

**BOARD OF REGISTERED NURSING
ADDENDUM TO THE FINAL STATEMENT OF REASONS**

Subject Matter of Proposed Regulations: Advanced Practice Registered Nurses

Sections Affected: Adopt Sections: 1483.1, 1483.2, 1486
Amend Sections: 1417, 1480, 1481, 1482, 1483, 1484

Updated Information

The Updated Informative Digest and the Supplement to the Initial Statement of Reasons are hereby incorporated by reference.

Section 1480(s) was amended to delete “s” from the word programs as a grammatical non-substantive change.

Documents are being incorporated by reference not per the instruction of the Office of Administrative Law but per the Board’s own discretion.

On December 6, 2017, the Office of Administrative Law (OAL) notified the Board of the Registered Nursing (Board) in writing, of their disapproval of the proposed rulemaking to adopt sections 1483.1, 1483.2, and 1486, and to amend sections 1480, 1481, 1482, 1483, and 1484 in title 16 of the California Code of Regulations. In the Decision of Disapproval of Regulatory Action dated December 13, 2017, OAL provided a written decision detailing the reasons for the disapproval of this regulatory filing.

In the proposed regulation text for 16 CCR sections 1417, 1480, 1481, 1482, 1483, 1483.1, 1483.2, 1484 and 1486, and the incorporated by reference documents, the following changes were made in response to the Decision of Disapproval. Provided below is a summary of the issues discussed in the OAL decision and the changes and actions taken by the Board to remedy the identified issues.

The Board proposed additional changes to the proposed text, to the incorporated by reference documents, and to documents relied upon, and released a supplemental Initial Statement of Reasons. The documents were noticed for a (third) 15-Day comment period on March 26, 2018 to April 10, 2018. The Board noticed additional changes to the proposed text and solicited comments on the fourth modification between May 15, 2018, and May 30, 2018. The Board received two comments during the third 15-Day comment period. The Board received no comments during the fourth 15-Day comment period.

The Board proposed making additional changes to the proposed text and to an incorporated by reference document. The Board approved the modified text at its meeting on September 27, 2018 and noticed for a (fifth) 15-Day comment period on

October 1, 2018 to October 15, 2018. The Board received two comments during the fifth 15-Day comment period which were in full support of the regulations.

The proposed changes to 1417 were not included in the final text because these changes were already reviewed and approved by OAL in file number 2018-0907-05S.

Third 15-Day comment period, March 26, 2018 – April 10, 2018

The Board received two comments. Saskia Kim of California Nurses Association/National Nurses United provided both comments. Comment #1 was for Significant Adverse Economic Impact on Business. Her concern that the ISR states “It is likely that educational programs may need additional courses to train registered nurses...”, would seem that this need to create additional courses would mean increasing the number of courses required for RNs and possibly require NP programs to develop the courses and hire additional instructors.

The Board rejected the comment. Implementing these regulations will have some minor impact, but not significant adverse economic impact. Nursing programs must often evaluate and restructure their programs to conform to regulatory changes, supply and demand, and anticipated costs of routine business. Some nursing programs may need to update their curriculum to comply with the new regulations. These perceived or realized costs will be minor and absorbable by the programs.

Comment #2 noted that while the language in section 1483.1 was amended, in relevant part, to add “in Nursing” to the requirements, similar changes were not made to section 1480 (l) “California based nurse practitioner program” and (s) “Non-California based nurse practitioner education programs”. It is suggested that both definitions be modified to conform with the clarification in section 1483.1.

The Board accepted the recommendation. The proposed language was amended to reflect the suggested changes in sections 1480 subdivision (l) and 1480, subdivision (s), by adding “in Nursing” after graduate degree and graduate level certificate. In addition, the Board amended section 1483.1, subdivision (a), to reflect “California based” nurse practitioner education program...” and sections 1486, and 1486, subdivision (a), have been amended to reflect “Non-California based” nurse practitioner education programs. This aligns the definitions across the entire text.

Fourth 15-Day comment period, May 15, 2018 – May 30, 2018

The Board received no comments.

Fifth 15-Day comment period, October 1, 2018 – October 15, 2018

The Board received two comments in full support of the regulation proposal from:

California Association for Nurse Practitioners
California Hospital Association

There were no objections or recommendations requiring a response.

Non-substantive Change to Language

The word “or” was mistakenly added to section 1482(b) and then struck out. Because it is not in the original text, it was omitted from the order of adoption. Similarly, the word “shall” in section 1483(a) was mistakenly underscored, even though it appears in the original text. The underscore was omitted from the order of adoption.

Rationale for Consistency

Issue - The disapproval noted that the proposed rulemaking violated the consistency standard of the Administrative Procedure Act (APA) with the original two documents incorporated by reference: the “Application Requirements for Nurse Practitioner Certification” (rev 5/2017), referred to as the “Certification Application”) and the “Nurse Practitioner Furnishing Number Application” (rev 10/2012), referred to as the “Furnishing Number Application”. The fees listed on these applications were incorrect and fell outside of the statutory ranges.

Solution – The Board has added amending section 1417 to this rulemaking file. As explained in the supplemental initial statement of reasons, SB 1039 (2016) required the Board to collect fees at an amount not less than a statutory minimum amount. The amendments to section 1417 conform to the current statutory minimum fee requirements. The Board prepared a separate rulemaking package addressing more broadly, SB 1039’s fee increases. OAL has reviewed and approved this regulation in file number 2018-0907-05S and the proposed changes to 1417 are not included in the final text. The Board is proposing to repeal the original two documents incorporated by reference and is proposing to adopt new documents incorporated by reference which list the appropriate fee for each application.

Rationale for Clarity

Issue – The disapproval noted clarity issues throughout the rulemaking file which violated the “clarity” standard of the APA. The biggest contributor to this decision was caused by the two incorporated by reference documents (the Applications). The documents included instructions and reference information where the pagination is not continuous and unclear titling to which pages correspond to each of the two documents.

These documents didn't reflect the proposed definitions in section 1480. The applications contain a citation to a previously repealed statute (Section 11350.6 of the Welfare and Institutions Code) and another (Article 5 of the Vehicle Code) without specifying which Chapter and Division of the Vehicle Code the cited Article appears in.

The disapproval noted it was unclear how the Board approval of a nurse practitioner education program is obtained, the determination criteria and whether the graduate degree or graduate level certificate must be in nursing. The categories of Nurse Practitioners were also unclear. It was unclear how the Board would grant initial and continuing approval when it used "required accreditation evidence" which appeared to include Board approval which could be interpreted as a second level of approval.

Solution – The Board is proposing to repeal the two incorporated by reference documents (the Applications) and adopt the updated Applications which will address the issues noted within the disapproval. These updates include ensuring pagination is continuous, titles are clear and all information is identified to the corresponding page number of the specific document. Definitions were updated to reflect section 1480 and to align with the proposed change to "Primary Care" in Section 1480(b).

Reference citations were aligned and amended to reference appropriate codes and incomplete or repealed statute references were removed. **Item 2.2 Nurse Practitioner Education Curriculum, and Advanced Pharmacology Courses and Enabling Objectives** in the disapproval decision, identified pages 5 and 6 of the Furnishing Number Application to be unclear. These pages reference the advanced pharmacology course guidelines. These pages are now 3 and 4 of the Furnishing Number Application of which the Board proposes to Adopt.

In the **Key Points** section on page 3 of the Furnishing Number Application, Bullet 4 was amended to reference the Health and Safety Code (HSC) Division 10, Uniform Controlled Substances Act, Sections 11000-11651, Chapter 1. General Provisions and Definitions, for Nurse Practitioners. Bullet 5 was amended to reference the Health and Safety (HSC) Division 10, Uniform Controlled Substances Act, Section 11056, for Certified Nurse-Midwives. Bullet 6 was removed.

In the **Course Objectives** section on the same page, Item 6 was amended to remove the Pharmacy, Health & Safety Code and Federal Register references. On page 4, in the **Advanced Pharmacology Enabling Objectives** section, Bullet 12 was amended to include "History and Physical Examination" to define the H&P acronym. Bullet 19 was amended to add "applicable" to legal requirements and removed "and in compliance with health and safety codes."

Since there were only minor substantive changes made to the applications, the necessity for the application materials was already explained in the original initial statement of reasons.

The Board proposes to incorporate by reference, “Nurse Practitioner Core Competencies Content” (2017), and “Criteria for Evaluation of Nurse Practitioner Programs” (2016) which are relied upon to establish categories of nurse practitioners and standards relative to each category. The Board consults with The National Organization of Nurse Practitioner Faculties (NONPF) and American Association of Nurse Practitioners (ANNP) which publish these documents.

The documents incorporated by reference provide the criteria for evaluating nurse practitioner programs including setting a clear curriculum plan with both didactic and clinical instruction consistent with nationally recognized core role and population-focused competencies and standards. The term “Faculty educator” more accurately describes the individual and not a group of faculty members.

Business and Professions Code section 2835.5 defines the requirements that an applicant for initial qualification or certification as a nurse practitioner must meet. Specifically, *“Possess a master’s degree in nursing, a master’s degree in a clinical field related to nursing, or a graduate degree in nursing.”*

Adding a definition for “Clinical field related to nursing” to section 1480 is necessary to provide clarity to those persons directly affected by the proposed regulations:

“A clinical field related to nursing means a specialized field of clinical practice in one of the following categories of nurse practitioners as recognized by the National Organization of Nurse Practitioner Faculties (NONPF) which are: Family/individual across the lifespan; Adult-gerontology, primary care; Adult-gerontology, acute care; Neonatal; Pediatrics, primary care; Pediatrics, acute care; Women’s health/gender-related; and Psychiatric-Mental Health across the lifespan.”

With this definition, section 1482(a) can be easily understood that, the applicant must possess a master’s degree in nursing, a master’s degree in a clinical field related to nursing or a graduate degree in nursing. The same applies to a graduate level certificate in nursing or in a clinical field related to nursing.

For APRN-Nurse Practitioner Education Programs based in California, the program must provide evidence that it is an accredited academic institution located within California, be an academic program accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation.

The language in section 1486 was updated to replace “out-of-state” nursing programs with “Non-California based” nursing programs to remain consistent throughout the rulemaking file. When determining Clinical Practice experience for students enrolled in non-California based nursing programs, the Board relies on the NONPF or AACN competencies. Non-California based nursing programs requesting clinical placements for students in a clinical practice setting in California must submit to the Board, evidence of each faculty member’s valid and active California license to practice their respective

profession and demonstrate current clinical competence. Clinical preceptors must have the educational preparation appropriate to their area of supervisory responsibility.

Rationale for Necessity

Issue - The disapproval noted that the necessity for many proposed provisions were missing throughout the Initial Statement of Reasons (ISR) and only general statements were included. The Board failed to state whether and to what extent the two relied upon documents provide the basis for specific provisions proposed in this rulemaking. OAL specifically noted lack of necessity in the ISR for: Signing Under Penalty of Perjury with the incorporated by reference documents; Adoption of a \$30.00 application fee for the Temporary Nurse Practitioner Certificate and all new fees must be consistent with the BPC; Requirements of core competencies from the National Organization of Nurse Practitioner Faculties (NONPF); and Faculty Years of Experience.

Solution – The updated applications that are being proposed to be incorporated by reference in this rulemaking require certain individuals, when required to sign specific portions of the applications, to sign under the penalty of perjury. Signing Under the Penalty of Perjury is necessary because the Board is communicating the gravity of falsifying information to the Board. Providing false information or omitting required information is grounds for denial of licensure or license revocation in California per BPC sections 480 (d), and 2761 (e).

Certification under penalty of perjury helps ensure that the documentation contains truthful, factual representation made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Board will be better able to protect consumers since only applicants who meet licensure requirements as demonstrated by their application materials will be eligible for licensure. The certification requirement protects the public by ensuring that only qualified applicants receive licenses. Licensing nurses with false information increases the potential for causing harm and puts the public at risk.

Requiring the core competencies from the National Organization of Nurse Practitioner Faculties (NONPF) is necessary to ensure Nurse Practitioner education programs meet the standards as outlined in the nationally recognized criteria used for evaluation and accreditation. These core competencies are the national standard and approved in all states except for California. It's the Board intent to align to this national standard.

The proposed language in section 1484, subdivision (d)(4)(C), defines the faculty years of experience into two timeframes: at least two (2) years of clinical experience as a nurse practitioner, certified nurse midwife, clinical nurse specialist, or certified registered nurse anesthetist, and within the last five (5) years of practice and consistent with the teaching responsibilities.

These timeframes are necessary because two years of clinical practice demonstrates a safe level of clinical practice with direct care. Two years gives the NP enough time to gain knowledge in the application of the practice to diagnose and treat patients within the designated population. A limit of five years to capture recent NP knowledge is necessary because practice can change every 18 months to two years, and the Board believes that a five-year limit will ensure that the clinical experience remains relevant to the current nursing practice.

APA Procedures Concern

The disapproval noted that the Board failed to follow procedure in this rulemaking and must address the following issues below before resubmittal of the rulemaking package to OAL.

Incorporation by Reference Correction – The documents incorporated by reference mention two documents that were not incorporated by reference – the “Application for California RN Licensure by Endorsement” and the “California RN Endorsement Application”. The Board does not choose to incorporate these two documents and they are not part of the proposed rulemaking. The proposed updated applications make no references to these documents.

Significant Adverse Economic Impact on Business – On January 25, 2018, the California Action Coalition (CAC) sent the Board a written response regarding *4.3 ISR Significant Adverse Economic Impact on Business* from the disapproval. The CAC agrees with the Board that there is no indication that approval of these regulatory amendments would negatively or adversely impact California businesses or those businesses that employ NPs and including the ability of California businesses to compete with businesses in other states. The Board noticed a supplemental ISR on March 26, 2018 through April 10, 2018 and did receive one comment regarding this impact. The Board considered the comment and it was rejected.

Updated Informative Digest – The Updated Informative Digest has been updated to reflect all changes to this rulemaking including the three statutes affecting the proposed regulations that were not previously identified.

Incorporation by Reference Statement – The Board proposes to incorporate by reference the following documents necessary for this rulemaking:

- Application for Nurse Practitioner (NP) Certification (Rev. 03/2018)
 - Consists of 9 pages
- Nurse Practitioner Furnishing Number Application (Rev. 03/2018)
 - Consists of 6 pages

- Application for Temporary Nurse Practitioner (NP) Certificate (Rev. 03/2018)
 - Consists of 3 pages
- “The 2017 Nurse Practitioner Core Competencies with Curriculum Content”, the National Organization of Nurse Practitioner Faculties (NONPF).
 - Consists of 16 pages
- “A Report of the National Task Force on Quality Nurse Practitioner Education”, 2016, Criteria for Evaluation of Nurse Practitioner Programs, 5th Edition, Washington, DC; National Organization of Nurse Practitioner Faculties (NONPF) and American Associate of Colleges of Nursing (AACN).
 - Consists of 44 pages

This is being done because it would be cumbersome, unduly expensive, confusing and impractical to publish these documents in the California Code of Regulations (CCR). These consist of three applications that are used for information collection which is necessary for Board staff to process the applications.

These applications consist of numerous fields for the applicant to provide responses and total 18 pages. Certain pages of these applications are intended for persons other than the applicant to complete such as the Director of the NP academic program, other evaluating nurse practitioners, physicians and certain staff of certifying agencies. Publishing this information in the CCR may not be easily accessed or fully understood by those affected persons.

Formatting the large amount of information contained within these documents and in a clear, meaningful way would be unduly expensive. The CCR is prepared in text form. Publishing the application in text format would be impractical and confusing to the applicant and other persons affected by the proposed regulations. Not having the information provided in the way it is intended, seems impractical and the decision to incorporate these documents by reference seems like the best solution.

These documents were made available to the affected public and will be published to the Board’s website upon the effective approval of this regulation package. While the applications will be published immediately, the Board will allow a short transition period for applicants to use the amended applications. This won’t be burdensome to those applicants because only minor substantive changes were made to the applications. Applicants are still required to submit all required information needed for the licensure and certification process and Board staff inspect all documentation received as part of their license and certification process. In addition, all California deans and directors will receive email communication with links to the updated applications, so that they can help spread the word to prospective nurse practitioner and furnishing applicants.