

AB 890*

An Overview

AB 890 will create two new categories of nurse practitioners (NPs) to function independently within a defined scope of practice without standardized procedures. Organizations may continue their current arrangements of NP practice, supervision, and standardized procedures for NPs who do not meet the qualifications of the two categories of NPs or choose not to pursue independent NP practice. Education, training, national certification, regulatory, and medical staff governance requirements for these two NP categories are defined in AB 890. In order for NPs to be eligible to practice independently under these two categories, certain provisions of the law need to be further refined through the promulgation of regulations by the Board of Registered Nursing (BRN). A summary of key provisions of the law with a description of the pre-requisite work is described below.

THE “103 NP”

The 103 NPs are so named in reference to the Business and Professions Code (BPC) Section 2837.103. 103 NPs are eligible to practice pursuant to a defined scope of practice without standardized procedures who 1) work in one of the settings below in which one or more physicians practice, and 2) satisfy the following requirements. Many of the requirements below need governmental action by the BRN and other state agencies before 103 NPs can practice. A description of the governmental action is listed in the table.

103 NP Settings BPC §2837.103(a)(2)(A)-(F)
<p><u>Authorized Settings and Organizations</u></p> <p>Any of the following settings that has one or more physicians and surgeons:</p> <ul style="list-style-type: none"> • A clinic, as defined in Section 1200 of the Health and Safety Code. • A health facility, as defined in Section 1250 of the Health and Safety Code, except for the following described under Exempted Settings. • A facility described in Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code. • A medical group practice, including a professional medical corporation, as defined in Section 2406, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians and surgeons that provides health care services. • A home health agency, as defined in Section 1727 of the Health and Safety Code. • A hospice facility licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code. <p><u>Exempted Settings</u></p> <p>NPs will still need to practice under standardized procedures.</p> <ul style="list-style-type: none"> • A correctional treatment center, as defined in paragraph (1) of subdivision (j) of Section 1250 of the Health and Safety Code. • A state hospital, as defined in Section 4100 of the Welfare and Institutions Code.

103 NP Requirements		
Requirement	BPC Section	Governmental Action
The NP has passed a national NP board certification examination.	2837.103(a)(1)(A)	None.
If applicable, the NP must pass a supplemental examination developed by the Dept of Consumer Affairs Office of Professional Examination Services (OPES).	2837.103(a)(1)(A) and 2837.105(a)(1)-(2)	The BRN and OPES shall conduct an analysis of national NP certification examinations to see if the national NP certification aligns with the NP scope of practice in Bus. & Prof. Code §2837.103(c) <i>et seq.</i> ¹ If there are competencies that are not covered by the national NP certification exams, then the OPES will need to create a supplemental exam.
The NP holds a certification as an NP from a national certifying body accredited by the National Commission for Certifying Agencies or the American Board of Nursing Specialties and recognized by the BRN.	2837.103(a)(1)(B)	None. The BRN already recognizes these national certifications in Title 16 § 1482(a)(2).
The NP provides documentation that the NP education was consistent to already existing BRN regulations in BPC §2836.	2837.103(a)(1)(C)	None. This is already being address through the BRN NP application process.
The NP has completed a transition to practice (TTP) in California of a minimum of three full-time equivalent years of practice or 4600 hours.	2837.103(a)(1)(D)	The BRN shall define the minimum standards for transition to practice through promulgation of regulations mandated by BPC §2837.101(c).

THE “104 NP”

The 104 NPs are so named in reference to the Business and Professions Code (BPC) Section 2837.104. 104 NPs are eligible to practice independently pursuant to a defined scope of practice without standardized procedures in settings outside those listed in BPC Section 2837.103(a)(2)(A)-(F) if they meet the following criteria.² This means that an NP can open up their own practice/business pursuant to already existing laws such as, but not limited to, a nursing corporation. The BRN will issue a separate NP certificate once the NP completes all of the 104 NP requirements and submits an application to the BRN.³ BPC 2837.104 goes into effect starting January 1, 2023.⁴ Therefore, NPs will not be eligible to become a 104 NP until that date.

104 NP Requirements		
Requirement	BPC Section	Governmental Action
The 104 NP must meet all of the same requirements as the 103 NPs: <ul style="list-style-type: none"> National certification OPES exam, if applicable BRN-approved NP education TTP 	2837.104(a) and 2837.104(a)(1)	Same as the 103 NP requirements list above.
Holds a valid and active RN license and a master’s degree in nursing or other clinical field related to nursing or a doctoral degree in nursing.	2837.104(b)(1)(B)	None.

¹ “*et seq.*” is a legal abbreviation for *et sequentes* or *et sequentia* meaning “and the following [sections, pages, etc.]”

² BPC §2837.104(a)(1).

³ BPC §2837.104(b).

⁴ BPC §2837.104(a).

104 NP Requirements		
The NP has practiced as an NP in good standing for at least three years, not inclusive of the TTP. The BRN may, at its discretion, lower this requirement for an NP who holds a Doctorate of Nursing Practice (DNP) based on practice experience gained in the course of doctoral education.	2837.104(b)(1)(C)	The BRN may lower this requirement at its discretion.

BRN NP ADVISORY COMMITTEE

AB 890 directs the BRN to create a Nurse Practitioner Advisory Committee to advise and make recommendations on matters including, but not limited to, education, appropriate standard of care, and other matters specified by the BRN.⁵ The committee shall provide recommendations or guidance to the Board when the Board is considering disciplinary action against an NP. The committee shall consist of four qualified NPs, two physicians with demonstrated experience working with NPs, and one public member.⁶

SCOPE OF PRACTICE

NPs who meet the requirements of Sections 103⁷ and 104⁸ will be able to practice under the following scope of practice:

- Conduct an advanced assessment.
- Order, perform, and interpret diagnostic procedures.
 - For radiologic procedures, an NP can order diagnostic procedures and utilize the findings or results in treating the patient. An NP may perform or interpret clinical laboratory procedures that they are permitted to perform under BPC §1206 and under the federal Clinical Laboratory Improvement Act (CLIA).
- Establish primary and differential diagnoses.
- Prescribe, order, administer, dispense, procure, and furnish therapeutic measures, including, but not limited to the following:
 - Diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources.
 - Prescribe, administer, dispense, and furnish pharmacologic agents, including over-the-counter, legend, and controlled substances.
 - Plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including, but not limited to, durable medical equipment, medical devices, nutrition, blood and blood products, and diagnostic and supportive services, including, but not limited to, home health care, hospice, and physical and occupational therapy.
- After performing a physical examination, certify disability pursuant to Section 2708 of the Unemployment Insurance Code.
- Delegate tasks to a medical assistant.

OBLIGATIONS

103 and 104 NPs must do the following:

- Verbally inform all new patients in a language understandable to the patient that an NP is not a physician. For Spanish language speakers, the NP shall use the standard phrase, “enfermera/o especializada/o.”⁹

⁵ BPC §2837.102(a).

⁶ BPC §2837.102(b).

⁷ BPC §2837.103(c) *et seq.*

⁸ BPC §2837.104(a)(1) and BPC §2837.104(b)(1).

⁹ BPC §2837.103(d) and BPC §2837.104(d).

- Post a notice in a conspicuous location accessible to public view that the NP is regulated by the BRN. The notice shall include the BRN's telephone number and internet website where the NP's license may be checked and complaints against an NP may be made.¹⁰
- Practice within their education and training and national certification.¹¹
- Refer patients to a physician or other health arts provider under certain circumstances or if the patient's condition is beyond the NP's education and training.¹²
- Carry liability insurance.¹³

TRANSITION TO PRACTICE

All 103 and 104 NPs will need to complete a "transition to practice" (TTP).¹⁴ AB890 directs the BRN to adopt, through regulation, minimum standards for the transition to practice. The TTP is three full-time equivalent years or 4,600 hours of additional clinical experience and mentorship intended to prepare an NP to practice independently.¹⁵ Topics that will be included in the TTP include, but are not limited to, managing a panel of patients, working within a complex health care setting, interpersonal communication, interpersonal collaboration and team-based care, professionalism, and business management of a practice.¹⁶ If clinical experience is obtained prior to January 1, 2021 and meets the TTP requirements established by the BRN, that experience may be counted towards the TTP. Therefore, before an NP can become a 103 or 104 NP, the BRN will need to create TTP regulations.

MEDICAL STAFF MEMBERSHIP, PRIVILEGES, VOTING RIGHTS, AND DISCIPLINE

103 NPs and 104 NPs are authorized for medical staff eligibility and rights differently under AB890.

103 NPs

In healthcare settings that have governing bodies as defined in Division 5 of Title 22 of the California Code of Regulations,¹⁷ the 103 NPs shall adhere to all applicable medical staff bylaws,¹⁸ be eligible to serve on medical staff and hospital committees,¹⁹ and be eligible to attend meetings of the department to which the 103 NP is assigned.²⁰ An NP shall not vote at department, division, or other meetings unless the vote is regarding the determination of NP privileges with the organization, peer review of NP clinical practice, whether a licensee's employment is in the best interest of the communities served by a hospital pursuant to BPC §2401, or the vote is otherwise allowed by applicable bylaws.²¹

104 NPs

104 NPs shall be eligible for membership of an organized medical staff.²² The 104 NP may vote at meetings of the department to which the 104 NP is assigned.²³

Discipline

If a medical staff executive or other administrator takes any of the following actions against a 103 NP or 104 NP as a result of peer review, the 103 NP or 104 NP will be reported to the BRN via an 805 report (referring to BPC §805):²⁴

¹⁰ BPC §2837.103(e) and BPC §2837.104(e).

¹¹ BPC §2837.103(f) and BPC §2837.104(c) *et seq.*

¹² BPC §2837.103(e) and BPC §2837.104(c) *et seq.*

¹³ BPC §2837.103(g) and BPC §2837.104(f).

¹⁴ BPC §2837.103(a)(1)(D) and BPC §2837.104(a)(1) and BPC §2837.104(b)(1)(A).

¹⁵ BPC §2837.103(a)(1)(D) and BPC §2837.104(a)(1) and BPC §2837.104(b)(1)(A).

¹⁶ BPC §2837.101(C).

¹⁷ BPC §2837.103(a)(3).

¹⁸ BPC §2837.103(a)(3)(A).

¹⁹ BPC §2837.103(a)(3)(B).

²⁰ BPC §2837.103(a)(3)(C).

²¹ BPC §2837.103(a)(3)(C).

²² BPC §2837.104(a)(2).

²³ BPC §2837.104(a)(3).

²⁴ BPC §805(b).

- A 103 NP or 104 NP's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.²⁵
- A 103 NP or 104 NP's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.²⁶
- Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.²⁷
- Resigns or takes a leave of absence from membership, staff privileges, or employment.²⁸
- Withdraws or abandons their application for staff privileges or membership.²⁹
- Withdraws or abandons their request for renewal of staff privileges or membership.³⁰

PROHIBITION OF CONTROL OVER NP PRACTICE

For 103 NPs who practice in the settings delineated in BPC §2837.103(a)(2)(A)-(F) which are, in general, facilities and organized settings, any entity in this section shall not interfere with, control, or otherwise direct the professional judgement of an NP.³¹

REFERRALS TO PHYSICIANS AND OTHER LICENSED HEALTH CARE PROVIDERS

103 NPs

103 NPs shall refer a patient to a physician or other licensed health care provider if a situation or condition of a patient is beyond the scope of the education and training of the 103 NP.³²

104 NPs

104 NPs shall consult and collaborate with other healing arts providers based on the clinical condition of the patient to whom health care is provided. Physician consultation shall be obtained as specified in the individual protocols and under the following circumstances:³³

- Emergent conditions requiring prompt medical intervention after initial stabilizing care has been started.³⁴
- Acute decompensation of patient situation.³⁵
- Problem which is not resolving as anticipated.³⁶
- History, physical, or lab findings inconsistent with the clinical perspective.³⁷
- Upon request of the patient.³⁸

104 NPs also shall establish a plan for referral of complex medical cases and emergencies to a physician or other appropriate healing arts provider and shall have an identified referral plan specific to the practice area that includes specific referral criteria. The referral plan shall address the following:³⁹

- Whenever situations arise which go beyond the competence, scope of practice, or experience of the NP.⁴⁰
- Whenever patient conditions fail to respond to the management plan as anticipated.⁴¹
- Any patient with acute decompensation or rare condition.⁴²

²⁵ BPC §805(b)(1).

²⁶ BPC §805(b)(2).

²⁷ BPC §805(b)(3).

²⁸ BPC §805(c)(1).

²⁹ BPC §805(c)(2).

³⁰ BPC §805(c)(3).

³¹ BPC §2837.103(b).

³² BPC §2837.103(f).

³³ BPC §2837.104(c)(2).

³⁴ BPC §2837.104(c)(2)(A).

³⁵ BPC §2837.104(c)(2)(B).

³⁶ BPC §2837.104(c)(2)(C).

³⁷ BPC §2837.104(c)(2)(D).

³⁸ BPC §2837.104(c)(2)(E).

³⁹ BPC §2837.104(c)(3).

⁴⁰ BPC §2837.104(c)(3)(A).

⁴¹ BPC §2837.104(c)(3)(B).

⁴² BPC §2837.104(c)(3)(C). Of note, the law has the word "decomposition". It has been changed to "decompensation" for the purposes of this document.

- Any patient conditions that do not fit the commonly accepted diagnostic pattern for a disease or disorder.⁴³
- All emergency situations after initial stabilizing care has been started.⁴⁴

PROHIBITION AGAINST SELF-REFERRAL

AB 890 makes self-referral prohibition under the Physician Ownership & Referral Act (PORA) applicable to 103 NPs and 104 NPs.⁴⁵

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⁴³ BPC §2837.104(c)(3)(D).

⁴⁴ BPC §2837.104(c)(3)(E).

⁴⁵ BPC §650.01.