializado*.”

The purpose of this subdivision is to establish what verbal information NPs must provide consumers as well as the required language.

This subdivision is necessary to ensure patients are advised that NPs are not physicians or surgeons. This is important so patients understand the NP may not be qualified or authorized to treat all of the patient’s conditions, and so patients consult the appropriate medical professional.

Health providers often encounter patients who do not speak English; it is common in health settings to have a chart wherein a non-English-speaking patient may point to particular sentence in a list of languages to advise the health care provider which language the patient seeks to use. Telephone system providers have translation services built into many contracts so that the provider may address the patient by using the telephone translator as an intermediary. Some health care providers are already required to provide information in a variety of languages Therefore, the requirement in subsection (b) to “verbally inform all new patients in a language understandable to the patient” should not be burdensome but is based on the goal that patients understand. Therefore, NPs must inform patients in the language they determine the patients understand that NPs are not physicians or surgeons. The legislature has determined that “*enfermera especializada*” should be the Spanish equivalent of “nurse practitioner;” this construction identifies the speaker as feminine. Based on public comment during outreach discussing draft language and based on the goals of Assembly Concurrent Resolution (ACR) No. 260 of 2018 (as discussed in the reasons for the amendments to 1481(c), above) to use gender-neutral language, the Board has also deemed it appropriate to add the more-generic masculine or neutral expression of this phrase “*enfermero especializado*.”

Subdivision (c)

The Board proposes to adopt subdivision (c) to provide "Advise patients that they have the right to see a physician and surgeon on request and the circumstances under which they must be referred to see a physician and surgeon."

The purpose of this subdivision is to establish what additional advice NPs must give consumers.

This subdivision is necessary to ensure patients understand they have a right to see a physician or surgeon on request and that there is a plan for continued care if the patient's medical care needs are emergent or above the level of care that the nurse practitioner can provide competently without assistance as outlined in BPC 2837.104(c)(1-3) .

Underlying Data:

- AB 890 (Wood, Chapter 265, Statutes of 2020)
- California Assembly Floor Analysis (August 2020)
- Meeting the Demand for Health – Final Report of the California Future Health Workforce Commission (February 2019)
- Advanced Practice Registered Nurse Advisory Committee Agenda, Meeting Materials, and Meeting Minutes - February 4, 2021, Agenda Items 8 -11
- Nurse Practitioner Advisory Committee (NPAC) Agenda, Meeting Materials, and Meeting Minutes - April 21, 2021, Agenda Items 7-8
- NPAC Agenda, Meeting Materials, and Meeting Minutes - May 11, 2021, Agenda Items 5-9
- NPAC Agenda, Meeting Materials, and Meeting Minutes - August 31, 2021, Agenda Items 5-7
- NPAC Agenda, Meeting Materials, and Meeting Minutes - September 21, 2021, Agenda Items 3-4
- NPAC Agenda, Meeting Materials, and Meeting Minutes - November 16, 2021, Agenda Items 5-6
- NPAC Agenda, Meeting Materials, and Meeting Minutes - February 8, 2022, Agenda Item 6-10
- Board Agenda, Meeting Materials, and Meeting Minutes - November 17, 18 2021, Agenda Item 6
- Board Agenda, Meeting Materials, and Meeting Minutes - February 16, 2022, Agenda Item 7
- Board Agenda, Meeting Materials, and Meeting Minutes - May 18, 19 2022, Agenda Item 5

Business Impact

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts.

There are currently over 32,000 NPs in California. The proposed regulations will encourage increased oversight integrity over the two new categories of NPs and makes explicit the Board's interpretation of its existing regulation regarding educational and experimental qualifications for these new categories in California. This proposal would not change the Board's existing interpretation of existing NPs. Therefore, this proposal would not result in any further economic impact to business.

NPs will be required to post a notice to consumers, as specified, but this requirement can be completed with normal business operations and is not anticipated to result in additional costs.

Economic Impact Statement

This regulatory proposal will not have any of the following effects for the reasons that follow:

- Create or eliminate jobs within the State of California.
- Create or eliminate businesses within the State of California.
- Significantly change the creation or elimination of new businesses.
- Have an impact on worker safety, because the proposed regulations are only detailing requirements for new categories of NPs.
- Impact on the state's environment, because the regulations will simply set forth minimum requirements for new nurse practitioners.
- Affect the expansion of businesses currently doing business within the State of California, as the proposed regulations only expand on creation of the two new categories of NPs being added to existing regulation.
- Affect the state's environment because it is not related to any environmental issues.
- Affect worker safety because this regulation does not relate to worker safety.

The proposed regulation will not result in additional costs to individuals who will apply for the two new categories of NPs established by BPC 2837.103 and 2837.104.

The Board estimates approximately 32,000 current NPs will apply for the category established by BPC 2837.103 certifications as it becomes available and subsequently

the category established by BPC 2837.104 after they have practiced in good standing for three additional years.

The Board is not aware of any other cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

Individuals seeking certification will be able to apply either through the Board's online platform and/or during initial licensure. The Board notes, it does not have statutory fee authority for the issuing of a certification for the category established by BPC 2837.103 and no fees are included in this proposal.

Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment. The Board will provide the online application with email notification and a portal to test after verification of identity. This will be done through existing systems that are utilized by both the Board of Registered Nursing and the Medical Board of California.

The Board assumes health care practitioners already have access to the internet. If not, the internet can be accessed free of charge through venues like a public library, etc.

Consideration of Alternatives

The Board has made an initial determination that no reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

1. Not adopt the regulations - This idea was rejected as the requirements and process of certification for expanded scope of practice role would be unclear.

2. Adopt the regulations - The Board determined this alternative is the most feasible because the proposed regulatory changes detail the process for certification for the two new categories of nurse practitioners practicing at a more advanced level.

3. In section 1482.4, having a signature in the referral plan pursuant to section 2837.103(f) of the code - Based on stakeholder input, the original materials included the text, "If the written plan calls for *a referral* to a specific individual, the

plan must include that individual's acknowledgment and consent to the referral, *signed and dated by that physician and the applicant*" (italics added). After much discussion, the NPAC voted (at the NPAC meeting on May 10, 2022) to delete the signature component and pluralize "referral" to show the intent that this is a general plan and not protocol for each individual patient or a new requirement for collaborative agreements. Adding a referral point as a signatory to the written plan was not considered workable due to diverse insurance coverage. The Board concurred at the May 18-19, 2022 Board meeting.

4. Deleting familial interest on attestation - Some public comments indicated that NPs joining their family's practice could be limited in proving clinical practice hours to become a 103 or 104 NP. It was suggested that this was discriminative against rural family business practice. However, other commenters thought the firewall against familial attestation was a positive protection against bias and potential ethical violations. This idea to delete a prohibition on familial attestation was rejected at the May 18-19, 2022 Board meeting.

5. Naming the 103 or 104 NPs with a different designation - After significant NPAC and Board discussion, and outreach to the public, it was ultimately determined that adding additional initials or letter to "NP" would be confusing, especially since some NPs add initials to designate their category (such as FNP being a Family Nurse Practitioner). It was also pointed out during public outreach that coming up with more naming conventions could subvert the legislative intent, based upon the Legislature's choice for a Spanish name interpretation.

The Board welcomes alternatives from the public.