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April 21, 2026

Honorable Aisha Wahab, Chair and Members,
Senate Business, Professions, and Economic Development Committee
State Capitol, Room 2053
Sacramento, CA 95814

Re: SB 1302 (Wahab): Board of Registered Nursing – SUPPORT IF AMENDED

Dear Senator Wahab and Members of the Committees:

The Consumer Protection Policy Center (CPPC) respectfully submits the following testimony relevant to the Committees' sunset review of the Board of Registered Nursing (BRN). As set forth in detail below, we are concerned that **the nursing profession has significant control over the Board and its decision-making**. While the Board has made some improvements since the previous sunset review, its composition still presents antitrust issues, which have resulted in a decreased supply of nurses in California while benefitting existing practicing nurses—all to the detriment of public protection, the Board's paramount priority.

Accordingly, CPPC proposes retention of the Board but makes the following major recommendations (which are explained more fully below):

1) **Remove the statutory requirement that its Executive Officer be a BRN Licensee:** Section 2708 of the Business and Professions Code is unique among Department of Consumer Affairs (DCA) boards, does not further public protection, and presents antitrust concerns.
2) **Establish a Public Member Majority on the Board:** Add two public members to the composition of the Board—one from each house of the Legislature—to ensure public protection remains the highest priority of the Board.
3) **Scrutinize BRN's Control over the Supply of Nurses in California**: California nurses are the highest paid in the nation (and in the world). While BRN has improved by decreasing processing time for endorsement applications and reducing excessive nursing school requirements, California's shortage of nurses continues to be one of the highest in the country.

4) **Add Mandated Reporting:** As stated in the Sunset Review Report, BRN is not an automatic recipient of mandatory reporting from entities, including employers such as hospitals, clinics, and other reporters. Strengthening the Board's mandatory reporting requirements would help to identify, investigate, and discipline nurses who risk patient protection.

5) **Maintain Section 2762 As-Is**: BRN's proposed amendment in Issue 10.12 would weaken the Board's public-protection authority with respect to dangerous alcohol and drug-related conduct and should be rejected.

About the Consumer Protection Policy Center

CPPC is a nonprofit, nonpartisan academic and advocacy center based at the University of San Diego School of Law. Since 1980, CPPC has studied the state's regulation of business, professions, and trades, and monitors the activities of state occupational licensing agencies and regulatory boards within the DCA. CPPC publishes the *California Regulatory Law Reporter*, which chronicles the activities and decisions of California regulatory agencies. CPPC has participated in the sunset review of DCA boards and commissions since the onset of sunset review in 1996.

U.S. Supreme Court Precedent Demands BRN Reform

As observers of BRN over the years, it has become increasingly clear that the nursing profession, particularly the California Nurses Association (CNA), exerts tremendous influence over the Board's decision-making. For example, CNA members of the Board, as well as public members who have ties to CNA, have repeatedly insisted upon stricter requirements for California nursing schools than any other state, even as nursing students reported extreme difficulty in securing clinical placements in a health care facility — a key pre-licensure requirement. This influence also worked to limit the number of students that nursing schools may accept and imposed the same stringent educational requirements on individuals who wish to move to California and are already licensed in another state, making license portability exceedingly difficult.

While BRN has taken some helpful steps during the current sunset cycle – including repealing the requirement that 75% of each course's clinical hours be in direct patient care, removing the lab component requirement for out-of-state applicants, and reducing endorsement times – these changes have not solved the underlying problems. Clinical displacement continues to pose a barrier to California nursing students,[1] and California remains one of the few states outside the Nurse Licensure Compact, thereby forcing nurses who relocate to California to endure a separate endorsement process.[2]

The nursing profession's advocacy in restricting the supply of nurses has paid off – the average wage for California registered nurses **has more than doubled** within the last

[1] *See* Teresa Watanabe, "*California has a severe nursing shortage. Inside the battle to get more students in schools*," Oct. 6, 2025, Los Angeles Times (finding "[m]ore than half of California's nursing school programs reported their requests for clinical placements were denied in 2022-23").

[2] *See* NLC Map. The Nurse Licensure Compact allows nurses within NLC states who hold a multistate license to practice in other NLC states without obtaining a separate state license.

twenty years.[3] And this average far exceeds the average income for registered nurses in the United States in general.[4]

CPPC has long argued that regulatory boards composed of a majority of licensee members — who can then control their own regulation and stand to benefit from anticompetitive decisions the board makes — violate federal antitrust law. In 2015, the U.S. Supreme Court validated CPPC's position in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. 494 (2015) ("*North Carolina*"). In that case, the Court recognized the inherent conflict of interest that exists when a state licensing board is controlled by members of the profession regulated by that board, and unequivocally held that state regulatory boards are not immune from federal antitrust scrutiny unless they are controlled by public members (and not "active market participant" licensees) **or** the state has created a mechanism to actively supervise the acts and decisions of these boards to ensure they benefit the public, and not merely the professions themselves. Since the issuance of the *North Carolina* decision, CPPC has participated in public hearings, submitted numerous letters explaining the decision, and supported legislation that would properly implement the decision.[5]

BRN's 5/4 licensee majority composition (Bus. & Prof. Code § 2702), combined with its unique statutory requirement that its Executive Officer (EO) must be a licensee of the Board (Bus. & Prof. Code § 2708(b)), not only presents fertile ground for anticompetitive conduct, but places BRN in an especially vulnerable position with respect to antitrust liability in light of the *North Carolina* decision. Indeed, the recent doubling of California nurses' average incomes over a relatively short time period, combined with the fact that California nurses are paid higher than those outside the state, is condemning evidence that active market participants on the Board are effectively controlling the supply of nurses to their own economic benefit.

Accordingly, CPPC strongly recommends that the Legislature take the following actions to strengthen public protection and decrease the influence of the profession over Board decision-making:

1) **Amend section 2708 of the Business and Professions Code** to *preclude* licensees of the Board from serving as its EO, rather than *requiring* the EO to be a licensee as it does now. This is necessary to provide an appropriate check on the

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[3] *See* "*Occupational Employment and Wages, May 2004*," U.S. Department of Labor (September 2005); "*Occupational Employment and Wages, May 2023*," U.S. Department of Labor (April 2024). Average salaries for California nurses rose from $66,920 in 2004 to $137,690 in 2023.

[4] *Id*. The annual mean wage nationally is $94,480.

[5] *See*, *e.g*., SB 1195 (Hill) in 2016, which was vehemently opposed by CNA. CPPC also respectfully disagrees with those who argue that DCA boards are "actively supervised" by the state. Nursing Board members make final disciplinary and other policy decisions which are not subject to review or ratification by the Department or any other state agency. Although the DCA Director is authorized to review and reject BRN rulemaking under the Administrative Procedure Act (APA), the Board may — by a unanimous vote — override the Director's disapproval of regulations. *See* Bus. & Prof. Code § 313.1.

Board, and to ensure that the chief administrator of Board staff has public protection at the forefront of the Board's operations.[6]

2) **Add two public members to the Board** to give the public, and not the profession, the majority of the voting members of the Board, and guard against potentially anticompetitive conduct in the future.

Mandatory Reporting Requirements Should be Imposed on BRN and its Licensees

While other health care licensing boards, most notably the Medical Board of California, receive a host of mandated reports about their licensees,[7] BRN is limited in the reports it receives. While BRN does receive mandatory reports in limited instances, such as in malpractice-related settlements of over $10,000, the Board lacks broader automatic reporting requirements for employers like hospitals or clinics. Significantly, the Board admits that this **lack of mandatory reporting "leaves the public at risk."**[8]

CPPC's former Administrative Director, Julianne D'Angelo Fellmeth, served as the Enforcement Monitor for the Medical Board of California from 2004–2005, and found reporting to be the single highest source of information for the Board with respect to the detection of unethical and dangerous physicians. [9] The fact that BRN does not receive these reports is wholly inconsistent with the Board's paramount priority to protect the public, which must be addressed and change.[10]

Indeed, the Legislature recognized employer reporting of disciplined nurses as an important regulatory tool, but ultimately directed the California Research Bureau (CRB) to study the issue before imposing mandatory reporting requirements.[11] Importantly, CRB was tasked with evaluating the extent to which employers voluntarily report disciplined nurses to the board, but it was unable to deliver this portion of the report because BRN does not collect this data.[12] Ultimately, CRB presented "Mandatory Reporting for Alleged Violations of the Nursing Practice Act" as one of the options for a "consistent and reasonable reporting mechanism" for the Legislature's consideration.[13]

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[6] In making this recommendation, CPPC does not suggest that the Board's existing EO is not appropriately exercising her duties; rather we believe it is important infrastructural change that must be made to ensure compliance with the antitrust laws, and achieve the Board's statutory paramount priority. *See* Bus. & Prof. Code § 2708.1 ("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.")

[7] *See* Bus. & Prof. Code §§ 800, *et seq*.

[8] https://www.rn.ca.gov/pdfs/forms/sunset2026.pdf p. 88.
https://legiscan.com/CA/text/AB890/id/2210587

[9] *See* Julianne D'Angelo Fellmeth and Thomas A. Papageorge, *Initial Report of the Medical Board Enforcement Monitor* (November 1, 2004) at 111–112.

[10] AB 890 requires peer-review bodies to report certain disciplinary actions for 103 NPs and 104 NPs, but does not extend this requirement broadly to registered nurses.

[11] SB 799 (Hill) (Chapter 520, Statutes of 2017); Bus. & Prof. Code § 2761.5.

[12] California Research Bureau, *Employer Reporting of Nurse Practice Act Violations in California*, January 2019 ("CRB report") at p. 1.

[13] *Id*. at 16-17.

As such, the Committees now have sufficient data to support the imposition of mandated reporting as an important public protection tool for BRN.

BPC Section 2762 Should Be Maintained As-Is

Business and Professions Code section 2762 states that "it is unprofessional conduct for a person licensed under this chapter" to use controlled substances or alcoholic beverages "to an extent or in a manner dangerous or injurious to themselves, any other person, or the public or to the extent that such use impairs their ability to conduct with safety to the public the practice authorized by their license."[14] Because of this, BRN typically takes formal discipline or issues administrative citations against licensees for drug or alcohol-related offenses.

BRN's recommendation in Issue 10.12 to amend section 2762 to specify that more than one misdemeanor related to alcoholic beverages or controlled substances is needed to constitute "unprofessional conduct" would weaken the Board's public-protection authority and should be rejected.

The California Court of Appeal has already upheld that a single DUI-related incident may justify a nurse's discipline in *Sulla v. Board of Registered Nursing*, even without a separate finding that the incident was "substantially related" to nursing qualifications.[15] Requiring repeated drug or alcohol-related offenses before the Board may engage in enforcement unnecessarily risks public protection, as a single offense can already signal that a licensee may engage in risky behavior or possess impaired judgment. In fact, BRN already holds discretion whether to impose discipline in a given case, further reducing the need for this amendment. As such, section 2762 should remain unchanged.

CPPC appreciates your consideration of this testimony and these recommendations.

Sincerely,

Marcus Friedman

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cc Loretta Melby, Executive Officer, Board of Registered Nursing
Christine Lally, Acting Director, Department of Consumer Affairs
Hon. Monique Limón, Senate President pro Tempore
Hon. Robert Rivas, Speaker of the Assembly

[14] Bus. & Prof. Code § 2762.

[15] *See* Sulla v. Board of Registered Nursing (2012) 205 Cal.App.4th 1195.