

# BOARD OF REGISTERED NURSING

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*Executive Officer: Loretta Melby, MSN, RN ♦ (916) 322-3350 ♦ [www.rn.ca.gov](http://www.rn.ca.gov)*

*Protection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 2708.1

**T**he Board of Registered Nursing (BRN) is a consumer protection agency within the California Department of Consumer Affairs (DCA). Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 et seq., BRN licenses registered nurses (RNs), and certifies advanced practice nurses, including certified nurse-midwives (CNMs), nurse practitioners (NPs), registered nurse anesthetists (CRNAs), clinical nurse specialists (CNSs), and public health nurses (PHNs). In addition to licensing and certification, BRN establishes accreditation requirements for California nursing schools and reviews nursing school criteria; receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR). As of 2020, BRN licenses over 450,000 RNs and certifies approximately 100,000 advanced practice nurses.

By law, the nine-member Board consists of four public members and five nurse licensees. The licensee members must include two direct-patient care nurses, an advanced practice nurse, a nurse administrator, and a nurse educator. Seven of the members (including all the RN members) are appointed by the Governor and two of the public members are appointed by the legislature. The Nursing Practice Act also requires BRN's Executive Officer to be a BRN licensee, a unique requirement among DCA boards.

On August 17, 2020, Governor Newsom [appointed](#) Mary J. Fagan as a licensee member to the Board. Fagan has been the chief nursing officer and vice president of patient care services at Rady Children’s Hospital-San Diego since 2010 and has held several positions at Rady’s since 1987. At this writing, the Board has all nine Board positions currently appointed. On June 4, 2020 the Board [announced](#) that it appointed Loretta Melby, MSN, RN as its Executive Officer. Ms. Melby had been serving as Acting Executive Officer since February 2020, when its former Executive Officer, Joseph Morris, resigned amid sexual harassment and racial discrimination allegations. [[25:2 CRLR 50–51](#)]

## **HIGHLIGHTS**

### **Board Audit Report Released to the Public**

On June 30, 2020, California State Auditor, [Elaine M. Howle](#), released an investigative [audit report](#) finding that BRN delivered a falsified report in response to a [2016 audit](#) concerning the number of licensee investigations assigned to BRN investigators. In the 2016 audit, the State Auditor found that BRN had not adequately or timely resolved complaints regarding nurses and recommended that BRN establish a plan to eliminate any backlog of complaints that had become substantial.

According to the 2020 State Auditor report, BRN shifted individual investigator caseloads to 25 complaints in an effort to eliminate the complaint backlog in response to the 2016 audit. However, the Auditor noted that investigators could only take 20 complaints at a time in accordance with statements made by BRN’s chief of investigations during the 2016 audit. So instead, BRN needed to focus on processing complaints in a timelier manner to comply with the audit recommendations. Consequently, several BRN executives altered the investigative records

by assigning the backlog of cases to employees who were not considered investigators, so the actual caseload showed 20 or fewer investigations per BRN investigator. This falsification resulted in BRN appearing to have resolved its backlog of cases, when in fact it had not. On November 28, 2018, the State Auditor accepted the reported data and concluded BRN had fully implemented the recommendation. Immediately after receiving the Auditor’s conclusion, BRN executives reverted the caseload back to its higher volume by reassigning cases to investigators.

After a whistleblower informed the State Auditor of the allegedly falsified data, the State Auditor, in its 2020 audit, concluded that three executives were involved in the manipulation of the data and imposed a \$5,000 fine to each. The Auditor interviewed two of the executives and both admitted wrongdoing. The Auditor elected not to interview the third executive, who no longer works for BRN.

According to state law, BRN protects the public by prosecuting nurses guilty of violating provisions of the Nursing Practice Act, see Business and Professions Code section 2700 et seq. The complaint process starts when a patient or other individual submits an [online complaint](#) through the dedicated complaint and enforcement system called “BreEZe” to BRN regarding a licensee of the Board. Allegations can include issues involving gross negligence, unprofessional conduct, and substance abuse. BRN must reply within 10 days to notify the complainant that they have received the complaint. BRN then uses a formal analyst to determine next steps and the need to launch a formal investigation. BRN must also notify complainants of the final action taken on the complaint. A backlog of cases can be harmful to the public, as nurses who are not investigated in a timely manner may be a risk to patients.

The June 30, 2020 audit recommends that within 30 days BRN reassess its current caseloads, and within 90 days fully implement the recommendations set forth in the 2016 audit.

BRN [responded](#) that it will commit to all of the State Auditor’s recommendations and launched its own investigation into the matter.

At the Board’s September 16–17, 2020 [meeting](#) [Item 8.1 at 132], the enforcement committee discussed its most recent accomplishments to reduce the amount of time taken to move a case through the system. BRN has partnered more closely with the Department of Consumer Affairs’ (DCA) Division of Investigation (DOI) to have DOI independently retrieve documents from the enforcement system BreEZe. BRN investigators will also scan all completed investigations electronically to reduce paperwork. For the fiscal year of 2019-2020 the total complaints received were 8,191. BRN was referred 837 of these complaints.

## **AB 890 Signed into Law Despite Board Opposition**

[AB 890 \(Wood\)](#), as amended August 28, 2020, amends sections 650.01, 805, 805.5, and adds Article 8.5 to the Business and Professions Code regarding nursing practitioner guidelines. According to a bill analysis and as defined by the Board, a nurse practitioner is an advanced practice registered nurse who meets BRN education and certification requirements and possesses additional advanced practice educational preparation and skills in physical diagnosis, psychosocial assessment, and management of health-illness needs in primary or acute care.

Section 650.01 amends the Business and Professions Code to include nurses in the list of licensees who can work without physician supervision. Sections 805 and 805.5 amend requirements to make nurse practitioners subject to formal peer review of licensee qualifications and professional conduct. New Article 8.5 requires that BRN establish a new Nurse Practitioner Advisory Committee consisting of four nurses, one public member, and two physicians with demonstrated experience working with nurse practitioners. Article 8.5 also details the requirements for nurse practitioners to practice without physician supervision and instructs nurse practitioners

to post a notice in a conspicuous public location stating they are not physicians and are regulated by BRN. Article 8.5 details the subsequent functions a nurse practitioner may perform, absent physician supervision.

Supporters state that the bill will reduce the shortage of physicians, especially in historically underrepresented areas. Supporters also claim that allowing nurses to practice without physician supervision will create cost savings without sacrificing quality healthcare. Opponents of the bill state that nurse practitioners do not have the training necessary to independently practice and argue that the bill does not clarify when a nurse should refer a patient to a physician if the care is beyond the scope of the nurse practitioner's training.

According to a bill analysis, when AB 890 was introduced, BRN opposed it unless amended because the new law would have created a new board separate from BRN, which they argued would generate consumer confusion as to who regulates nurses, as well as create a \$3.6 million loss in revenue for BRN [[25:2 CRLR 51–52, 56](#)]. On August 28, 2020, the Senate amended AB 890 to place the new board under the jurisdiction of BRN.

Further, as [stated](#) at its February 20, 2020 [meeting](#), the Board did not oppose the scope of practice for nurses but instead opposed the new board's inclusion of two physicians on the Nurse Practitioner Advisory Committee. BRN claimed the new physician configurations would not be appropriate for a nursing board and requested the removal of the language including physicians to comprise the Nurse Practitioner Advisory Committee. As of the most recent Board [meeting](#) [Item 10.1 at 19], on September 20, 2020, BRN continued to oppose AB 890 unless amended.

Governor Newsom signed AB 890 on September 29, 2020, (Chapter 265, Statutes of 2020), without the amendments to the Nurse Practitioner Advisory Committee sought by BRN. As a result, BRN will begin its configuration of the new committee.

## **Board Takes Action in Response to COVID-19 Pandemic**

Starting in August 2020, BRN took the following actions to address consumer protection and nursing issues related to the COVID-19 pandemic:

On August 11, 2020, BRN issued a [news release](#) stating that nursing students who meet CDC guidelines for healthcare workers may supplement existing medical personnel in certain healthcare settings. The Board confirmed that the COVID-19 pandemic was an “emergency” as defined in section 2727(d) of the Business and Professions Code, and therefore, nursing students would not violate the law by supplementing needed health care in both long-term care settings and acute care hospitals. This news release came after a large surge in COVID-19 cases in California, and BRN’s Executive Director Loretta Melby explained the purpose: to help ease the burden on California’s healthcare system. Ms. Melby encouraged health care facilities to use a specified Emergency Care Matrix to assess nursing students’ and graduates’ skill level and determine appropriate assignments to ensure competency.

On October 2, 2020, in accordance with the Governor’s ongoing proclamation of a state of emergency, the DCA [extended](#) the prior order waiving nurse practitioner supervision requirements, and the order waiving nurse-midwife supervision requirements. Both orders have been extended to December 10, 2020, but may be further extended or amended, as necessary. The order is consistent with the Governor’s [Executive Order N-39-20](#), which allows the Director of the DCA to waive statutory professional licensing changes due to the state of emergency as a result of COVID-19.

During its September 16–17, 2020 [meeting](#) [Item 7.1 at 42], the Board discussed section 1426, Title 16 of the California Code of Regulations, which allows nursing schools to change

minor curriculum aspects at their institutions. Twenty-four out of the thirty-three nursing schools who submitted revisions asked the Board for temporary changes due to COVID-19. For example, one nursing program requested minor curriculum revisions to reorder classes for future semesters, as well as to pause several cohorts from face-to-face clinical classes. Other colleges sought revisions to decrease enrollment to fewer students in anticipation of a possible COVID-19 surge, and to replace certain classes with a faculty-led capstone project. Other schools asked for virtual or videoconferencing modality revisions to instruct students during COVID-19 pandemic. The Board accepted these requests.

Additionally, at its September 16–17, 2020 [meeting](#) [Item 7.7 at 125], the Board discussed the quarterly reports of the NCLEX-RN nursing exam, the nationwide examination for the licensing of nurses. The Board reported that the National Council of State Boards of Nursing temporarily modified the exam length and lowered the maximum number of scored questions, both due to COVID-19.

The Board announced at its September 16–17, 2020 meeting [Item 8.1.1 at 136], that the Board Enforcement Unit, in partnership with the DCA’s DOI, has transitioned to a paper-free system and will use the BreEZe system to ensure that enforcement is adequately conducted during COVID-19. The Board took measures to increase monitoring of licensing enforcement cases and continues to work with the DOI on the Complaint Resolution Pilot Project, which gives priority to urgent cases alleging significant harm or death for BRN investigation. The Project also provides case tracking measures for the Board to closely watch caseloads during the COVID-19 pandemic.

## **RULEMAKING**

The following is a status update on recent rulemaking proceedings that BRN has initiated:

- **Unprofessional Conduct, Disciplinary Guidelines, and Criminal Conviction**

**Substantial Relationship and Rehabilitation Criteria:** At its May 27, 2020 [meeting](#) [Item 5.0], after consideration of public comment heard at an April 29 public hearing, the Board voted to modify its proposed amendments to sections 1441, 1444, 1444.5, and 1445, Title 16 of the CCR to adopt “unprofessional conduct” and “criteria for rehabilitation” when considering discipline or denying licensure for a licensee or applicant convicted of a crime. The proposed modifications streamline the process for determining whether a licensee with criminal history has made a showing of rehabilitation and specify distinctions between denial of an application for a license or certificate, compared to the suspension or revocation of an existing license. On June 8, 2020, BRN posted [notice](#) and released the [modified text](#) for a 15 day comment period ending June 25, 2020. The Board initially published notice of its intent to amend these sections on March 12, 2020 in order to implement [AB 2138 \(Chiu\) \(Chapter 995, Statutes of 2018\)](#), which aims to increase access to licensure for individuals with prior convictions. [*25:2 CRLR 56*] At this writing, the Board has not taken further action on these proposed regulations.

## **LEGISLATION**

- [SB 1237 \(Dodd\)](#), as amended August 25, 2020, and as it applies to BRN, amends sections 650.01, 2746.2, 2746.5, 2746.51, and 2746.52 of, and adds sections 2746.54 and 2746.55 to the Business and Professions Code to expand nurse-midwives’ scope of practice. Of note, section 2746.2 requires that BRN implement a Nurse-Midwifery Advisory Committee of four nurse-midwives, two physicians, and one public member in charge of the disciplinary action for certified midwives. Section 2746.5 removes the physician supervisor requirement and authorizes nurse-midwives to attend to low-risk cases of pregnancy According to the author, this bill will



address gaps in medical access for women, while recognizing the importance of nurse-midwives. Governor Newsom signed SB 1237 on September 18, 2020 (Chapter 88, Statutes of 2020).

- [AB 2288 \(Low\)](#), as amended August 20, 2020, adds section 2786.3 to the Business and Professions Code to expand upon provisions related to the Governor’s state of emergency declarations. The bill allows nursing programs to submit requests to modify clinical experience requirements during the COVID-19 pandemic and future health emergencies. The bill includes a list of potential modifications that could be requested including reducing the number of direct patient care hours to 50% in geriatrics, completing 25% of clinic hours by telehealth, or requesting a waiver for the needed clinic experience approval by the Board. According to the author, the bill requires BRN to approve the request provided the nursing program meets all requirements such as having an equivalent learning experience for students. Governor Newsom signed AB 2288 on September 29, 2020 (Chapter 282, Statutes of 2020).

- [AB 890 \(Wood\)](#), as amended August 28, 2020 amends sections 650.01, 805, and 805.5 of, and adds Article 8.5 (commencing with 2837.100) to, the Business and Professions Code to allow a nurse practitioner to provide increased authorized care without physician supervision. Article 8.5 establishes a Nurse Practitioner Advisory Committee within BRN. According to the author of the bill, increasing nurses’ scope of practice will help to resolve California’s serious shortage of healthcare workers in underserved areas (see HIGHLIGHTS). Governor Newsom signed AB 890 on September 29, 2020 (Chapter 265, Statutes of 2020).

The following bills reported in Volume 25, No. 2 (Spring 2020) died in committee or otherwise failed to be enacted during 2020: [AB 2704 \(Ting\)](#), which would have required BRN to collect demographic information, including gender identity, when a licensee renews or applies for a license; [AB 3016 \(Dahle\)](#), which would have required BRN to develop recommendations to

implement an online license verification system; and [SB 1053 \(Moorlach\)](#), which would have enacted the Nurse Licensure Compact, allowing BRN to issue multistate licenses.