

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 491

Introduced by Senator Hernandez

February 21, 2013

An act to amend ~~Section 2834~~ Sections 2835.5, 2835.7, 2836.1, 2836.2, and 2836.3 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 491, as amended, Hernandez. Nurse practitioners.

Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurse practitioners by the Board of Registered Nursing. Existing law requires an applicant for initial qualification or certification as a nurse practitioner who has never been qualified or certified as a nurse practitioner in California or in any other state to meet specified requirements, including possessing a master's degree in nursing, a master's degree in a clinical field related to nursing, or a graduate degree in nursing, and to have satisfactorily completed a nurse practitioner program approved by the board. Existing law authorizes the implementation of standardized procedures that authorize a nurse practitioner to perform certain acts, including, among others, ordering durable medical equipment, and, in consultation with a physician and surgeon, approve, sign, modify, or add to a plan of treatment or plan for an individual receiving home health services or personal care services.

This bill would revise these provisions by deleting the requirement that those acts be performed pursuant to a standardized procedure or in consultation with a physician and surgeon. The bill would also authorize a nurse practitioner to perform specified additional acts,

including, among others, diagnosing patients, performing therapeutic procedures, and prescribing drugs and devices. The bill would require that, on and after July 1, 2016, an applicant for initial qualification or certification as a nurse practitioner hold a national certification as a nurse practitioner from a national certifying body recognized by the board.

~~Existing law declares the findings of the Legislature that the public is harmed by conflicting usage of the title of nurse practitioner and lack of correspondence between use of the title and qualifications of the registered nurse using the title.~~

~~This bill would make a nonsubstantive change to this declaration.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Nurse practitioners are a longstanding, vital, safe, effective,*
4 *and important part of the state's health care delivery system. They*
5 *are especially important given California's shortage of physicians,*
6 *with just 16 of 58 counties having the federally recommended ratio*
7 *of physicians to residents.*

8 (b) *Nurse practitioners will play an especially important part*
9 *in the implementation of the federal Patient Protection and*
10 *Affordable Care Act, which will bring an estimated five million*
11 *more Californians into the health care delivery system, because*
12 *they will provide for greater access to primary care services in all*
13 *areas of the state. This is particularly true for patients in medically*
14 *underserved urban and rural communities.*

15 (c) *Due to the excellent safety and efficacy record that nurse*
16 *practitioners have earned, the Institute of Medicine of the National*
17 *Academy of Sciences has recommended full independent practice*
18 *for nurse practitioners. Currently, 17 states allow nurse*
19 *practitioners to practice to the full extent of their training and*
20 *education with independent practice.*

21 (d) *Furthermore, nurse practitioners will assist in addressing*
22 *the primary care provider shortage by removing delays in the*
23 *provision of care that are created when dated regulations require*
24 *a physician's signature or protocol before a patient can initiate*

1 *treatment or obtain diagnostic tests that are ordered by a nurse*
2 *practitioner.*

3 *SEC. 2. Section 2835.5 of the Business and Professions Code*
4 *is amended to read:*

5 2835.5. (a) A registered nurse who is holding himself or herself
6 out as a nurse practitioner or who desires to hold himself or herself
7 out as a nurse practitioner shall, within the time prescribed by the
8 board and prior to his or her next license renewal or the issuance
9 of an initial license, submit educational, experience, and other
10 credentials and information as the board may require for it to
11 determine that the person qualifies to use the title “nurse
12 practitioner,” pursuant to the standards and qualifications
13 established by the board.

14 (b) Upon finding that a person is qualified to hold himself or
15 himself out as a nurse practitioner, the board shall appropriately
16 indicate on the license issued or renewed, that the person is
17 qualified to use the title “nurse practitioner.” The board shall also
18 issue to each qualified person a certificate evidencing that the
19 person is qualified to use the title “nurse practitioner.”

20 (c) A person who has been found to be qualified by the board
21 to use the title “nurse practitioner” prior to ~~the effective date of~~
22 ~~this section~~ *January 1, 2005*, shall not be required to submit any
23 further qualifications or information to the board and shall be
24 deemed to have met the requirements of this section.

25 (d) On and after January 1, 2008, an applicant for initial
26 qualification or certification as a nurse practitioner under this article
27 who has not been qualified or certified as a nurse practitioner in
28 California or any other state shall meet the following requirements:

29 (1) Hold a valid and active registered nursing license issued
30 under this chapter.

31 (2) Possess a master’s degree in nursing, a master’s degree in
32 a clinical field related to nursing, or a graduate degree in nursing.

33 (3) Satisfactorily complete a nurse practitioner program
34 approved by the board.

35 (e) *On and after July 1, 2016, an applicant for initial*
36 *qualification or certification as a nurse practitioner shall, in*
37 *addition, hold a national certification as a nurse practitioner from*
38 *a national certifying body recognized by the board.*

39 *SEC. 3. Section 2835.7 of the Business and Professions Code*
40 *is amended to read:*

1 2835.7. (a) Notwithstanding any other ~~provision of law, in~~
2 addition to any other practices ~~that meet the general criteria set~~
3 ~~forth~~ *authorized* in statute or regulation ~~for inclusion in~~
4 ~~standardized procedures developed through collaboration among~~
5 ~~administrators and health professionals, including physicians and~~
6 ~~surgeons and nurses, pursuant to Section 2725, standardized~~
7 ~~procedures may be implemented that authorize, a nurse practitioner~~
8 ~~to~~ *may* do any of the following:

9 (1) Order durable medical equipment, ~~subject to any limitations~~
10 ~~set forth in the standardized procedures.~~ Notwithstanding that
11 authority, nothing in this paragraph shall operate to limit the ability
12 of a third-party payer to require prior approval.

13 (2) After performance of a physical examination by the nurse
14 practitioner ~~and collaboration with a physician and surgeon,~~ certify
15 disability pursuant to Section 2708 of the Unemployment Insurance
16 Code.

17 (3) For individuals receiving home health services or personal
18 care services, ~~after consultation with the treating physician and~~
19 ~~surgeon,~~ approve, sign, modify, or add to a plan of treatment or
20 plan of care.

21 ~~(b) Nothing in this section shall be construed to affect the~~
22 ~~validity of any standardized procedures in effect prior to the~~
23 ~~enactment of this section or those adopted subsequent to enactment.~~

24 (4) *Assess patients, synthesize and analyze data, and apply*
25 *principles of health care at an advanced level.*

26 (5) *Manage the physical and psychosocial health status of*
27 *patients.*

28 (6) *Analyze multiple sources of data, identify alternative*
29 *possibilities as to the nature of a health care problem, and select,*
30 *implement, and evaluate appropriate treatment.*

31 (7) *Make independent decisions in treating health conditions.*

32 (8) *Diagnose patients and perform diagnostic and therapeutic*
33 *procedures.*

34 (9) *Order, furnish, or prescribe drugs or devices pursuant to*
35 *Section 2836.1.*

36 (10) *Refer patients to other health care providers when*
37 *appropriate due to the limits of the nurse practitioner's knowledge,*
38 *experience, or educational preparation.*

39 (11) *Delegate to a medical assistant.*

1 (12) Perform additional acts that require education and training
2 and that are recognized by the nursing profession as proper to be
3 performed by a nurse practitioner.

4 (13) Order hospice care as appropriate.

5 (14) Perform procedures that are necessary and consistent with
6 the nurse practitioner's training and education.

7 (b) A nurse practitioner shall maintain medical malpractice
8 insurance.

9 SEC. 4. Section 2836.1 of the Business and Professions Code
10 is amended to read:

11 2836.1. Neither this chapter nor any other provision of law
12 shall be construed to prohibit a nurse practitioner from furnishing
13 or, ordering, or prescribing drugs or devices when all of the
14 following apply:

15 (a) The drugs or devices ~~that are furnished or ordered by a nurse~~
16 ~~practitioner in accordance with standardized procedures or~~
17 ~~protocols developed by the nurse practitioner and the supervising~~
18 ~~physician and surgeon when the drugs or devices furnished or~~
19 ~~ordered furnished, ordered, or prescribed~~ are consistent with the
20 practitioner's educational preparation or for which clinical
21 competency has been established and maintained.

22 (b) ~~The nurse practitioner is functioning pursuant to standardized~~
23 ~~procedure, as defined by Section 2725, or protocol. The~~
24 ~~standardized procedure or protocol shall be developed and~~
25 ~~approved by the supervising physician and surgeon, the nurse~~
26 ~~practitioner, and the facility administrator or the designee.~~

27 (c) (1) ~~The standardized procedure or protocol covering the~~
28 ~~furnishing of drugs or devices shall specify which nurse~~
29 ~~practitioners may furnish or order drugs or devices, which drugs~~
30 ~~or devices may be furnished or ordered, under what circumstances,~~
31 ~~the extent of physician and surgeon supervision, the method of~~
32 ~~periodic review of the nurse practitioner's competence, including~~
33 ~~peer review, and review of the provisions of the standardized~~
34 ~~procedure.~~

35 (2) ~~In addition to the requirements in paragraph (1), for Schedule~~
36 ~~II controlled substance protocols, the provision for furnishing~~
37 ~~Schedule II controlled substances shall address the diagnosis of~~
38 ~~the illness, injury, or condition for which the Schedule II controlled~~
39 ~~substance is to be furnished.~~

1 ~~(d) The furnishing or ordering of drugs or devices by a nurse~~
2 ~~practitioner occurs under physician and surgeon supervision.~~
3 ~~Physician and surgeon supervision shall not be construed to require~~
4 ~~the physical presence of the physician, but does include (1)~~
5 ~~collaboration on the development of the standardized procedure,~~
6 ~~(2) approval of the standardized procedure, and (3) availability by~~
7 ~~telephonic contact at the time of patient examination by the nurse~~
8 ~~practitioner.~~

9 ~~(e) For purposes of this section, no physician and surgeon shall~~
10 ~~supervise more than four nurse practitioners at one time.~~

11 ~~(f) (1) Drugs or devices furnished or ordered by a nurse~~
12 ~~practitioner may include Schedule II through Schedule V controlled~~
13 ~~substances under the California Uniform Controlled Substances~~
14 ~~Act (Division 10 (commencing with Section 11000) of the Health~~
15 ~~and Safety Code) and shall be further limited to those drugs agreed~~
16 ~~upon by the nurse practitioner and physician and surgeon and~~
17 ~~specified in the standardized procedure.~~

18 ~~(2) When Schedule II or III controlled substances, as defined~~
19 ~~in Sections 11055 and 11056, respectively, of the Health and Safety~~
20 ~~Code, are furnished or ordered by a nurse practitioner, the~~
21 ~~controlled substances shall be furnished or ordered in accordance~~
22 ~~with a patient-specific protocol approved by the treating or~~
23 ~~supervising physician. A copy of the section of the nurse~~
24 ~~practitioner's standardized procedure relating to controlled~~
25 ~~substances shall be provided, upon request, to any licensed~~
26 ~~pharmacist who dispenses drugs or devices, when there is~~
27 ~~uncertainty about the nurse practitioner furnishing the order.~~

28 ~~(g)~~

29 ~~(b) (1) The board has certified in accordance with Section~~
30 ~~2836.3 that the nurse practitioner has satisfactorily completed a~~
31 ~~course in pharmacology covering the drugs or devices to be~~
32 ~~furnished or *furnished*, ordered, or *prescribed* under this section.~~

33 ~~(2) A physician and surgeon may determine the extent of~~
34 ~~supervision necessary pursuant to this section in the furnishing or~~
35 ~~ordering of drugs and devices.~~

36 ~~(3)~~

37 ~~(2) Nurse practitioners who are certified by the board and hold~~
38 ~~an active furnishing number, who are authorized through~~
39 ~~standardized procedures or protocols to furnish Schedule II~~
40 ~~controlled substances, and who are registered with the United~~

1 States Drug Enforcement Administration, shall complete, as part
2 of their continuing education requirements, a course including
3 Schedule II controlled substances based on the standards developed
4 by the board. The board shall establish the requirements for
5 satisfactory completion of this subdivision.

6 *(c) A nurse practitioner shall not furnish, order, or prescribe a*
7 *dangerous drug, as defined in Section 4022, without an appropriate*
8 *prior examination and a medical indication, unless one of the*
9 *following applies:*

10 *(1) The nurse practitioner was a designated practitioner serving*
11 *in the absence of the patient's physician and surgeon, podiatrist,*
12 *or nurse practitioner, as the case may be, and if the drugs were*
13 *prescribed, dispensed, or furnished only as necessary to maintain*
14 *the patient until the return of his or her practitioner, but in any*
15 *case no longer than 72 hours.*

16 *(2) The nurse practitioner transmitted the order for the drugs*
17 *to a registered nurse or to a licensed vocational nurse in an*
18 *inpatient facility, and if both of the following conditions exist:*

19 *(A) The nurse practitioner had consulted with the registered*
20 *nurse or licensed vocational nurse who had reviewed the patient's*
21 *records.*

22 *(B) The nurse practitioner was designated as the practitioner*
23 *to serve in the absence of the patient's physician and surgeon,*
24 *podiatrist, or nurse practitioner, as the case may be.*

25 *(3) The nurse practitioner was a designated practitioner serving*
26 *in the absence of the patient's physician and surgeon, podiatrist,*
27 *or nurse practitioner, as the case may be, and was in possession*
28 *of or had utilized the patient's records and ordered the renewal*
29 *of a medically indicated prescription for an amount not exceeding*
30 *the original prescription in strength or amount or for more than*
31 *one refill.*

32 *(4) The licensee was acting in accordance with subdivision (b)*
33 *of Section 120582 of the Health and Safety Code.*

34 ~~(h)~~

35 *(d) Use of the term "furnishing" in this section, in health*
36 *facilities defined in Section 1250 of the Health and Safety Code,*
37 *shall include ~~(1) the ordering of a drug or device in accordance~~*
38 *~~with the standardized procedure and (2) transmitting an order of~~*
39 *a supervising physician and surgeon.*

40 ~~(i)~~

1 (e) “Drug order” or “order” for purposes of this section means
2 an order for medication which is dispensed to or for an ultimate
3 user, issued by a nurse practitioner as an individual practitioner,
4 within the meaning of Section 1306.02 of Title 21 of the Code of
5 Federal Regulations. Notwithstanding any other provision of law,
6 ~~(1) a drug order issued pursuant to this section shall be treated in~~
7 ~~the same manner as a prescription of the supervising physician;~~
8 ~~(2) (1) all references to “prescription” in this code and the Health~~
9 ~~and Safety Code shall include drug orders issued by nurse~~
10 ~~practitioners; and~~ ~~(3) (2) the signature of a nurse practitioner on a~~
11 ~~drug order issued in accordance with this section shall be deemed~~
12 ~~to be the signature of a prescriber for purposes of this code and~~
13 ~~the Health and Safety Code.~~

14 *SEC. 5. Section 2836.2 of the Business and Professions Code*
15 *is amended to read:*

16 2836.2. ~~Furnishing or ordering of drugs or devices by nurse~~
17 ~~practitioners is defined to mean the act of making a pharmaceutical~~
18 ~~agent or agents available to the patient in strict accordance with a~~
19 ~~standardized procedure.~~ All nurse practitioners who are authorized
20 pursuant to Section 2836.1 to *prescribe*, furnish, or issue drug
21 orders for controlled substances shall register with the United
22 States Drug Enforcement Administration.

23 *SEC. 6. Section 2836.3 of the Business and Professions Code*
24 *is amended to read:*

25 2836.3. (a) The furnishing of drugs or devices by nurse
26 practitioners is conditional on issuance by the board of a number
27 to the nurse applicant who has successfully completed the
28 requirements of subdivision ~~(g)~~ (b) of Section 2836.1. The number
29 shall be included on all transmittals of orders for drugs or devices
30 by the nurse practitioner. The board shall make the list of numbers
31 issued available to the Board of Pharmacy. The board may charge
32 the applicant a fee to cover all necessary costs to implement this
33 section.

34 (b) The number shall be renewable at the time of the applicant’s
35 registered nurse license renewal.

36 (c) The board may revoke, suspend, or deny issuance of the
37 numbers for incompetence or gross negligence in the performance
38 of functions specified in Sections 2836.1 and 2836.2.

39 ~~SECTION 1. Section 2834 of the Business and Professions~~
40 ~~Code is amended to read:~~

1 ~~2834. The Legislature finds that various and conflicting~~
2 ~~definitions of the nurse practitioner are being created by state~~
3 ~~agencies and private organizations within California. The~~
4 ~~Legislature also finds that the public is harmed by conflicting usage~~
5 ~~of the title of nurse practitioner and by lack of correspondence~~
6 ~~between use of the title and qualifications of the registered nurse~~
7 ~~using the title. Therefore, the Legislature finds the public interest~~
8 ~~served by determination of the legitimate use of the title “nurse~~
9 ~~practitioner” by registered nurses.~~

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