

HEALTH CARE REGULATORY AGENCIES

develop and adopt regulations to establish adequate RCFE staffing requirements, with consideration to the needs of residents with the medical conditions specified above. [A. A<C]

RECENT MEETINGS

At its June 4 meeting, the Board heard a presentation on "Livescan," new technology that will speed up receipt of BRN licensure applicants' fingerprints by the Department of Justice. DOJ hopes to implement the new technology after January 2000. Rather than submitting their fingerprints on cards, licensure applicants will be able to go to any of over 400 locations throughout the state, where their fingerprints will be scanned and transmitted to DOJ in electronic form. It is hoped that the new system will speed DOJ clearance of applicant fingerprints and expedite the licensure system because of the enhanced quality of digitized fingerprints.

At its September 10 meeting, BRN reviewed its enforcement statistics for fiscal year 1998-99. During that year (July 1, 1998-June 30, 1999), BRN received 1,552 complaints, opened 1,215 investigations, referred 280 completed investigations to the Attorney General's Office, filed 131 formal

accusations, and took a total of 131 disciplinary actions against licensees (including 60 revocations, 48 probations, and 17 license surrenders). Of the 131 disciplinary actions, 37 were the result of default by the respondent licensee and another 62 were settled by stipulation; only 32 actually went to hearing. Although earlier in the year the Board projected a 16% decrease in complaints received over 1997-98 [16:2 CRLR 44], actual year-end numbers reflect only a 7.4% decrease in the number of complaints received. The Board also noted a 23% increase in the number of referrals to the Attorney General's Office (from 227 in 1997-98 to 280 in 1998-99)—a record number for the past six consecutive fiscal years.

FUTURE MEETINGS

- December 2-3, 1999 in Riverside.
- February 3-4, 2000 in San Francisco.
- April 6-7, 2000 in San Diego.
- June 22-23, 2000 in Sacramento.
- September 7-8, 2000 in Los Angeles.
- November 30-December 1, 2000 in San Francisco.

Board of Optometry

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The nine-member Board of Optometry is a consumer protection agency within the state Department of Consumer Affairs (DCA). The Governor appoints six practicing optometrists and one public member; the Assembly Speaker appoints one public member; and the Senate Rules Committee appoints one public member. In addition to the statutorily-mandated Therapeutic Pharmaceutical Advisory Committee, the Board maintains eight standing committees to assist it in the performance of its duties. The Executive Officer and a permanent full-time staff of six support the Board from its office in Sacramento.

Established in Business and Professions Code section 3000 *et seq.*, the Board is charged with protecting consumers from unsatisfactory eye care provided by incompetent, unlicensed, or unethical practitioners; enforcing the provisions of the Optometry Practice Act; and educating licensees and the public on vision care issues. The Board's regulations are codified in Division 15, Title 16 of the California Code of Regulations (CCR).

The Board's duties include licensing individual optometrists and branch offices, and registering optometric corporations; establishing educational and examination requirements for optometrists and additional certification requirements for those optometrists who use and prescribe therapeutic pharmaceutical agents; accrediting optometric educational institutions; administering licensing examinations; and

promulgating regulations related to the practice of optometry in California. Assisted by DCA's Division of Investigation and the Office of the Attorney General, the Board also investigates allegations of incompetent, unprofessional, and unlawful conduct by licensees, and takes disciplinary action, including license revocation, when warranted.

The Board of Optometry meets approximately four times per year, alternating among Sacramento, Los Angeles, San Francisco and San Diego. Working committees meet periodically as the need arises.

On June 1, the Senate Rules Committee announced its reappointment of public member Jane Vogel to the Board. Vogel is a teacher of visually impaired students with the West Orange County Consortium for Special Education and a special education consultant in private practice.

MAJOR PROJECTS

Update on Recent Board Rulemaking Proceedings

The following is an update on recent Board rulemaking proceedings described in detail in Volume 16, No. 2 (Summer 1999) of the *California Regulatory Law Reporter*:

♦ **Consumer Information Regulation.** On August 12, the Office of Administrative Law (OAL) approved the Board's

HEALTH CARE REGULATORY AGENCIES

adoption of section 1566.1, Title 16 of the CCR, which requires optometrists to supplement the consumer information notice required by section 1566. Under section 1566.1, optometrists are now required to post a notice stating that “the practice of optometry in California is regulated by the Board of Optometry. The Board of Optometry receives and investigates all consumer complaints involving the practice of optometry.” The notice must further direct consumers to forward complaints and grievances involving California-licensed optometrists to the Board; the Board’s address and telephone number must be included in the notice. [16:2 CRLR 46; 16:1 CRLR 67] The new regulation became effective on September 11.

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◆ **Regulations for Issuing Citations and Fines.** On August 17, OAL approved the Board’s adoption of sections 1576–1581, Title 16 of the CCR, which establish a system for the issuance of citations and fines for violation of the laws and regulations governing the practice of optometry. [16:2 CRLR 46; 16:1 CRLR 67] These regulations became effective on September 16.

◆ **Continuing Education Via the Internet.** At its May 16 meeting, the Board again decided to postpone discussion of proposed amendments to section 1536, Title 16 of the CCR. The amendments would revise the Board’s continuing education (CE) requirement and permit optometrists to fulfill part of their CE requirement via approved courses offered over the Internet. These proposed amendments have proven somewhat controversial; they were the subject of an August 1998 public hearing, continued discussion at the Board’s November 1998 and March 1999 meetings, and a recent survey of other state optometry boards and DCA occupational licensing boards by Board staff. [16:2 CRLR 46–47; 16:1 CRLR 67–68] Because the Board failed to approve and submit these proposed amendments to the Department of Consumer Affairs within one year of their original notice date (June 26, 1998), it will have to republish these amendments if it wishes to pursue them.

◆ **Disciplinary Guidelines.** At its May meeting, the Board approved a proposal to publish notice of its intent to amend section 1575, Title 16 of the CCR, which currently requires the Board—in reaching a decision in a disciplinary matter under the Administrative Procedure Act—to consider the 1996 version of its disciplinary guidelines entitled “Disciplinary Guidelines and Model Disciplinary Orders.” The guidelines are not included in section 1575 but are incorporated by reference into the regulation. Because the Board has amended its disciplinary guidelines since 1996, it wishes to incorporate by reference the 1999 version of its guidelines into section 1575. At this writing, the Board has not yet published notice of its intent to amend section 1575 in the *California Regulatory Notice Register*.

◆ **Examination Regulations.** Also in May, the Board instructed staff to publish notice of its intent to repeal sections 1533 and 1533.1, Title 16 of the CCR. Section 1533 permits licensure candidates who have failed the Board’s examination to review the questions they missed on that specific test’s administration; the Board seeks to eliminate candidates’ ability to inspect their examination papers to alleviate one potential avenue for subverting the Board’s exam. Section 1533.1 permits candidates who have failed the Board’s exam to appeal their exam score. The Board proposes to repeal this provision because it is inconsis-

tent with the Department of Consumer Affairs’ new examination development and validation standards. At this writing, the Board has not yet published notice of its intent to repeal these sections in the *California Regulatory Notice Register*.

◆ **Diagnostic Drugs.** Also in May, the Board agreed to publish notice of its intent to repeal section 1560, Title 16 of the CCR, which specifies the kinds of topical diagnostic pharmaceutical agents that optometrists may use. Because the Board believes section 1560 is superseded by Business and Professions Code section 3041(a)(5), it will seek to repeal section 1560. At this writing, the Board has not yet published notice of its intent to repeal section 1560 in the *California Regulatory Notice Register*.

LEGISLATION

AB 794 (Corbett), as amended August 16, clarifies the requirements for Board licensees whose clients’ records are subpoenaed in civil litigation. Among other things, the bill expands the definition of “personal records” to include electronic data; conforms the time for production of documents under Code of Civil Procedure sections 1985.3 and 1985.6 to that in Code of Civil Procedure section 2020 (no earlier than 20 days after the issuance, or 15 days after the service, of the subpoena duces tecum, whichever is later); requires that when provided with advance notice of at least five business days, the witness must designate at least a six-hour block of time on a date certain for the deposition officer to copy records subject to the subpoena; adds a presumption that any objection to release of records is waived by a party when his/her attorney signs an authorization for the release; and raises the maximum amount the party serving the subpoena may be charged for clerical costs associated with making the records available, from \$16 to \$24 per person per hour, computed on the basis of \$6 per quarter hour. Governor Davis signed AB 794 on September 21 (Chapter 444, Statutes of 1999).

SB 929 (Polanco), as introduced in February 1999, is a two-year bill that would amend Business and Professions Code section 3041 to significantly expand the scope of practice of optometrists. Specifically, this bill would remove various restrictions on current optometry practice, especially in

HEALTH CARE REGULATORY AGENCIES

the area of diagnosis and treatment of diseases of the eye. Under SB 929, optometrists would be permitted to treat diseases such as glaucoma, and perform simple wound repairs and a number of additional procedures that they are not currently permitted to perform (*e.g.*, lacrimal irrigation and dilation; stromal micropuncture; chemical cautery; and subconjunctival, intravenous, and subdermal injection of drugs). Further, optometrists certified to use therapeutic pharmaceutical agents (TPA) would be able to prescribe all topical and oral medications, including Schedule III, IV, and V controlled substances; TPA-certified optometrists are currently limited to a restricted formulary of drugs listed in section 3041. This bill would also authorize the Board to adopt and administer regulations implementing the expanded practice of optometry. SB 929 is sponsored by the California Optometric Association (COA). At its May 16 meeting, the Board voted to support SB 929 at the request of COA. [*S. B&P*]

AB 368 (Kuehl), as amended August 17, would require health plans, health insurance providers, and Medi-Cal to provide coverage for prosthetic devices for "low vision" individuals (*i.e.*, visual acuity with best correction in the better eye worse than 20/60 or significant impairments in the central or peripheral field of vision, as documented by a formal visualfield measurement). The term "prosthetic devices" means devices that substitute for or augment visual function for a diseased eye by providing magnification to enable the use of alternative sites of the eye for vision. Prosthetic devices include, but are not limited to, magnification devices, including spectacle-mounted devices designed for a working distance of seven inches or less, illumination-related devices, telescopes (for far or near), field expansion devices, video magnifiers, computer-based devices, and voice output devices. [*S. Appr*]

RECENT MEETINGS

At the Board's May 16 meeting, Executive Officer Karen Ollinger reported on the status of the occupational analysis the Board has commissioned. An occupational analysis is designed to capture information on the knowledge, skills, and abilities (KSAs) required of licensed optometrists in order to practice optometry competently. This information is then used to evaluate the Board's licensing examination for job-relat-

edness and validity. [*16:2 CRLR 47; 16:1 CRLR 69*] Although DCA's Office of Examination Resources, which is coordinating the analysis, originally estimated that its analysis of survey data on the KSAs currently required of licensed optometrists would be ready in early 1999, the final report has been delayed. Ollinger stated her hope that the final results will be available for incorporation into the January 2000 licensing examination.

Also on May 16, the Board approved the contents of a letter that it will mail to several hundred licensees who hold valid California optometrist licenses but have never been certified to use diagnostic pharmaceutical agents (DPA), as authorized in 1978 legislation. [*16:2 CRLR 47-48*] DPA certification is optional, and is not currently required to maintain licensure as an optometrist. However, with the passage of 1996 legislation that now authorizes optometrists to pursue certification in the use of therapeutic pharmaceutical agents (TPA) for a limited number of eye conditions, the Board believes that DPA certification should be a minimum requirement for optometric practice in California and—according to its letter—is considering the sponsorship of legislation to "eliminate the non-DPA category of licensure. If such legislation passes, it would eliminate the category of licensure into which you currently fall." In its letter, the Board will seek information on how such a proposal would impact non-DPA licensees, and will attach a survey questioning whether the licensees are currently practicing in California, the nature of their practice setting, whether they have ever completed the 55-hour DPA course, and what action they would take if the non-DPA category of licensure is eliminated (*e.g.*, retirement, seek DPA certification, etc).

The Board cancelled its scheduled August 20-21 meeting.

FUTURE MEETINGS

- November 14-15, 1999 in San Diego.
- April 7-8, 2000 in Long Beach.
- July 28-29, 2000 in Sacramento.
- November 3-4, 2000 in San Diego.