NURSING PRACTICE
COMMITTEE MEETING
Sheraton Fairplex Hotel & Conference Center
601 W. McKinley Ave.
Pomona, CA 91768
(909) 622-2220

AGENDA
August 9, 2017

THIS MEETING WILL IMMEDIATELY FOLLOW THE CONCLUSION OF THE INTERVENTION/DISCIPLINE COMMITTEE MEETING

Wednesday, August 9, 2017

10.0 Call to Order/Roll Call /Establishment of a Quorum
   10.0.1 Review and Vote on Whether to Approve Previous Meeting’s Minutes:
       ➢ May 10, 2017

10.1 Information: Nurse Midwifery Committee Discussion of Agenda and Draft Meeting Minutes for April 5, 2017 Meeting and Proposed Meeting on September 7, 2017

10.2 Discussion and Possible Action Regarding; Frequently Asked Questions Concerning the Scope of RN Practice in Medical Spas

10.3 Information: Review of Advance Practice Advisory Committee Application Process For Interested Parties

10.4 Public Comment for Items Not on the Agenda

10.5 Adjournment

NOTICE:
All times are approximate and subject to change. Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. The meeting may be canceled without notice. For verification of the meeting, call (916) 574-7600 or access the Board’s Web Site at http://www.rn.ca.gov. Action may be taken on any item listed on this agenda, including information only items.

Public comments will be taken on agenda items at the time the item is heard. Total time allocated for public comment may be limited.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Administration Unit at (916) 574-7600 or email webmasterbrn@dca.ca.gov, or send a written request to the Board of Registered Nursing at 1747 N. Market Blvd., Ste. 150, Sacramento, CA 95834. (Hearing impaired: California Relay Service: TDD phone # (800) 326-2297). Providing your request at least five (5) business days before the meeting will help to ensure the availability of the requested accommodation. Board members who are not members of this committee may attend meetings as observers only, and may not participate or vote. Action may be taken on any item listed on this agenda, including information only items. Items may be taken out of order for convenience, to accommodate speakers, or maintain a quorum.
# BOARD OF REGISTERED NURSING

## NURSING PRACTICE COMMITTEE MINUTES

**May 10, 2017**  
Board of Registered Nursing  
1747 N. Market Blvd., Hearing Room  
Sacramento, CA 95834  
(916) 574-7600

### MEMBERS PRESENT
- Trande Phillips, RN  
- Michael Jackson, MSN, BSN, RN, CEN, MICN  
- Cynthia Klein, RN  
- Elizabeth Woods, RN

### STAFF PRESENT:
Janette Wackerly, MBA, BSN, RN, SNEC, Staff Liaison

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**May 10, 2017**  
Meeting called to order by Trande Phillips, RN Chair  
Member introductions: Michael Jackson RN, Cynthia Klein, RN, Elizabeth Woods, RN

### 10.0 Review and Vote on Whether to Approve Previous Meeting Minutes March 8, 2017

<table>
<thead>
<tr>
<th>Motion: Michael Jackson</th>
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<tr>
<td>Second: Elizabeth Woods</td>
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<thead>
<tr>
<th>TP: Yes</th>
<th>CK: Abstained</th>
<th>MJ: Yes</th>
<th>EW: Yes</th>
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### 10.1 Information: How Nurse Practitioners Qualify for Opioid Treatment Program, Buprenorphine Waiver, Medication Assisted Treatment presented by Nancy Trego, DNP, GNP –California Association of Nurse Practitioners.

<table>
<thead>
<tr>
<th>Motion: No motion Nancy Trego unable to attend at this meeting. Nancy Trego will do her presentation at the June 8, 2017 Board Meeting.</th>
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<tr>
<td>Second:</td>
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<tr>
<th>TP:</th>
<th>CK:</th>
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<th>EW:</th>
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10.2 2017 Forecasting Report of RNs in California

Along with each biennial RN survey and report, the BRN contracts with the University of California San Francisco (UCSF), Institute for Health Policy Studies to complete the Forecasts of the Registered Nurse Workforce in California report which presents RN supply and demand projections. Following the 2016 RN Survey, UCSF is currently preparing the 2017 forecasting report which is based on a variety of data sources including the 2016 Survey of California RNs, BRN licensing data, data from other California state agencies (i.e., OSHPD, EDD, Department of Finance) and national survey data. When final, this report will be included under the forms and publications/reports section of the BRN website.

Dr. Joanne Spetz from UCSF was in attendance and provide a presentation of some of the preliminary highlights of the data.

Motion: No Motion

Second:
TP: CK: MJ: EW:

10.3 Summary of Findings of the 2016 Survey Report of California RNs with Active Licenses

The 2016 Registered Nurse study is the tenth in a series of surveys designed to collect and evaluate nursing workforce data and identify trends that may assist policy makers and the public in addressing the nursing shortage and workplace issues. Since 2004, studies have been completed on a biennial schedule, prior to 2004 studies were conducted in 1990, 1993 and 1997. Data for the 2016 study was collected in late spring to early summer of 2016.

The 2016 survey was conducted and analyzed for the Board of Registered Nursing by the University of California, San Francisco (UCSF), Institute for Health Policy Studies. Joanne Spetz, Ph.D., UCSF, served as the principal investigator for the study. Dr. Spetz is presenting a summary today to the Board of the 2016 survey findings and will also present preliminary 2017 RN forecasting data.

Motion: no motion information only

Second:
TP: CK: MJ: EW:

10.4 Public Comment for Items Not on the Agenda

No Public Comment

Submitted by: Janette Wackerly, MBA, BSN, RN, SNEC Supervising Nursing Education Consultant NP Liaison

Accepted by: Trande Phillips, RN
AGENDA ITEM: 10.1
DATE: March 8, 2017

ACTION REQUESTED: Information: Nurse Midwifery Committee Discussion of Agenda and Draft Meeting Minutes for April 5, 2017 Meeting and Proposed Meeting on September 7, 2017

REQUESTED BY: Trande Phillips RN
Chair Practice Committee

BACKGROUND:
Attached in the April 5th, 2017 Nurse-Midwifery Advisory Committee meeting agenda and draft meeting minutes. Nurse-Midwifery Advisory Committee members were noticed by email regarding September 7, 2017 Board Meeting, and whether it is a possible date for an informational session related to Nurse-Midwifery Practice. The Nurse-Midwifery members to determine if September 7, 2017 is an acceptable date for their next Nurse-Midwifery Committee Advisory meeting following the Board Meeting.

NEXT STEPS: Place on Board agenda.

FISCAL IMPACT, IF ANY:

PERSON(S) TO CONTACT:
Janette Wackerly, MBA, BSN, RN
Supervising Nursing Education Consultant
Janette.Wackerly@dca.ca.gov
(916) 574-7686
Present: BJ Snell, PhD, CNM, WHNP, MSN, FACNM; Lin Lee, RN, CNM; Karen Ruby Brown, MSN, CNM; Karen Roslie, CPPM
Absent: Naomi Stotland, MD
Guests: Joseph Morris RN, MSN, Ph.D., Janette Wackerly, RN, BSN, MBA; Betty Woods, RN, FNP, MSN; Trande Phillips, RN; Shannon Silberling Deputy Chief, Complaint Intake and Investigations Dept., Joseph Pacheco Deputy Chief of Enforcement, Complaint Intake and Investigations, Julie Campbell-Warnock, Research Program Specialist

Recorder: Nicoll Walton/Susan C. Engle DNP, PHN, RN

<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Discussion</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>10.0 Call to Order/Roll Call /Establishment of a Quorum:</td>
<td>The meeting was called to order by BJ Snell Quorum established If a member is not able to attend the Nurse Midwifery Advisory Committee meeting in the planned physical location, they need to submit the location where they plan to access the meeting electronically and the telephone number at least 15 days before the date of the meeting. Public participants may attend the meeting at any location.</td>
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</tr>
<tr>
<td>10.01 Vote on Whether to Approve Committee Meeting Minutes: September 16, 2016</td>
<td>Minutes were approved by the committee members with minor corrections that will be submitted in writing. Established quorum</td>
<td>Karen Ruby Brown to submit edits in writing</td>
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## 10.1 Items to be Discussed and Considered

<table>
<thead>
<tr>
<th>1. Creating and Presenting an Informational Session for BRN Related to Nurse-Midwifery Practice</th>
<th>Committee member shared that the Board understands nursing issues but may not have a lot of information about midwifery practice and midwifery education. The committee discussed items that they would want to have in the informational session. Each committee member provided input for the presentation content such as insight to how midwifery practice is in hospitals with physician co-management and the safety perspectives, midwives practice under scope of practice and not standardized procedures with the exception of specific SPs <strong>required</strong> by law, educational evolution aspects and perspectives, history of midwifery and California practice, issues related to CNMs and Licensed Midwives <strong>related</strong> to homebirths and practice settings such as birth centers and homes. Based on Committee member’s discussion, staff provided a summary of the content for the informational session to the Board. Content to include co-management with physicians and residents in hospitals where nurse midwives work, history of midwifery practice in California, and consumer perspective. Committee member shared that the history, trends will include health policy component including scope of practice and licensed midwives, differences and commonalities, and Dr. Stoddard’s perspective with Physician and residents. Board member suggested that the presentation also include resident education. Staff recommended that the presentation include a question and answer period. Staff recommended a part one and a part two. Staff shared that the presentation in covering all aspects discussed will inform the Board that includes public members and Registered Nurses. Staff shared that the Board meetings are scheduled for September and November.</th>
<th>Janette Wackerly will provide the Board meeting dates. Karen Ruby Brown to develop PowerPoint presentation/s Committee to provide presentation need (i.e. Audiovisual equipment)</th>
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<tr>
<td>2. Feedback Received from Certified Nurse Midwifery Community Related to Expert Witness Participation</td>
<td>There was discussion between Committee members and staff regarding expert witness participation. In addition, there was discussion regarding standardized procedures and physician supervision. Staff informed the committee that the name has been changed from expert witness to Expert Practice Consultant. Committee member shared that in the past wording had been interpreted by experts was that the Board was asking the expert to find a violation which isn’t true. Staff stated that the Board needs an unbiased opinion as to whether or not there was unprofessional conduct issue. Staff shared that they are engaging in a process with the AG to in the near future to have formalized training so that the consultant will know what their legal role is and how their product to the Board will be used and provide some direction to the Board. Committee</td>
<td>Joseph Pacheco to provide synopsis of changes</td>
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</table>
Nurse-Midwifery Advisory Committee Meeting

requested that staff provide a synopsis of the changes were made to the materials sent to consultants and posted on the website so that the information can be shared with the midwifery community. Committee wanted to know how early the nurse midwife could be involved in a case as there are times when things seem to get down the pike so far that the case may not need to go that far and so having someone that can give input at an earlier timeframe as to whether this is appropriate scope of practice or not because there are some investigations that have continued to go on and on that are really within the midwifery scope of practice but no midwife has ever looked at the case until it gets way down the pike. Staff shared that all investigators were trained by the AG office. The training included a piece around midwifery. Staff: what evidence needs to be collected? Staff: How much is enough to identify early on in an investigation when it’s ok to stop. Committee member asked if it would be okay to bring in an expert practice consultant (title changed from expert witness) at the 1st or 2nd step to do an initial look to see if it needs to go anywhere or to advise. Staff stated that it is possible; the main hurdle to that is we have had discussions the nurse expert get involved early in the process but resources is the number one issue. Staff reported that the Board does not have the money and the second resource that is lacking is people. Staff reported that there are not enough nurses to review the cases already and those are the ones that have been found already with potential violations and that it was suggested that all midwifery cases that are referred would go to an expert that would over tax the system and actually delay it even further because there are not enough experts currently. Committee member shared that resources might be freed up if cases that do not require the level of investigation to work numbers to make sense. Committee member asked if volunteers could do the 1st glance. Staff reported that due to confidential issues the practice expert consultant would need to be contracted through DCA. Committee member asked if the initial investigator was a nurse; staff responded that the initial investigation team were not nurses. Staff reported that 5 midwifery nurse cases were sent to the AG for disciplinary reasons. Committee member stated that it seems to be investigations for out of hospital births. Committee member shared that the expert needs to be familiar with out of hospital births. Committee member reported that many expert witnesses found that the cases they worked on was related to physician supervision issues and with physician supervision not being available that it put the expert in a bind of recognizing that the current practice does not fit the whole physician supervision model and with the administrative rulings and those kind of things so they are giving feedback to the Board that there is a big issue to have a nurse midwife trying to provide true expert witness when in fact what supervision is in 2017 is very different then what it was in 1974.
Staff asked the committee to provide clear cut practice guidelines; What is the standard of care in the field? What does the committee suggest to the Board? What is the NMW allowed to do? What is not allowed? What is the standard in birthing centers and home birth practice? Staff reported that the standard of practice is undefined. Committee member shared that it may be undefined from the Board’s perspective but it is clearly defined by the professional associations nationally and by the birth center associations. Committee member shared that there are standards and guidelines that a certified NMW is expected by their competency and national certification to be held too. Committee member stated that those standards are very clear; national certification is what keeps the NMW in the position to be tied to the standards. Staff shared that the Expert Practice consultant information was updated on the BRN webpage.

### 3. Status of Survey for Advanced Practice Nursing 2017; Information Only

<table>
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<tr>
<th>Staff provided an update on the survey for Advanced Practice Nursing 2017. A survey draft was sent to another group of nurse practitioners and nurse midwives to provide feedback. A copy of the final version of the survey was included in the meeting packet. The survey was beta tested by NPs/CNMs who did not see the questions. In an attempt to improve the response rate, the survey link was sent by UCSF in 2016 to 2500 NPs and CNMs. As of January 24th, 690 (28%) online responses were received. Statistics March 31st, show that there were 1435 (58%) eligible responses received with 612 (25%) received by mail and 823 (33%) responses received online as of March. A final post card reminder March 31st. The survey will remain open for another 3-4 weeks. UCSF will then provide an analysis and report to be available late 2017. Committee member asked for the breakdown of the CNM is the sample and the number of CNM responses.</th>
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<tr>
<td>Julie Campbell-Warnock to provide number of CNMs and NPs that received the survey.</td>
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### 4. Mission of Nurse Midwifery Advisory Committee and Reporting Relationship to the Board

<table>
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<tr>
<th>Committee member asked if the recommendation made by the Sunset Review Committee to have the NMW Advisory Committee report directly to the Board. Committee member asked if the Board had discussed this matter. Staff reported that the committee should report recommendations to the Practice committee. Committee member shared that there are parts of the committee that deal with education, practice and credentialing. Staff stated that if there are separate issues, the committee can provide a report to the education committee. Staff discussed information about attendance at the Nursing Education &amp; Workforce Advisory Committee (NEWAC). NEWAC meets twice a year. The next NEWAC meeting is in October. Education and practice issues are discussed at the NEWAC meeting with representation from a diverse group of participants such as the Hospital Association, ACNL, and Deans and Directors.</th>
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<tbody>
<tr>
<td>Janette Wackerly to provide information about participation and attendance at the NEWAC meetings.</td>
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### 10.2 Discussion and Consideration of

| Committee chair asked members for input to prioritize 1-7 for future agenda items to allow the NMW committee and community to interact with different staff and to improve communication. Committee member discussed the need for legislation to look |
### Nurse-Midwifery Advisory Committee Meeting

<table>
<thead>
<tr>
<th>Items Related to the Practice of Midwifery; Possible Recommendations to the Full Board</th>
<th>at how the board could advise NMW committee until supervision is removed from the regulation. Committee discussed legal implications, advisements to be developed for episiotomies in the home.</th>
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<tbody>
<tr>
<td>1. Discuss the Meeting Frequency and Disciplinary Issues Regarding Nurse-Midwives that Arose During the Sunset Review Process</td>
<td>Staff discussed that the committee will need to bring forward the agenda item to the nursing practice committee or the education/licensing committee. If the item is agendadized, a committee member would need to attend and present the agenda item at the respective meeting. Staff shared that the committee meeting are held 5 times per year generally before the Board meetings. The meetings will be held in northern California through June.</td>
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<tr>
<td>2. Comparison of Midwifery in California of Certified Nurse Midwives and Licensed Midwives to Include Scope, Supervision, Education Preparation, and Predominant Location of Practice</td>
<td>Item not discussed, tabled until future meeting</td>
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<tr>
<td>3. Issues Regarding Physician Supervision and Prior Administrative</td>
<td>Committee members and staff discussed the need to develop CNM advisories such as: supervision, episiotomies (Business and Professions Code 2746.5(2), NCSBN state practices, proposal: consultation, collaboration, referral principles. Committee members discussed CNMs and LMs in relation to disciplinary action 2761(a)(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional</td>
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<tr>
<td>Cases Related to Certified Nurse Midwifery and Licensed Midwife Practice</td>
<td>license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action. Dual license clearly defined before they start practicing as a LNM. Committee Members discussed that CNM need for standardized procedures for furnishing and episiotomy so that they are not practicing medicine without a license.</td>
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<tr>
<td>4. Recommendation for Revision to Business and Professions Code Section 2746.52 to Add Performance of an Episiotomy as an ‘Urgent/Emergency Event’ in the Home Setting and Repair of Laceration in Home as a Patient Safety Issue</td>
<td>Committee members discussed issues related to episiotomies in hospitals, birth centers, and home births in reference to Business and Professions Code Section 2746.52) Committee members discussed implications for episiotomies and home births including patient safety (i.e. delay in repair, bleed) Committee members discussed the need to develop advisements such as the one that was developed for “vacuum” until language in law can include “home” for homebirths.</td>
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<tr>
<td>5. Authority Conferred for Nurse Midwifery Scope of Practice in Business and Professions Code Section 2746.5 Regarding Whether Standardized Procedures are Necessary for Nurse Midwifery Practice</td>
<td>Item not discussed, tabled until future meeting</td>
</tr>
<tr>
<td>6. Recommendation for Revision to Business and Professions Code</td>
<td>Item not discussed, tabled until future meeting</td>
</tr>
<tr>
<td>Sections 2746 through 2746.8 Relating to Whether California Certified Nurse Midwifery Practice Should Be Based on Standards for Practice of Midwifery and Core Competencies for Basic Midwifery Practice</td>
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<td>Committee members shared that there are 3 Nurse Midwifery programs in California. The application process by endorsement from out of state and the length of time required for processing. Staff shared that there is a separate process for furnishing.</td>
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<tr>
<th>7. Length of Time to Obtain Registered Nurse License and Nurse Midwifery Certification</th>
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<td>Item not discussed</td>
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<tr>
<th>10.3 Discuss Online License and Certificate Renewal Processes</th>
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<td>None</td>
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<th>10.4 Public Comment for Items Not on the Agenda</th>
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<td>None</td>
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<table>
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<tr>
<th>Next Meeting</th>
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<tbody>
<tr>
<td>September 7, 2017</td>
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<table>
<thead>
<tr>
<th>Adjournment:</th>
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<tbody>
<tr>
<td>The meeting was adjourned at 4:30pm</td>
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AGENDA ITEM: 10.2
DATE: August 9, 2017

ACTION REQUESTED:
Discussion and Possible Action Regarding; Frequently Asked Questions Concerning the Scope of RN Practice in Medical Spas

REQUESTED BY:
Trande Phillips RN
Chair Practice Committee

BACKGROUND:
The Board of Registered Nursing wishes to inform registered nurses about questions concerning the scope of RN practices in medical spas. The use of prescriptive medical devices and injections for cosmetic purposes in the practice of medicine. There are no separate laws governing medical cosmetic treatment and procedures and the RN’s and physicians will be held to their licensing standards. (Business and Professions code 2725 Nursing Practice Act)

Please review the Medical Board of California available documents at the Medical Board website.

Frequently Asked Questions - Cosmetic Treatments Use of Mid-Level Practitioners for Laser, Dermabrators, Botox, and Other Treatments
http://www.mbc.ca.gov/Licensees/Cosmetic_Treatments_FAQ.aspx

The Bottom Line: The Business of Medicine - Medical Spas
http://www.mbc.ca.gov/Licensees/medical_spas-business.pdf

NEXT STEPS:
Place on Board agenda.

FISCAL IMPACT, IF ANY:
None

PERSON(S) TO CONTACT:
Janette Wackerly, MBA, BSN, RN
Supervising Nursing Education Consultant
Janette.Wackerly@dca.ca.gov
(916) 574-7686
Frequently Asked Questions Concerning the Scope of RN Practice in Medical Spas

The use of prescriptive medical devices and injections for cosmetic reasons is the practice of medicine?

There is a tendency for RNs, other professions and the public to view laser treatments, Botox, and cosmetic filler injections as cosmetic rather than medical treatments. There are no separate laws governing these procedures; and RNs and physicians will be held to their licensing standards.

(1) Who may use medical lasers or intense pulse light devices to remove hair, spider veins and for cosmetic medical procedures?
Laser medical treatments can be performed by trained registered nurses in a medical facility where the physician practices.

(2) Can a registered nurse perform Botox injections?
Trained registered nurses may perform Botox injections on the order of the patients’ physician when the RN competency to perform the injection technique has been evaluated and confirmed by the ordering or supervising physician.

(3) Can a registered nurse ask a physician to be “medical director” of a medi-spa?
No, No one who cannot legally practice medicine can offer or provide medical cosmetic services (Business and Professions Code section 2052). To offer or provide these medical cosmetic services (laser, Botox, cosmetic filler injections) the business must be physician-owned medical practice or professional medical corporation with a physician being the majority shareholder.

(4) Can an RN approach a physician to be the “sponsoring physician” for the RN opening a business operation to offer laser and Botox and other cosmetic practices; is this arrangement legal?
No. There is no such thing as a “sponsoring physician”. Registered nurses may not, under California law, employ or contract for physician services. The Nursing Practice Act recognizes “the existence of overlapping functions between physicians and registered nurses” and permit “additional sharing for functions within an organized health care system that provides collaboration between physicians and registered nurses” (Business and Professions Code section 2725) nurses may only provide medical functions under “standardized procedures”. The BRN does not believe this allows a registered nurse to have a private medical cosmetic practice without physician supervision and ownership.

(5) Can RNs perform microdermabrasion?
If the microdermabrasion is a medical treatment, that is the microdermabrasion penetrates to deeper levels of the epidermis, then it is medical treatment performed by a physician, and or by a registered nurse. Treatments to remove scarring, blemishes, or wrinkles would be considered a medical treatment.
If the microdermabrasion treatment affects the outermost layer of the skin or the stratum corneum, then a licensed cosmetician or esthetician may perform the microdermabrasion treatment. Unlicensed persons including medical assistants, may not perform any type of microdermabrasion.

(6) Can the registered nurse set up a practice in a salon, hire a physician supervisor, or perform medical cosmetic procedures by standardized procedure?

No, the law does not allow a registered nurse to set up a medical practice utilizing standardized procedures in a salon, hire a physician, or provide medical cosmetic procedures by standardized procedure. CCR 1472 Standardized Procedure Functions are performed in an organized health care system meaning medical practice offices.

(7) RN business arrangements: what are the issues related to ownership and control for a medical practice?

California law prohibits the corporate practice of medicine. Laypersons or lay entities may not own any part of a medical practice (Business and Professions Code 2400). Physicians must either own the practice, or must be employed or contracted by a physician-owned practice or medical corporation. The majority of stock in a medical corporation must be owned by a California licensed physician.

Medical Board of California website provides the following information on Medical Cosmetic Treatments:

http://www.mbc.ca.gov/Licensees/Cosmetic_Treatments_FAQ.aspx

http://www.mbc.ca.gov/Licensees/medical_spas-business.pdf
1. Who may use lasers or intense pulse light devices to remove hair, spider veins and tattoos?

Physicians may use lasers or intense pulse light devices. In addition, physician assistants and registered nurses (not licensed vocational nurses) may perform these treatments under a physician's supervision. Unlicensed medical assistants, licensed vocational nurses, cosmetologists, electrologists, or estheticians may not legally perform these treatments under any circumstance, nor may registered nurses or physician assistants perform them independently, without supervision.

2. Who may inject Botox?

Physicians may inject Botox, or they may direct registered nurses, licensed vocational nurses, or physician assistants to perform the injection under their supervision. No unlicensed persons, such as medical assistants, may inject Botox.

3. I've been approached by a nurse to be her "sponsoring physician" for her laser and Botox practice; would that be legal?

No. There is no such thing as a "sponsoring physician." Nurses may not, under California law, employ or contract with a physician for supervision. A nurse may not have a private practice with no actual supervision. While the laws governing nursing recognize "the existence of overlapping functions between physicians and registered nurses" and permit "additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses" (Business and Professions Code section 2725), nurses only may perform medical functions under "standardized procedures." The board does not believe this allows a nurse to have a private medical cosmetic practice without any physician supervision.

4. I've been asked by a layperson to serve as "medical director" for a "medi-spa" that provides laser and other cosmetic medical services; would that be legal?

No. No one who cannot legally practice medicine can offer or provide medical services (Business and Professions Code section 2052). A physician contracting with or acting as an employee of a lay-owned business would be aiding and abetting the unlicensed practice of medicine (Business and Professions Code section 2264, 2286, and 2400). To offer or provide these services, the business must be a physician-owned medical practice or professional medical corporation with a physician being the majority shareholder.
5. I see these ads for "Botox Parties" and think that it has to be illegal. Is it?

The law does not restrict where Botox treatments may be performed, as long as they are performed by a physician or by a registered nurse, licensed vocational nurses, or physician assistant under a physician's supervision.

6. Who may perform microdermabrasion?

It depends. If it's a cosmetic treatment, that is to say it only affects the outermost layer of the skin or the stratum corneum, then a licensed cosmetician or esthetician may perform the treatment. If it's a medical treatment, that is to say it penetrates to deeper levels of the epidermis, then it must be performed by a physician, or by a registered nurse or physician assistant under supervision. Treatments to remove scarring, blemishes, or wrinkles would be considered a medical treatment. Unlicensed personnel, including medical assistants, may not perform any type of microdermabrasion.

7. I would like to provide non-medical dermabrasion, and hire an esthetician to perform that and also cosmetic facial and skin treatments. What do I need to do?

It is legal for physicians to hire licensed cosmetologists or estheticians to perform cosmetology services, if they have obtained a facility permit from the Board of Barbering and Cosmetology. You may apply for a permit with the Department of Consumer Affairs, Board of Barbering and Cosmetology, 2420 Del Paso Blvd., Sacramento, CA 95834. You may obtain application forms at the DCA website at http://www.dca.ca.gov/. All licensed cosmetologists, including estheticians, must perform their services in a facility with a permit.

8. Why can't I use a medical assistant instead of a nurse?

Medical assistants are not licensed professionals. While doctors have become accustomed to their assistance in medical office practices, they are not required to have any degree, nor do they have to pass an examination or be licensed. For that reason, the law only allows them to perform technical supportive services as described in sections 2069-2071 of the Business and Professions Code, and Title 16, California Code of Regulations, sections 1366-1366.4.

9. What is the penalty if I get caught using or helping an unlicensed person to perform medical treatment?

The law provides a number of sanctions, ranging from license discipline to criminal prosecution, for aiding and abetting the unlicensed practice of medicine. Physicians could be charged with aiding and abetting unlicensed practice, and the employee could be charged with unlicensed practice.
10. I understand that all of these practices may be illegal, but I see advertisements all the time for these kinds of illegal practices. What should I do?

You may file a complaint with the Medical Board. To do so, please send the advertisement, the publication name and date, and your address and telephone number where you may be reached for further information, to our Central Complaint Unit at 2005 Evergreen Street, Sacramento, CA 95815. The board will contact the business, inform them of the law, and direct them to cease any illegal practice. If it is simply the advertisement that is misleading, they will be directed to change or clarify the ad.

It is impossible to cover all of the relevant legal issues in a short article, and these questions and answers are not a substitute for professional legal advice. Physicians may want to consult with their attorneys or malpractice carriers about the use of their office personnel. In addition, the board has a number of written materials with more thorough information on this subject. There are legal opinions on the use of lasers and dermabrasion, materials outlining the legal limitations on use of medical assistants, as well as the actual statutes and regulations. To request any of these documents, please contact the Medical Board of California, 2005 Evergreen Street, Sacramento, CA 95815, or call (916) 263-2389.
The Bottom Line:
The Business of Medicine – Medical Spas

There has been an explosion of cosmetic medicine over the past few years, and many physicians are being approached to "increase their bottom line" by entering into this lucrative field. Recently, our office received a letter from a business promoting the many programs they offered to physicians that contained the following message:

"...Lastly, we are very excited to announce our Medical Director program. This opportunity allows Doctors and Physicians to earn up to $400 per month per spa in their area. We have several DaySpas that anxiously await a Medical Director and we would anticipate a large number of client referrals to your practice. "...We would be happy to discuss how they can benefit your practice and grow your bottom line."

This business is offering the opportunity for physicians, for a fee, to rent their license to a business so that the business may engage in the practice of medicine --- a profession for which it has no license or qualifications.

Is what this business proposes legal? Can physicians simply sign-on, lend their names on paper to a salon or spa, collect "up to" $400 a month, and escape any liability or responsibility for the patients treated by the business? NO!

In 2006, Senator Liz Figueroa authored legislation (SB 1423, Chap 873) that directed the medical and nursing boards to work together to study the issue of safety in the use of lasers in cosmetic procedures. Over the past year, the boards have been holding public forums on the subject. What we have learned is that the current law is being violated with impunity by many in the cosmetic medical field.

The current environment gives rise to violations of the laws governing the business of medical practices, including violations of the corporate practice prohibitions, as well as fee-splitting and payment for referrals. The illegal business models give rise to the use of unlicensed or inappropriately licensed personnel, paper-only supervision ("rent-a-license") of allied health professionals, consumer confusion over the medical nature of the procedures, and confusion over who is responsible for the patient. Patients are not fully informed of the risks and often do not know the medical nature of the treatments or who is responsible for their care.

The use of prescriptive medical devices and injections for cosmetic reasons is the practice of medicine:

There is a tendency for the public, and some in the profession, to view laser treatments, Botox and cosmetic filler injections as cosmetic rather than medical treatments. The use of prescriptive drugs and devices, however, is the practice of medicine, and the same laws and regulations apply to these types of treatments as those driven by medical necessity. There are no separate laws governing these procedures, and physicians will be held to the same standard as they are for their routine medical practices. This means that the standards for informed consent, delegation to allied health professionals, physician-patient confidentiality and boundaries, maintaining medical records, as well as responsibility and liability apply to physicians, even those denominated "medical director."
Physician responsibility when delegating procedures to allied health professionals:

In the practice of medicine, physicians routinely delegate functions to allied health professionals. Physicians, however, may only delegate to appropriately licensed staff that they know to be capable of performing the task. Lasers and other prescriptive devices and prescriptive drugs must only be utilized by licensed registered nurses, nurse practitioners, or physician assistants. No unlicensed staff, including medical assistants, may use these devices or drugs, regardless of the level of training or supervision. Likewise, delegation to improperly licensed personnel, such as estheticians, is prohibited.

Supervision of those to whom procedures are being delegated:

While current law allows the delegation of laser treatments and injections to the above mentioned licensees, the law requires supervision by the physician. In the current environment, many have operated under the opinion that since the nursing regulations are broadly written, nurses may perform anything anywhere with essentially no supervision as long as there are "standardized procedures" or "delegation of services" documents on file.

Nurses:

Standardized procedures for nurses allow nurses to perform procedures while the physician is not on-site; however, they do not absolve physicians of their supervision responsibilities. Nor does the law allow nurses to set up a practice in a salon, hire a physician supervisor, or perform medical procedures independently.

The law does not contain a legal definition of supervision, and therefore, absent a legal definition, the plain English definition applies. "Supervision" is defined as the act of supervising, which is to oversee, to direct, to have charge, to inspect, to provide guidance and evaluation. The law and regulations support this definition.

As an example, the regulations for "standardized procedures guidelines" require physicians to be responsible for ensuring the experience, training, and education requirements for performance of the delegated function – and this must be documented. The regulations require that a method of initial and continuing evaluation of the nurses' competence be established. Further, it is the responsibility of the physician to examine the patient before delegating a task to a registered nurse.

When functioning under "standardized procedures," physicians need not be present in the facility when the procedures are being performed. The facility, however, must be a medical setting. Regulations require that the location be an "organized healthcare system," which is not a salon, spa, or other facility not under the control of the physician.

An appropriate prior examination is required where prescriptive drugs and devices will be used, and this examination may not be delegated to registered nurses. After performing the examination, the supervising physician may delegate a procedure that utilizes a prescriptive device to a nurse working under standardized procedures.
The guidelines further require the standardized procedures to describe the circumstances under "which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition." While there is no actual mileage limit relating to supervision, this requirement certainly means that the physician must be immediately reachable and able to provide guidance in the event of an emergency or the need for a higher level of care that must be provided by the physician. Physicians must be within a geographical distance that enables them to effectively provide supervision and support when needed or upon request.

For more specific information on registered nurse and nurse practitioner regulations, the Board of Registered Nursing website is: www.bn.ca.gov.

Nurse Practitioners:

Nurse practitioners are granted much more autonomy than registered nurses. They are advanced practice nurses who are master's-level educated, and, for that reason, may perform certain functions with a different level of supervision than registered nurses. The major exception to the rules governing their supervision in cosmetic procedures is that they may be delegated the task of providing the appropriate prior examination and ordering the drug or prescriptive device for the patient, if acting under standardized procedures.

Physician Assistants:

The supervision of physician assistants (PAs) is similar to that of nurses; however, the regulations governing PAs are much more specific. First, PAs may only be delegated tasks that are part of the physician's customary practice. In other words, obstetricians may supervise PAs treating obstetrical patients; pediatricians may supervise PAs providing care to pediatric patients, and so forth. Therefore, if cosmetic medicine is not a part of the physician's customary practice, the physician may not supervise a PA providing cosmetic procedures. In addition, physicians may only supervise four PAs at any given time, and must be in the facility with the PA or be immediately available by electronic communication if the PA is working under a delegation of services agreement.

PAs may be delegated the "appropriate prior examination" of the patient, but there are methods enumerated in the law and regulations on how physicians must provide their supervision and evaluation. For more specific information, all of the rules and regulations are available at the Physician Assistant Committee website: www.pac.ca.gov.

Supervision of all allied health professionals:

"Supervise" is a verb, and it requires those calling themselves supervisors to guide, direct, oversee, and evaluate performance. Physicians must really supervise, not simply lend their license to allied health professionals on paper without providing any supervision. A "supervising" physician who does not give direction, oversee or inspect, is not performing the task of supervising and is in violation of the law.
Qualifications of Physician Supervisors:

Physicians may only delegate to those that they know to be capable of performing the task. If they are to supervise the procedure, the physician too should be capable of performing it. One cannot provide guidance, direction, evaluation and oversight unless one is knowledgeable and competent in the procedure being delegated.

The law does not require board certification to perform cosmetic procedures. That said, however, one should not think that the absence of this requirement allows anyone of any specialty to supervise cosmetic procedures, unless the physician has sufficient knowledge and training in the procedures being performed.

Business arrangements; issues of ownership and control:

California law prohibits the corporate practice of medicine. Laypersons or lay entities may not own any part of a medical practice. (Business & Professions Code Section 2400) Physicians must either own the practice, or must be employed or contracted by a physician-owned practice or a medical corporation. (The majority of stock in a medical corporation must be owned by California licensed physicians, with no more than 49% owned by other licensed health care professionals, such as nurses, physician assistants, nurse practitioners, etc. No stock in a medical corporation may be owned by a lay-person. (Corporation Code Section 13401.5(a))

In an attempt to circumvent this legal prohibition, some creative business and management schemes have emerged that violate the law. Businesses that provide management services, franchises or other models that result in any unlicensed person or entity influencing or making medical decisions are in violation of the law.

As an example, businesses that control medical records, the hiring and firing of healthcare staff, decisions over coding and billing, and the approving or selection of medical equipment or drugs, violate the law. Management Service Organizations (MSOs) arranging for advertising, or providing medical services rather than only providing administrative staff and services for a physician's medical practice (non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business) are also engaging in illegal conduct. Also, many current business arrangements violate the prohibition against fee-splitting or giving any consideration for patient referrals. The current practice of lay-owned businesses hiring medical directors is also prohibited. A physician who acts as medical director of a lay-owned business is aiding and abetting the unlicensed practice of medicine. (See Precedential Decision No. MBC – 2007-01-Q, in the matter of the Accusation against Joseph F. Basile.)

Physicians who become employees or contractors of lay-owned spas and violate other business provisions of the laws may be disciplined for unprofessional conduct.

Physician Responsibility for back-up systems and emergency plans:

Physicians who perform or delegate treatments are responsible for their patients' care. As supervisors, they are responsible to ensure that back-up systems and emergency plans are in place.
Under current law, the patients are the physician’s responsibility, and the physician is responsible for treating mishaps, complications or any other emergency that might arise from the treatments the physician has delegated. While nurses are responsible for their patients within their scope-of-practice, under the Medical Practice Act, physicians have the ultimate responsibility for the care of their patients.

**Physician responsibility for patient informed consent and education:**

All medical procedures must be preceded by informed consent, which should include the possible risks associated with the treatment. While there is no specific code section that enumerates the contents of an informed consent, the well-established doctrine of informed consent in case law requires that patients must be, at a minimum, informed of:

1) the nature of the treatment,
2) the risks, complications, and expected benefits, including its likelihood of success, and
3) Any alternative to the recommended treatment, including the alternative of no treatment, and its risks and benefits.

Providing sufficient information to constitute informed consent is the responsibility of the physician.

**Physician responsibility for advertising and marketing:**

California law requires advertising to include the physician’s name or the name for which they have a fictitious name permit. (Business & Professions Code Section 2272) While nurses may be performing the treatment, the name of the supervising physician, or his or her registered fictitious name, must be in the advertisement.

The law governing physician advertising is specific, and requires the physician ads not be misleading. California law is very specific in prohibiting many of the advertising practices currently being used to promote cosmetic treatments. The use of models, without stating that they are models, the use of touched-up or refined photos, and claiming superiority of the facility or procedures with no objective scientific evidence is prohibited. Also, the use of discount or “bait and switch” promotions is prohibited. The use of "for as low as” in advertising procedures, is strictly prohibited. The laws relating to physician advertising, Business & Professions Code Section 651, may be viewed on the Medical Board's website: www.mbc.ca.gov.

**The Bottom Line:**

Cosmetic procedures are the practice of medicine, and physicians are responsible for their patients, regardless of who performs the treatments. There is no legal scheme that allows physicians to collect a fee for signing their name to an agreement to lend their license to an entity to practice medicine. Legally, the "clients" of the spa or salon are patients — the physician’s patients, and that arrangement comes with all of the responsibility and liability that goes with any other doctor-patient relationship. Becoming involved in an improper business arrangement, may, in the short term, raise a physician’s economic bottom line. In the long run, however, the risks are great. In reality, the
bottom line is that physicians who become embroiled in these illegal arrangements may lose their license, or their livelihoods.

*It is impossible to cover all of the relevant legal issues in this short article, and the content is not a substitute for professional legal advice. Physicians may want to consult with their attorneys or malpractice carriers for additional legal advice.*
MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 17, 2014
ATTENTION: Members of the Committee on Physician Supervisory Responsibilities
SUBJECT: Medical Spas
STAFF CONTACT: Jennifer Simoes, Chief of Legislation

This memo provides background information for a discussion by this Committee on medical spas.

MEDICAL SPAS - STAFF RECOMMENDATION:
A medical spa is not a facility that is currently licensed and regulated in California. However, as explained in the background of this memo (below), licensed physicians and other health care providers are licensed and regulated in California. The purpose of defining a medical spa in law would be to license and regulate this type of facility. Staff does not recommend creating a definition for medical spas in law, as any individual providing medical services is required to be licensed and regulated accordingly. If an individual is providing a service that requires a license or is outside their scope of practice in any type of facility (including a medical spa), this is already a violation of law, which can be pursued criminally or administratively.

BACKGROUND:
The International Medical Spa Association defines a medical spa as follows:
“A medical spa is a facility that operates under the full-time, on-site supervision of a licensed health care professional. The facility operates within the scope of practice of its staff, and offers traditional, complementary, and alternative health practices and treatments in a spa-like setting. Practitioners working within a medical spa will be governed by their appropriate licensing board, if licensure is required.”

Currently, the Medical Board of California (Board) has information on its website related to medical spas and cosmetic procedures, as this is not a new issue for the Board.

Medical Spa Information Currently Available on the Board’s Website for Consumers:
Medical treatments should be performed by medical professionals only. There is risk to any procedure, however minor, and consumers should be aware of those risks. While it is illegal for unlicensed personnel to provide these types of treatments, consumers should be aware that some persons and firms are operating illegally. Cosmetologists or estheticians, while licensed professionals and highly qualified in superficial treatments such as facials and microdermabrasion, may never inject the skin, use lasers, or perform medical-level dermabrasion or skin peels. Those types of treatments must be performed by qualified medical personnel. In California, that means a physician, or a registered nurse or physician assistant under the supervision of a physician.

Patients must know the qualifications of persons to whom they are entrusting their health. Those seeking cosmetic procedures should know that the person performing them is medically qualified and experienced. Specifically, patients should:
• Know who will perform the procedure and his or her licensing status: If a physician is performing the treatment, the patient should ask about the physician’s qualifications. Is the physician a specialist in these procedures? Is he or she board certified in an appropriate
specialty? Licensing status may be verified on the Board's website at www.mbc.ca.gov., "Check Your Doctor." Board certification status may be verified at www.abms.org.

- If a registered nurse or physician assistant will be doing the procedure, what are his or her qualifications? Where is the physician who is supervising them? Are they really being supervised, or are they acting alone with a paper-only supervisor? (Although the physician does not have to be onsite, he or she must be immediately reachable.) Again, the patient should check the supervising physician's credentials, as well as the nurse or physician assistant. Those websites are www.rn.ca.gov and www.pac.ca.gov.

- Be fully informed about the risks: All procedures carry risks, and conscientious practitioners will fully disclose them. Medical professionals have an ethical responsibility to be realistic with their patients and tell them what they need to know. Use caution if procedures are being heavily marketed, with high-pressure sales techniques promising unrealistic results.

- Observe the facility and its personnel: Medical procedures should be done in a clean environment. While one cannot see germs, one can see if the facility looks clean and personnel wash their hands, use gloves, and use sound hygienic practices.

- Ask about complications, and who is available to handle them: If the patient has an adverse reaction, he or she should know who will be there to help. Who should the patient call, and what hospital or facility is available where the physician can see the patient? Qualified physicians have facilities or privileges at a hospital where they can handle emergencies.

- Don't be swayed by advertisements and promises of low prices: There are a host of medical professionals offering competent, safe cosmetic procedures. If they are being offered at extremely low prices, there is a good possibility that what they are advertising is not what will be delivered. There have been tragic cases of unscrupulous practitioners injecting industrial silicone and toxic counterfeit drugs that have made patients critically ill, caused disfigurement, or resulted in death.

- Know that there is a substantial financial cost to obtaining qualified treatments, as well as some risk. If the patient wants the best results, he or she should do his or her homework and only trust those who demonstrate competence and caution.

**Cosmetic Procedure Information Currently on the Board’s Website:**

In 2006, Senator Liz Figueroa authored legislation (SB 1423, Chap 873) that directed the medical and nursing boards to work together to study the issue of safety in the use of lasers in cosmetic procedures. Both boards held public forums on the subject. What was learned in these forums is that the current law is being violated with impunity by many in the cosmetic medical field.

The current environment gives rise to violations of the laws governing the business of medical practices, including violations of the corporate practice prohibitions, as well as fee-splitting and payment for referrals. The illegal business models give rise to the use of unlicensed or inappropriately licensed personnel, paper-only supervision (“rent-a-license”) of allied health professionals, consumer confusion over the medical nature of the procedures, and confusion over who is responsible for the patient. Patients are not fully informed of the risks and often do not know the medical nature of the treatments or who is responsible for their care.

The use of prescriptive medical devices and injections for cosmetic reasons is the practice of medicine and the same laws and regulations apply to these types of treatments as those driven by
medical necessity. There are no separate laws governing these procedures, and physicians will be held to the same standard as they are for their routine medical practices. This means that the standards for informed consent, delegation to allied health professionals, physician-patient confidentiality and boundaries, maintaining medical records, as well as responsibility and liability apply to physicians, even those denominated “medical director.”

**Physician responsibility when delegating procedures to allied health professionals:**
In the practice of medicine, physicians routinely delegate functions to allied health professionals. Physicians, however, may only delegate to appropriately licensed staff that they know to be capable of performing the task. Lasers and other prescriptive devices and prescriptive drugs must only be utilized by licensed registered nurses, nurse practitioners, or physician assistants. No unlicensed staff, including medical assistants, may use these devices or drugs, regardless of the level of training or supervision. Likewise, delegation to improperly licensed personnel, such as cosmetologists or estheticians, is prohibited.

**Supervision of those to whom procedures are being delegated:**
While current law allows the delegation of laser treatments and injections to the above mentioned licensees, the law requires supervision by the physician. In the current environment, many have operated under the opinion that since the nursing regulations are broadly written, nurses may perform anything anywhere with essentially no supervision as long as there are "standardized procedures" or "delegation of services" documents on file.

Section 2023.5 was signed into law and added to the Business and Professions Code in 2011, and required the Board to adopt regulations on the “appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.” These regulations were adopted and became effective on July 1, 2013. The regulatory language states:

Whenever an elective cosmetic procedure involving the use of a laser or intense pulse light device is performed by a licensed health care provider acting within the scope of his or her license, a physician with relevant training and expertise shall be immediately available to the provider. For purposes of this section, “immediately available” means contactable by electronic or telephonic means without delay, interruptible, and able to furnish appropriate assistance and direction throughout the performance of the procedure and to inform the patient of provisions for post procedure care. Such provisions shall be contained in the licensed health care provider’s standardized procedures or protocols.

**Nurses:**
Standardized procedures for nurses allow nurses to perform procedures while the physician is not on-site; however, they do not absolve physicians of their supervision responsibilities. Nor does the law allow nurses to set up a practice in a salon, hire a physician supervisor, or perform medical procedures independently.

The law does not contain a legal definition of supervision, and therefore, absent a legal definition, the plain English definition applies. "Supervision" is defined as the act of supervising, which is to
oversee, to direct, to have charge, to inspect, to provide guidance and evaluation. The law and regulations support this definition.

As an example, the regulations for "standardized procedures guidelines" require physicians to be responsible for ensuring the experience, training, and education requirements for performance of the delegated function – and this must be documented. The regulations require that a method of initial and continuing evaluation of the nurses' competence be established. Further, it is the responsibility of the physician to examine the patient before delegating a task to a registered nurse.

An appropriate prior examination is required where prescriptive drugs and devices will be used, and this examination may not be delegated to registered nurses. After performing the examination, the supervising physician may delegate a procedure that utilizes a prescriptive device to a nurse working under standardized procedures.

The guidelines further require the standardized procedures to describe the circumstances under "which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition." While there is no actual mileage limit relating to supervision, this requirement certainly means that the physician must be immediately reachable and able to provide guidance in the event of an emergency or the need for a higher level of care that must be provided by the physician. Physicians must be within a geographical distance that enables them to effectively provide supervision and support when needed or upon request.

For more specific information on registered nurse and nurse practitioner regulations, the Board of Registered Nursing website is: www.rn.ca.gov.

Nurse Practitioners:
Nurse practitioners are granted much more autonomy than registered nurses. They are advanced practice nurses who are master's-level educated, and, for that reason, may perform certain functions with a different level of supervision than registered nurses. The major exception to the rules governing their supervision in cosmetic procedures is that they may be delegated the task of providing the appropriate prior examination and ordering the drug or prescriptive device for the patient, if acting under standardized procedures.

Physician Assistants:
The supervision of physician assistants (PAs) is similar to that of nurses; however, the regulations governing PAs are much more specific. First, PAs may only be delegated tasks that are part of the physician's customary practice. In other words, obstetricians may supervise PAs treating obstetrical patients, pediatricians may supervise PAs providing care to pediatric patients, etc. Therefore, if cosmetic medicine is not a part of the physician's customary practice, the physician may not supervise a PA providing cosmetic procedures. In addition, physicians may only supervise four PAs at any given time, and must be in the facility with the PA or be immediately available by electronic communication if the PA is working under a delegation of services agreement.

PAs may be delegated the "appropriate prior examination" of the patient, but there are methods enumerated in the law and regulations on how physicians must provide their supervision and
evaluation. For more specific information, all of the rules and regulations are available at the Physician Assistant Board website: www.pac.ca.gov.

Qualifications of Physician Supervisors:
Physicians may only delegate to those that they know to be capable of performing the task. If they are to supervise the procedure, the physician too should be capable of performing it. One cannot provide guidance, direction, evaluation and oversight unless one is knowledgeable and competent in the procedure being delegated.

The law does not require board certification to perform cosmetic procedures. That said, however, one should not think that the absence of this requirement allows anyone of any specialty to supervise cosmetic procedures, unless the physician has sufficient knowledge and training in the procedures being performed.

Business arrangements: issues of ownership and control:
California law prohibits the corporate practice of medicine. Laypersons or lay entities may not own any part of a medical practice (Business and Professions Code Section 2400). Physicians must either own the practice, or must be employed or contracted by a physician-owned practice or a medical corporation. (The majority of stock in a medical corporation must be owned by California licensed physicians, with no more than 49% owned by other licensed healthcare professionals, such as nurses, physician assistants, nurse practitioners, etc. No stock in a medical corporation may be owned by a lay-person (Corporation Code Section 13401.5(a)).

Businesses that provide management services, franchises or other models that result in any unlicensed person or entity influencing or making medical decisions are in violation of the law. Management Service Organizations (MSOs) arranging for advertising, or providing medical services rather than only providing administrative staff and services for a physician's medical practice (non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business), are also engaging in illegal conduct. Also, many current business arrangements violate the prohibition against fee-splitting or giving any consideration for patient referrals. The current practice of lay-owned businesses hiring medical directors is also prohibited. A physician who acts as medical director of a lay-owned business is aiding and abetting the unlicensed practice of medicine. (See Precedential Decision No. MBC – 2007-01-Q, in the matter of the Accusation against Joseph F. Basile.) Physicians who become employees or contractors of lay-owned spas and therefore violate the laws may be disciplined for unprofessional conduct.

Physician responsibility for back-up systems and emergency plans:
Physicians who perform or delegate treatments are responsible for their patients' care. As supervisors, they are responsible to ensure that back-up systems and emergency plans are in place. Under current law, the patients are the physician's responsibility, and the physician is responsible for treating mishaps, complications or any other emergency that might arise from the treatments the physician has delegated. While nurses are responsible for their patients within their scope-of-practice, according to the Medical Practice Act physicians have the ultimate responsibility for the care of their patients.

PSR 5-5
Physician responsibility for patient informed consent and education:
All medical procedures must be preceded by informed consent, which should include the possible risks associated with the treatment. While there is no specific code section that enumerates the contents of an informed consent, the well-established doctrine of informed consent in case law requires that patients must be, at a minimum, informed of:

- The nature of the treatment;
- The risks, complications, and expected benefits, including its likelihood of success; and
- Any alternative to the recommended treatment, including the alternative of no treatment, and its risks and benefits.

Providing sufficient information to constitute informed consent is the responsibility of the physician.

Physician responsibility for advertising and marketing:
California law requires advertising to include the physician’s name or the name for which they have a fictitious name permit (Business and Professions Code Section 2272). While nurses may be performing the treatment, the name of the supervising physician, or his or her registered fictitious name, must be in the advertisement.

The law governing physician advertising is specific, and requires the physician advertisements not be misleading. California law is very specific in prohibiting many of the advertising practices being used to promote cosmetic treatments. The use of models, without stating that they are models, the use of touched-up or refined photos, and claiming superiority of the facility or procedures with no objective scientific evidence is prohibited. Also, the use of discount or “bait and switch” promotions is prohibited. The use of "for as low as" in advertising procedures, is strictly prohibited. The laws relating to physician advertising, Business and Professions Code Section 651, may be viewed on the Board's website: www.mbc.ca.gov.
AGENDA ITEM: 10.3
DATE: August 9, 2017

ACTION REQUESTED: Information: Review of Advance Practice Advisory Committee Application Process For Interested Parties

REQUESTED BY: Trande Phillips RN Chair Practice Committee

BACKGROUND:
- Advance Practice Registered Nurse Committee Call for Interested Parties
- Procedures for the Advance Practice Registered Nurse Committee
- Advance Practice Registered Nurse Committee Member Application
- Advance Practice Registered Nurse Committee Appointment

The purpose of the advanced practice committee is to provide recommendations to the Board on issues involving nursing advanced practice. The advanced practice registered nurses are nurse practitioner, nurse anesthetist, nurse-midwives and clinical nurse specialists.

The goals of the advanced practice committee:
1. Clarify and articulate sufficiency of the four advanced practice roles and recommend changes to the Nursing Practice Act and rules
2. Develop recommendations for joint statements related to scope of practice and advanced practice nurse functions
3. Review national trends in the regulation of advance practice nurses and make recommendations to the board.
4. Collaborate with other Board committees on matters of mutual interest

Suggestion for committee members to include 4 NPs, 2 CRNA, 2 CNS, and 2 CNM. The committee members are requested to have diverse and rich backgrounds. Members include nurses from various areas of nursing agencies and health care setting throughout the state. Each member may serve a maximum of two consecutive terms.

Suggestion for committee meetings to be held semi-annually in Sacramento in person and by WebEx

The Senate Committee on Business, Professions and Economic Development and the Assembly Business and Professions Committee recommends the BRN should establish an Advanced
Practice Committee, separate from the Nursing Practice Committee, whose goal is to survey existing laws and regulations and determine what is lacking for regulation of APRNs. The BRN should seek legislation, promulgate regulations, and develop advisories to ensure APRNs have sufficient guidance in all practice settings.

NEXT STEPS: 
Place on Board agenda.

FISCAL IMPACT, IF ANY:

PERSON(S) TO CONTACT:
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Home Page: www.rn.ca.gov

ADVANCED PRACTICE REGISTERED NURSE COMMITTEE
CALL FOR MEMBERS

Dr. Morris requests your participation for the Advance Practice Registered Nurse Committee (APRN) which is currently recruiting advanced practices nurses who are interested in volunteering to serve on the Advanced Practice Advisory Committee for a two-year term beginning dates to be set through dates to be set.

The plan is for the committee to have a rich and diverse membership, which includes practitioners from various setting and specialties throughout the State of California.

PURPOSE:
The purpose of the Advanced Practice Registered Nurse Committee is to provide recommendations to the California Board of Registered Nursing on issues involving advanced practice.

GOALS:
1. Clarify and articulate sufficiency of the four Advanced Practice Registered Nurse roles and recommend changes to the Nurse Practice Act and rules.
2. Develop recommendations for joint statements related to scope of practice and advanced practice nurse functions.
3. Review national trends in regulation of advanced practice nurses and make recommendations to the Board.
4. Collaborate with other Board committees on matters of mutual interest.

The committee meets a minimum of two times per year, on date to set for beginning and ending of the terms of appointment. The meetings are generally held from 1pm – 3pm in the library located in the Headquarters of the BRN California Board of Nursing at 1747 North Market Blvd., Suite 150 in Sacramento.

If you are interested in applying to serve as a volunteer on the CA Board of Registered Nursing Advanced Practice Registered Nurse Committee, please submit your application and resume by e-mail janette.wackerly@dca.ca.gov or U.S. mail to Janette Wackerly MBA, BSN, RN California Board of Registered Nursing, 1747 N. Market Blvd., Suite 150, Sacramento, CA 95834 by Date. Telephone interviews will be conducted in mid to end of September Date. The Board will appoint the new and returning committee members at the Date Board Meeting. First meeting is to be determined.
Examples of the work produced by the committee may be found on the California Board of Registered Nursing website at http://rn.ca.gov/ under the Resources tab and then under Advanced Practice Committee and Advisory Opinions.
MEMORANDUM

TO: California Board of Registered Nursing
FROM: Dr. Joseph Morris
DATE: September 7, 2017
RE: Advanced Practice Registered Nurse Committee

2017-2019 Advanced Practice Registered Nurse Advisory Committee

The Process

According to California Board of Registered Nursing (BRN) Policy and Procedure, Advisory Committees Policies and Responsibilities (2011), Board committees are structured to provide an organized mechanism for nurses and other members of the public to jointly identify recommendations, which represent a variety of perspectives for BRN’s consideration or action. Protection of the public is the central focus of all recommendations. All committees are advisory in nature and their recommendations will represent the committee’s majority opinion regarding a recommendation. The Board will make appointment to committees. Call for committee members are solicited on the BRN web site. Volunteers complete an application process, provided a resume, and participated in an informal interview process that explored the applicant’s availability, understanding, and commitment to the committee’s charges.

Responsibilities

Candidates are presented to the Board for consideration and selection. BRN Board Members will retain responsibility for the final approval of committee members. In making an appointment, the Board will take into account the following: current expertise of members, expertise needed in relation to the committee charges, equity in geographic and work setting distribution. The Board may accept, reject, modify, or return recommendations back to the committee for further work. Board staff will act on behalf of the Board to carry out the work required. Committee members are responsible for regular attendance, active participation in the committee’s deliberations and work and promoting awareness within their agencies of the final decisions adopted. If the committee member is unable to participate in the majority of the meetings or is unable to complete the work on a consistent basis, the Chair will address committee members to resolve the issues. The Board retains full discretion to remove committee members. Committee Chairs and members will work in collaboration with other committees and staff when final recommendations to the Board require multiple viewpoints. All committees conduct an annual self-evaluation, which is utilized by the Board in determining the continuation of the committee appointment and assigned charges.

Member Selection

The Advanced Practice Advisory Committee consists of 10 members and one (1) Committee Chairs. For the 2017-2019 membership, the Board is seeking to fill ten (10) open positions. Board members recommend that Advanced Practice Registered Nurse Advisory Committee members based on population, practice area, specialty area, geographical location, years of experience.

The Proposed committee members may hold certification in more than one population foci. The proposed 2017-2019 committee members consist of:
- 2 Clinical Nurse Specialists (CNS),
- 4 Nurse Practitioners (NP),
- 2 Certified Nurse Midwife (CNM),
- 2 Certified Registered Nurse Anesthetists (CRNA),

**Specialty Area**
Specialty areas demonstrate the variety of practice locations and specialties for the recommended committee members.

**Geographical Diversity**
The geographical diversity of recommended committee members includes:
The APRN Committee Members practice in the following locations within the state.

Please sign and send back with application

____________________________________
Signature
Advanced Practice Registered Nurse Committee Application

Please Print or Type:
Name: ______________________________________________________
Address: ____________________________________________________
Phone: (Work)_____________ (Home)___________(Cell)_____________
Email: _____________________ Fax______________________________

Category for which you are applying and your certificate number:
Clinical Nurse Specialists (CNS)___________________
Certified Nurse Midwife (CNM)___________________
Certified Registered Nurse Anesthetists ______________
Nurse Practitioner ______________________________

California License Number: RN______________
California license number must be active and current

Attach a current resume. Please answer the following question:

- Explain why you are interested in serving on the Advance Practice Registered Nurse Committee
- Describe your education and work as an Advance Practice provider.

I have read and understand the responsibilities, time commitments, and the reimbursement of the Advanced Practice Registered Nurse Committee Member.

Signature: _______________________     Date: _________________________

Submit Completed Application and Resume to: Janette Wackerly, RN, BSN, MBA
Supervising Nursing Education Consultant
Board of Registered Nursing
PO Box 944210
Sacramento, CA 94244-2100
Month, Date, Year

Dear Name:

Congratulations! On date to be set, the California Board of Registered Nursing voted to approve your appointment to the Advanced Practice Registered Nurse Advisory Committee Meeting for dates to be set term. The Committee is comprised of 10 members – 2 Clinical Nurse Specialists (CNS), 2 Certified Nurse Midwife (CNM), 1 Certified Registered Nurse Anesthetists (CRNA), 4 Nurse Practitioners appointed members. The first Advanced Practice Registered Nurse Advisory Committee Membership meeting is to be determined in the Library of the California Board of Registered Nursing offices located at 1747 N. Market Blvd Ste. 150, Sacramento, CA 95834. Committee materials will be sent a week prior to the committee meeting and will include a committee resources to assist you in your duties as a committee member. Please review all materials prior to the Committee meeting. I look forward to seeing you there!

Member Selection
The Advanced Practice Registered Nurse Advisory Committee consists of 10 members and one (1) Committee Chair. For the dates to be determined membership, the Board is seeking to fill Ten positions. Board staff recommends Advanced Practice Registered Nurse Advisory Committee will look at members based on population foci, specialty area, practice area, years of experience, and geographical location.

Population Foci
Committee members may hold certification in more than one population foci. The proposed dates to be determined committee members consist of:

- 2 Clinical Nurse Specialists (CNS),
- 2 Certified Nurse Midwife (CNM),
- 2 Certified Registered Nurse Anesthetists (CRNA),
- 4 Nurse Practitioner (NP)

_________________________
Trande Phillips, RN, Board President