AGENDA
August 20, 2019
11:30 am – 1:30 pm

August 20, 2019-11:30 am

1.0 Call to Order/Roll Call /Establishment of a Quorum

   1.1 Review and Vote on Whether to Approve Previous Meeting’s Minutes:
       ➢ February 26, 2019

2.0 Discussion of Proposal to Amend the Nursing Practice Act and Possible Vote to Recommend Such Amendments to the Board: The proposal is to recommend to the Board an amendment to the Nursing Practice Act, specifically Business & Professions Code sections 2746.51 and 2746.52 that would allow certified Nurse-Midwives to (1) procure certain supplies and medications, and (2) perform and repair episiotomies in the home setting.

3.0 Information and discussion and possible action Scope of the Nurse Midwifery Committee (Cal. Code Regs., tit. 16, § 1461): “The board shall appoint a committee comprised of at least one nurse-midwife and one physician, who have demonstrated familiarity with consumer needs, collegial practice and accompanied liability, and related educational standards in the delivery of maternal-child health care. This committee shall also include at least one public member and may include such other members as the board deems appropriate. The purpose of the committee is to advise the board on all matters pertaining to nurse-midwifery as established by the board, and, if necessary, to assist the board or its designated representatives in the evaluation of applications for nurse-midwifery certification.”

4.0 Public Comment for Items Not on the Agenda

   Note: The Committee may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code, Sections 11125 and 11125.7(a)).
5.0 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 at 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.
DATE: February 26, 2019
START TIME: 11:33 am
MAIN LOCATION: 1747 N. Market Blvd
HQ-2 Pearl Room, Ste. 100
Sacramento, CA 95834
(916) 574-7600

TELECONFERENCE LOCATION: Best Start Birth Center
3630 Enterprise Street
San Diego, CA 92110

STAFF MEMBERS PRESENT: Janette Wackerly, MBA, BSN, RN, Supervising Nursing Education Consultant-BRN Nursing Practice Liaison
Thelma Harris, Chief of Legislation
Michael Santiago, DCA Legal Attorney
Elizabeth Woods, RN, FNP, MSN-BRN Nursing Practice Committee Chair

EXECUTIVE OFFICER: Dr. Joseph Morris, PhD, MSN, RN

1.0 Call to Order/Roll Call/Establishment of a Quorum
PRESENCE: Betty Johnson-Snell, PhD, CNM, WHNP, MSN, FACNM
Lin Lee, RN, CMN
Hilary Reyes, CNM

TELECONFERENCE ATTENDANCE: Karen Roslie, CPPM, Public Member
ABSENT: Naomi Stotland, MD

1.1 Review and Vote on Whether to Approve Previous Meeting’s Minutes:
➢ June 27, 2018

MOTION: Hilary Reyes: Motion to approve previous meeting minutes after amendment.
SECOND: Lin Lee
VOTE: BS: Yes | HR: Yes | LL: Yes | KR: Yes
PUBLIC COMMENT: Betty Johnson Snell- request correction regarding 10.2, AB 2682 of June 27, 2018 meeting minutes.
2.0 Information Only: Report from Board Meeting: November 15, 2018 the Board voted to maintain the current appointment terms and provided that members could serve an additional two-year term, if reappointment was approved by the Board.

BACKGROUND:
The Nurse Midwifery Advisory Committee was approved by the Board for one (1) two-year term with the ability for a member(s) to be reappointed to an additional two 2-year term. The current 4 members with the exception a newly appointed CNM are serving their second two-2year term.

At the June 27, 2018, Nurse Midwifery Advisory Committee meeting, B J Snell PhD CNM proposed that the CNM Advisory Committee terms of appointment be changed to longer term of appointment, suggesting appointments from two-2 years to four-2-year terms.

The Nurse-Midwifery Advisory Committee members request consideration to increase the term of office from (1) from two- year term with the ability for a member(s) to reappointed to an additional four–2-year term and to forward to the request to the Practice Committee and Board.

The term of member appointments to the Nurse-Midwifery Advisory Committee will include staggered terms of appointment. The initial two-year term for members to the Nurse-Midwifery Advisory Committee and any subsequent approved two-year membership on the Nurse-Midwifery Committee means a total appointment of four years.

August 16, 2018; The Nursing Practice Committee presented agenda item 10.3.1 Discussion and Possible Action: Increasing Nurse-Midwifery Advisory Committee Member Terms of Appointment from 2-two years terms to four, 2-year terms.

On November 15, 2018, The Board declined the request of the current Nurse-Midwifery Committee to serve four two-year terms or a total of eight years, but members could serve an additional two-year term, if reappointment was approved by the Board.

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<tr>
<th>PUBLIC COMMENT:</th>
<th>Dr. Joseph Morris-Executive Officer</th>
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3.0 Discussion of Proposal to Amend the Nursing Practice Act and Possible Vote to Recommend Such Amendments to the Board: The proposal is to recommend to the Board an amendment to the Nursing Practice Act, specifically Business & Professions Code sections 2746.51 and 2746.52, that would allow certified Nurse-Midwives to (1) procure certain supplies and medications, and (2) perform and repair epistomomies in a home setting.

BACKGROUND:
Specifically, delete Business & Professions Code section 2746.51, subdivision (b)(3), and add subdivision (f) to state as follows: “A certified nurse-midwife is authorized to directly procure supplies and devices, or order, obtain and administer drugs and diagnostic tests, to order laboratory and diagnostic
testing, and to receive reports that are necessary to his or her practice as a certified nurse-midwife and consistent with nurse-midwifery education program.”

Further, amend Business & Professions Code section 2746.52 to read as follows:

(a) Notwithstanding Section 2746.5, the certificate to practice nurse-midwifery authorizes the holder to perform and repair episiotomies, and to repair first-degree and second-degree lacerations of the perineum, in a licensed acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, a nationally accredited birth center, or in a home.

(b) The certified nurse-midwife performing episiotomies and repairing first-degree and second-degree lacerations of the perineum shall do both of the following:

1. Ensure that all complications are referred to a physician and surgeon immediately; and
2. Ensure immediate care of patients who are in need of care beyond the scope of practice of the certified nurse-midwife or provide emergency care for times when a physician and surgeon is not available.

**MOTION:**

Betty Johnson-Snell

**SECOND:**

**VOTE:**

BS: HR: LL: KR:

**PUBLIC COMMENT:**

4.0 **Information Only:** The midwife assistant role was created by SB 408, now Business and Professions Code section 2516.5, which is found within the Licensed Midwifery Practice Act of 1993 (Business and Professions Code section 2505, et. Seq.) It states that midwife assistant is one who, among other things, possesses “at least the minimum amount of hours of appropriate training pursuant to standards established by the Board for a medical assistant pursuant to Section 2069.” (Bus. & Prof. Code, § 2516.5, subd. (a).) For purpose of the Licensed Midwifery Practice Act of 1993, “board” is defined as the Medical Board of California. (Bus. & Prof. Code, § 2506, subd. (a).)

**BACKGROUND:**

Business and Professions Code section 2746.5, subdivision (e) requires that the BRN be consulted when a state department promulgates regulations “that affect the scope of practice of a certified nurse-midwife…” the midwife assistant regulations, however, only impact the training and scope of practice of the midwife assistant, and not the scope of practice of a certified nurse-midwife.

To the extent people not involved with the Medical Board wished to participate, they could have, as proposed regulations must be published and open to public comment. Please see the Guide to Public Participation in the
Regulatory Process published by the Office of Administrative Law, located at:

The Medical Board published on its website the Notice, text of proposed regulations, ISOR, modified text, and notice of approval here:
http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations/ (look under the category for “Midwife Assistants”)

To the extent that interested persons wish to see the existing regulations modified, they may make such suggestions to the Medical Board. Also, to the extent that one wished to know what actions the Medical Board is pursing, one may subscribe to the Medical Board’s e-mail alerts here:
http://www.mbc.ca.gov/Suscribers/

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<th>PUBLIC COMMENT:</th>
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### Information Only:
Introduction of information from the Nurse-Midwifery Advisory Committee to recognize the credentialed certified nurse-midwifery legislation. Section 2746.5  
Section 2746.5  
section (e) Any regulation promulgated by a state department that affect the scope of practice of a certified nurse-midwife shall be developed in consultation with the Board.

### BACKGROUND:
Section 2746.5  
(a) The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.  
(b) As used in this chapter, the practice of nurse-midwifery constitutes the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.  
(c) As used in this article, “supervision” shall not be construed to require the physical presence of the supervising physician.  
(d) A certified nurse-midwife is not authorized to practice medicine and surgery by the provisions of this chapter.  
(e) Any regulations promulgated by a state department that affect the scope of practice of a certified nurse-midwife shall be developed in consultation with the board.  
(Amended by Stats. 2002, Ch. 764, Sec. 1. Effective January 1, 2003.)
Regulations that were developed by the Board of Medicine also impacts certified nurse-midwives. The Nurse-Midwifery Advisory Committee will discuss and give feedback regarding the Board of Registered Nursing’s affiliation with Section 2746.5 (e).

**PUBLIC COMMENT:** None

6.0

**Information Only:** On November 29, 2018, hospitals who are members of the California Maternal Quality Care Collaborative (CMQCC) Maternal Data Center were notified of a new statistic called “Percent Deliveries by Certified Nurse-Midwives” to be publicly reported on to CalHospitalCompare.org. CalHospitalCompare.org will help women more easily identify their hospital choices that have a certified nurse-midwife presence as it will help ensure that what the consumer sees on CalHospitalCompare.org is an accurate reflection of the proportion of certified nurse-midwives at their facilities.

**BACKGROUND:**

Cal Hospital Compare is a performance reporting initiative managed by a multi-stakeholder Board of Directors, with representatives from hospitals, purchasers, health plans, and consumer groups. Prior to 2016, Cal Hospital Compare was known as the California Hospital Assessment Task Force (CHART). CHART was first established in 2004 for the purposes of developing a statewide hospital performance reporting system using a multi-stakeholder collaborative process. CHART aggregated data from participating hospitals until 2011, when its Board of Directors moved to using only publicly available data sources for all hospitals, not just those participating voluntarily.

If a hospital is a member of the California Maternal Quality Care Collaborative (CMQCC) Maternal Data Center (MDC), Certified Nurse-Midwives who currently use the MDC at their facility will begin to be publicly reported to CalHospitalCompare.org. This data will come directly from the birth certificate. The system features information on California hospitals that helps consumers make smarter and more informed choices when making medical decisions.

The Nurse-Midwifery Advisory Committee will discuss information presented after attending the online California Maternal Quality Care Collaborative (CMQCC) Maternal Data Center webinar. The webinar will be held Wednesday, January 16, 2019 from 12:00 noon-1:30pm, pacific standard time. Please visit: https://stanford.zoom.us/webinar/register/WN_Q_Z67_HOQP6q7nAUSoUnpA

(note that the first 20 minutes will include non-CNM related topics as this is an MDC update webinar; please remain on the call to hear about the CNM statistic).
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<th>PUBLIC COMMENT:</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>7.0</strong></td>
<td><strong>Discussion and Possible Vote Regarding Meeting Schedule:</strong> Review 2019 Board and Committee meeting schedule to establish future meeting schedules for Nurse-Midwifery meetings and determine agenda submission deadlines.</td>
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<tr>
<td><strong>BACKGROUND:</strong></td>
<td>The Nurse-Midwifery Advisory Committee will review the 2019 Board of Registered Nursing (BRN) Board and Committee meeting schedule to determine, vote and establish future meeting dates. The Nurse-Midwifery Advisory Committee will review, discuss, and commit the Committee meeting guidelines and deadlines for Agenda and Meeting Material procedures.</td>
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<tr>
<td><strong>MOTION:</strong></td>
<td>Betty Johnson-Snell</td>
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<td><strong>SECOND:</strong></td>
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<td><strong>VOTE:</strong></td>
<td>BS: Yes HR: Yes LL: Yes KR: Yes</td>
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<td><strong>PUBLIC COMMENT:</strong></td>
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<td><strong>8.0</strong></td>
<td><strong>Public Comment for Items Not on the Agenda</strong></td>
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<td><strong>PUBLIC COMMENT:</strong></td>
<td>Paris Mulberry-Certified Nurse-Midwife, Registered Nurse; California Nurse-Midwifery Policy Committee.</td>
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<td><strong>9.0</strong></td>
<td><strong>ADJOURNMENT:</strong> Adjournment at 12:49 pm</td>
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Submitted by: ___________________________________________ Signature: __________________________ Date: ________________________

Title: ____________________________

Approved by: ___________________________________________ Signature: __________________________ Date: ________________________

Title: ____________________________
AGENDA ITEM: 2  
DATE: August 20, 2019

ACTION REQUESTED: Discussion of Proposal to Amend the Nursing Practice Act and Possible Vote to Recommend Such Amendments to the Board:  
The proposal is to recommend to the Board an amendment to the Nursing Practice Act, specifically Business & Professions Code sections 2746.51 and 2746.52 that would allow certified Nurse-Midwives to (1) procure certain supplies and medications, and (2) perform and repair episiotomies in the home setting.

REQUESTED BY: BJ Snell, PhD, RN, CNM

BACKGROUND:

Background information for proposal to amend Nursing Practice Act r/t nurse-midwifery

Issue 1: Episiotomy and repair of lacerations in the home/community setting:  
The practice of nurse-midwifery continues to change commensurate with current knowledge, evidence-based practice and health care evolution. In California from the initial enabling legislation (1974) nurse-midwifery practice included the practice of episiotomy and repair of lacerations. The BRN regulations for nurse-midwifery education have always required didactic teaching of and clinical experience under preceptor guidance for students to learn episiotomy and repair. In 1995 The Attorney General was asked, ‘May a nurse-midwife perform an episiotomy pursuant to standardized procedure?’ The conclusion rendered was, ‘A nurse-midwife may not perform an episiotomy pursuant to a standardized procedure. Following the ruling there was legislation passed in 1996 to specifically allow nurse-midwives to perform episiotomy and repair first and second-degree laceration under standardized procedure. Hospitals and birth centers were specifically named in the legislation. At that time there was no recognition of the home setting. The practice of nurse-midwifery included care in the home and there was never any advisement from the Board that episiotomy and repair were only allowed in the hospital and birth center setting. The fact that the ‘home location’ was not identified in the statute became a concern with an investigation of case where repair of laceration was completed in the home. The issue related to repair of laceration was that the nurse-midwife did not have a Standardized Procedure as required by law. There has been concern that even with Standardized Procedure a nurse-midwife performing episiotomy or repair of laceration in the home setting could be in jeopardy of investigation. A copy of the administrative ruling in the Noble case is attached for reference.
Home birth is part of nurse-midwifery practice. Episiotomy and repair of lacerations has been codified as within the scope of practice of a nurse-midwife using Standardized Procedure. There is a large patient safety component related to this issue. Any tissue tear or purposeful incision of the skin such as episiotomy will create bleeding. Delay of repair is a patient safety concern. The knowledge and skill ability to repair an episiotomy or laceration is not different based on the location of the patient.
Due to the concern of the nurse-midwifery community about the absence of identification of the home setting in the 1996 statute we request that the Board seek clarification by amending the statute to include the home/community setting.

Issue 2: Procurement of supplies and medications
The practice of nurse-midwifery includes the ability to obtain prescription medications and devices along with supplies for the care of women and newborns. With the increasing trend of women requesting nurse-midwifery care and out of hospital childbirth there is a need to be able to procure medications and supplies that are needed for patient care. In California nurse-midwives can order, administer and dispense medications but do not have the statutory authority to procure. In 2011 the largest provider of supplies, medications and devices in the United States, McKesson pharmaceuticals, sent letters to their sales managers informing them that they could not provide medications directly to nurse-midwives (see attached). Since the letter was released the state of Hawaii has changed their statute to allow nurse-midwives the ability to directly procure medications, devices and supplies. This leaves California as the only state that does not have provision for nurse-midwives to procure.
Licensed midwives have the ability to procure supplies related to women’s health care and childbirth on their own license. Nurse-midwives must have a physician set up the account so that a nurse-midwife can garner the medications, devices and supplies to provide care. In the current environment in California, it is difficult and sometimes impossible to have a physician who will provide the signature for these accounts. Physicians that sign any document for a nurse-midwife imply that they are the supervisor of the practice. Current California liability insurers preclude physicians to supervise nurse-midwives unless the nurse-midwife is an employee.
Due to the concern of the nurse-midwifery community about patient safety, there is a request to have the statute amended to allow procurement of needed medications, devices and supplies in an independent nurse-midwifery practice.

RESOURCES:

NEXT STEPS: Board

FISCAL IMPACT, IF ANY: None

PERSON(S) TO CONTACT: Janette Wackerly, MBA, BSN, RN
Supervising Nursing Education Consultant
Phone: 916-574-7686
Email: janette.wackerly@dca.ca.gov
THE HONORABLE DANIEL E. BOATWRIGHT, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following question:

May a nurse-midwife perform an episiotomy pursuant to a standardized procedure?

CONCLUSION

A nurse-midwife may not perform an episiotomy pursuant to a standardized procedure.

ANALYSIS

Under provisions of the Nursing Practice Act (Bus. & Prof. Code, §§ 2700-2837; "Act") the Board of Registered Nursing ("Board") issues certificates to practice nurse-midwifery to persons licensed under the Act who are specially qualified (§§ 2746-2746.8). The practice of nurse-midwifery is defined in section 2746.5 as follows:

1Unidentified section references hereafter are to the Business and Professions Code.

2This opinion concerns the practice of nurse-midwifery, as distinguished from the practice authorized under the Licensed Midwifery Practice Act of 1993 (§§ 2505-2521).
"The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the new-born.

"As used in this chapter, the practice of nurse-midwifery constitutes the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. The practice of midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.

"As used in this article, `supervision' shall not be construed to require the physical presence of the supervising physician.

"A nurse-midwife is not authorized to practice medicine and surgery by the provisions of this chapter."3

In 62 Ops.Cal.Atty.Gen. 225 (1979), we concluded that section 2746.5 did not authorize a nurse-midwife to perform episiotomies (a small surgical incision of the perineum to allow a greater opening through which the baby emerges) under the direction of a physician. Whether a nurse-midwife may do so pursuant to a standardized procedure was expressly left undetermined. (Id., at pp. 228-229 ["Whether certified nurse-midwives . . . may perform episiotomies . . . under standardized procedures within the meaning of sections 2725 and 2726 involves separate issues that are not addressed in this opinion"]). We now address that question.

Section 2725 describes "standardized procedures" as follows:

"In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems which provide for collaboration between physicians and registered nurses. Such organized health care systems include, but are not limited to,

3 The provision of "prenatal, intrapartum, and postpartum care" at childbirth constitutes the practice of medicine. (Northrup v. Superior Court (1987) 192 Cal.App.3d 276, 280.) Thus the last sentence of section 2746.5 must be construed to prohibit the practice of medicine other than as permitted in the statute itself or by some other provision of law. (See Magit v. Board of Medical Examiners (1961) 57 Cal.2d 74, 83; 67 Ops.Cal.Atty.Gen. 122, 126-127 (1984)).
health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

"The practice of nursing within the meaning of this chapter means those functions, including basic health care, which help people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all of the following:

".................................

"(d) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and (2) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

"Standardized procedures,' as used in this section, means either of the following:

"(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses;

"(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Such policies and protocols shall be subject to any guidelines for standardized procedures which the Division of Allied Health Professions of the Medical Board of California and the Board of Registered Nursing may jointly promulgate; and if promulgated shall be administered by the Board of Registered Nursing.

"Nothing in this section shall be construed to require approval of standardized procedures by the Division of Allied Health Professions of the Medical Board of California or the Board of Registered Nursing."
An applicant for a certificate to practice nurse-midwifery must, as noted at the outset, initially be licensed by the Board as a registered nurse in addition to complying with all the provisions, including educational prerequisites, established by the Board for certification as a nurse-midwife. (§§ 2746, 2746.1, 2746.2.) Accordingly, the provisions of section 2725, subdivision (d), pertaining to standardized procedures, are fully applicable to certified nurse-midwives. (See, e.g., § 2746.51 [furnishing of drugs or devices under standardized procedure]; see also Cal. Code Regs., tit. 16, § 1463.)³

As authorized by section 2725, subdivision (d)(2), the Board, in conjunction with the Medical Board of California, has promulgated guidelines (Regs. 1470-1474) for the adoption of standardized procedures in clinics, home health agencies, physicians' offices, and public or community health services.⁶ Regulation 1474, subdivision (b), provides:

"Each standardized procedure shall:

"(1) Be in writing, dated and signed by the organized health care system personnel authorized to approve it.

"(2) Specify which standardized procedure functions registered nurses may perform and under what circumstances.

"(3) State any specific requirements which are to be followed by registered nurses in performing particular standardized procedure functions.

"(4) Specify any experience, training, and/or education requirements for performance of standardized procedure functions.

"(5) Establish a method for initial and continuing evaluation of the competence of those registered nurses authorized to perform standardized procedure functions.

"(6) Provide for a method of maintaining a written record of those persons authorized to perform standardized procedure functions.

"(7) Specify the scope of supervision required for performance of standardized procedure functions. . . .

³Unidentified regulation references hereafter are to title 16 of the California Code of Regulations.

⁶These are "organized health care systems" that are not health facilities licensed under Health and Safety Code section 1253. We are informed that 98 percent of the births attended by nurse-midwives during 1993 took place in licensed health facilities, such as hospitals, which would not be subject to the Board's guidelines. Nevertheless, we view the guidelines as helpful in determining the scope of the policies and protocols in question.
"(8) Set forth any specialized circumstances under which the registered nurse is to immediately communicate with a patient's physician concerning the patient's condition.

"(9) State the limitations on settings, if any, in which standardized procedure functions may be performed.

"(10) Specify patient record keeping requirements.

"(11) Provide for a method of periodic review of the standardized procedures."

Regulation 1472 provides that a registered nurse may perform standardized procedure functions only under the conditions specified in a health care system's standardized procedures, and must provide the system with satisfactory evidence that the nurse meets its experience, training, and/or education requirements to perform such functions.

In our 1979 opinion, we concluded that a nurse-midwife could not perform an episiotomy because it "requires the severance of tissue and is therefore a surgical procedure" involving "the use of scissors or scalpel . . . an artificial and mechanical means of assisting childbirth within the meaning of section 2746.5." (62 Ops.Cal.Atty.Gen., supra, 228.) Section 2746.5 expressly states: "The practice of midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version." 7 May a standardized procedure adopted under the general grant of authority of section 2725, subdivision (d), authorize a nurse-midwife to perform what the Legislature has declared a nurse-midwife may not perform in the practice of midwifery?

In resolving this question, we may rely upon well established rules of statutory construction. "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245, 268.) "A statute must be construed 'in the contest of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation.]" (People v. Woodhead (1987) 43 Cal.3d 1002, 1009.) "[W]hen a special and a general statute are in conflict, the former controls. (Code Civ. Proc., § 1859.) "[T]he special act will be considered as an exception to the general statute whether it was passed before or after such general enactment." [Citations.]" (Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392, 420.)

The provisions of section 2725 regarding standardized procedures must be read in light of the express limitations of section 2746.5. The general terms of the former may not be interpreted as granting authority to adopt policies and protocols allowing what the latter forbids. Such construction gives meaning to each of the statutes and harmonizes the provisions of the Act as a whole.

7"Version" is "the manual operation of turning a fetus in the uterus to aid delivery." (Webster's Third New Internat. Dict. (1971) p. 2545.)

5. 94-1011
We recognize that since our 1979 opinion, the Board has administratively construed section 2746.5 as including the performance of episiotomies within practice of nurse-midwifery. In 1988 it determined that an episiotomy was part of a "normal childbirth" and "progress [meeting] criteria accepted as normal" rather than involving "complications" and did not constitute "the assisting of childbirth by any artificial, forcible, or mechanical means." Moreover, episiotomies are part of the nurse-midwifery curriculum. (Reg. 1462, subd. (b)(4)(B).) As a consequence, episiotomies are now commonly performed by nurse-midwives, both in California as well as nationally.

Nevertheless, we find no basis for concluding that the use of scissors or a scalpel to make a surgical incision is anything other than "the assisting of childbirth by any artificial, forcible, or mechanical means." We believe that the Legislature has used clear and unambiguous terms in section 2746.5 with respect to whether a nurse-midwife may perform surgery. If episiotomies are to be performed by nurse-midwives, the language of section 2746.5 requires amendment; neither this office nor the Board may rewrite the statute. (See Wells Fargo Bank v. Superior Court (1991) 53 Cal.3d 1082, 1097 ["... courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions"]).

In answer to the question presented, therefore, we conclude that a nurse-midwife may not perform an episiotomy pursuant to a standardized procedure.

* * * * *

However, it is to be presumed that the Legislature was aware of our 1979 opinion and if our conclusion were contrary to its intent, some corrective measure would have been adopted with respect to the language of section 2746.5. (See Calif. Assn. of Psych. Providers v. Rank (1990) 51 Cal.3d 1, 17; 71 Ops.Cal.Atty.Gen. 39, 44 (1988).)

The Board may of course require that the curriculum for nurse-midwifery include subjects outside the scope of practice. (Cf., Cleveland Chiropractic College v. State Bd. of Chiropractic Examiners (1970) 11 Cal.App.3d 25, 43 ["... there is certainly nothing in the law which prohibits... requiring that prospective chiropractors be instructed in areas which are beyond the scope of the chiropractor's competence"]).
Dear Sales Managers,

In order to ensure that MMS remains compliant with changing state and federal regulations regarding the distribution of controlled substances, prescription drugs, and prescription devices; a regular review is conducted. The most recent review of all statutes for our customer base has resulted in some changes. In general these changes affect the mid-level practitioners (i.e. RN, PA, NP, etc.). The changes differ by state and specialty and are at the sole discretion of the state(s) - not McKesson. We understand this will create some inconvenience and may affect certain customers more than others. However, this is unavoidable if we are to avoid disciplinary action, fines, and/or loss of licensure within the states.

Please inform your sales team that in the state of California & Hawaii, a Nurse Practitioner/Nurse Midwife will no longer be able to purchase prescription drugs and devices and a Registered Nurse will no longer be able to purchase prescription devices in California. The customer will need a licensed medical doctor to continue purchasing these items. Attached are a list of the accounts in question that we have identified and the particular statute/regulation within the states of California & Hawaii. This can be used to explain the reasoning. If the customer believes we are taking this action in error after reviewing the statute/regulation, please let us know per account. This will allow us to investigate the issue with the assistance of other resources.

We appreciate your continued support and would be happy to answer any questions or concerns.

Mike Coombs

Account Manager

McKesson Medical-Surgical

Cell 619.993.9853
AGENDA ITEM: 3
DATE: August 20, 2019

ACTION REQUESTED: REQUESTED BY: BJ Snell, PhD, RN, CNM

BACKGROUND:
Mission Statement – Nurse Midwifery Advisory Committee of the California Board of Registered Nursing
The mission of the Nurse-Midwifery Advisory Committee is to advise the board on all matters pertaining to nurse-midwifery. The Committee shall provide information based on Board request and from the Nurse-Midwifery community to the Board, including recommendation for statutory change to clarify contemporary issues. Nurse-Midwifery is a dynamic profession with well-established standards that evolve based on evidence that support current education, practice and health care needs of women. California nurse-midwifery regulations and advisories should reflect current standards developed and vetted by professional associations along with federal and state task force opinions. The committee will assist the board to protect the public through a focus on patient safety and quality care that is contemporary, collegial and based on accepted national standards.

RESOURCES: NEXT STEPS: Board

FISCAL IMPACT, IF ANY: None

PERSON(S) TO CONTACT: Janette Wackerly, MBA, BSN, RN
Supervising Nursing Education Consultant
Phone: 916-574-7686
Email: janette.wackerly@dca.ca.gov
Mission Statement – Nurse Midwifery Advisory Committee of the California Board of Registered Nursing

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Approved 9/16/16 NMAC meeting, Newport Beach, CA
Nurse-Midwifery Committee

Newport Beach Marriott Hotel
900 Newport Center Drive
Newport Beach, CA 92660
(949) 640-4000

AGENDA

September 16, 2016
11:00am

Friday, September 16, 2016 –

10.0 Call to Order/Roll Call /Establishment of a Quorum

10.01 Review Previous meeting Minutes March 10, 2016

10.1 Information only: review of Grounds for Discipline, Disciplinary Proceedings and Rehabilitation 1441-1445.1 and Discussion Shannon Silberling, Chief of Complaint Intake

10.2 Information only: Nurse Practitioner and Nurse-Midwifery Survey

10.3 Review of Mission Statement Draft

10.4 Discussion of AB 1306- Nurse Midwives Scope of Practice

10.5 Public Comment for Items Not on the Agenda

10.6 Adjournment

NOTICE: All times are approximate. Meetings may be canceled without notice. For verification of meeting, call (916) 574-7600 or access the Board’s Web Site www.rn.ca.gov under “Meetings.” 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 Office at 1747 North Market Suite 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. The public will be provided an opportunity to comment on each agenda item at the time it is discussed; however, the committee may limit the time allowed to each speaker.