

HEALTH CARE REGULATORY AGENCIES

training in geriatric pharmacology. The bill would also require the Board to encourage licensed psychologists to take continuing education courses in geriatric pharmacology. The bill is intended to clean up confusion created by SB 983 (Polanco and Rainey) (Chapter 822, Statutes of 1998) (see MAJOR PROJECTS). [S. B&P]

SB 125 (Haynes), as amended March 17, would prohibit the Board of Behavioral Sciences from utilizing any type of oral examination as a condition of licensure as a clinical social worker or marriage and family therapist, except as specified, and delete the prescribed fees for the oral examination. Although this bill does not directly affect BOP or its licensees and applicants, the Board is closely monitoring the progress of the bill. BOP is opposed to the elimination of its oral examination as a requirement for licensure of psychologists in California. [S. B&P]

LITIGATION

On May 12, the California Supreme Court declined to review the Fourth District Court of Appeal's decision in *Trear v. Sills*, 69 Cal. App. 4th 1341 (Feb. 16, 1999), a case of first impression. In that case, a stepfather sought damages against a therapist for allegedly implanting the idea in his stepdaughter's head that he had sexually abused her when she was a child. The Fourth District affirmed the superior court's dismissal of the matter, holding that the professional duty of a therapist does not extend beyond an adult patient to the patient's parent. [16:2 CRLR 66]

RECENT MEETINGS

At BOP's May meeting, staff announced that an automated online consumer complaint form is now available via the Board's webpage. Consumers who have complaints against Board licensees or who wish to report the unlicensed practice of psychology may now complete and file those complaints online. Staff also noted that it hopes to add a "licensee look-up" feature to its webpage by the end of the year; this feature will enable consumers to immediately verify whether an

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individual holding him/herself out as a Board licensee is in fact licensed.

At its August meeting, the Board reviewed its enforcement statistics for fiscal year 1998-99 (July 1, 1998 through June 30, 1999). During this period, BOP received 520 complaints, opened 122 investigations, filed 40 accusations, and took a total of 44 disciplinary decisions (including ten revocations, twelve stayed revocations with probation, and eleven voluntary surrenders).

FUTURE MEETINGS

- November 4-6, 1999 in San Diego.
- March 3-4, 2000 in Monterey.
- May 12-13, 2000 in Riverside.
- August 18-19, 2000 in Sacramento.
- November 3-4, 2000 in Fresno.

Respiratory Care Board

Executive Officer: Cathleen A. McCoy ♦ (916) 263-2626 ♦ Internet: www.dca.ca.gov/r_r/respcare.htm

The Respiratory Care Board (RCB) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Respiratory Care Practice Act, Business and Professions Code section 3700 *et seq.*, and its regulations in Division 13.6, Title 16 of the California Code of Regulations (CCR), RCB licenses and regulates respiratory care practitioners (RCPs). These health care professionals regularly perform critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. RCPs provide direct patient care in the hospital or home care setting; their patients may be suffering from lung cancer, emphysema, asthma, or cystic fibrosis, or may be premature infants whose lungs have not fully developed.

RCB is charged with examining and licensing qualified RCPs, setting standards for the practice of respiratory care in California, inspecting hospitals and other facilities in which respiratory care is delivered, investigating alleged wrongdoing by

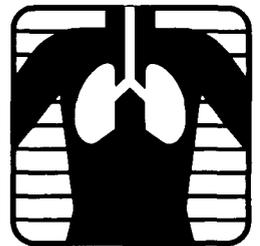
licensees, and taking appropriate disciplinary action, including license suspension or revocation, in order to ensure public health and safety.

The nine-member Board consists of four RCPs, four public members, and one physician. Three members are appointed by the Governor, three are appointed by the Senate Rules Committee, and three by the Assembly Speaker. RCB is staffed by 14 people. RCB is financed by licensing fees and receives no allocation from the state general fund.

MAJOR PROJECTS

RCB's Continued Use of National Licensing Exam In Question

At the Board's July 16 meeting, representatives of the National Board for Respiratory Care (NBRC)—the vendor



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that prepares and administers the RCP licensing exam in California and in many other states—made a presentation to RCB in hopes of persuading the Board to continue using its licensing exam (the Certified Respiratory Therapist Examination), which is shifting to a computerized format on January 1, 2000. The Board's contract with NBRC ran out on June 30, 1999. In the past, RCB has expressed serious concerns about continuing to use the exam, and has even considered converting its existing competency exam into a state licensing exam. [16:2 CRLR 70; 16:1 CRLR 88–89] RCB has been particularly concerned because NBRC's exam was stolen in New Jersey in 1992, and—despite a contractual provision requiring NBRC to notify exam purchasers of security breaches—RCB was not informed of the theft until 1994. NBRC claims that its contract provision requires it to inform RCB only about security breaches in California. For this and other reasons, RCB has become dissatisfied with its relationship with NBRC.

Under NBRC's proposal presented at the July meeting, its national licensing exam will be converted to a computerized format by 2000, and the exam will be administered at H&R Block tax preparation locations. Board members unanimously objected to the use of H&R Block locations as testing sites, arguing that (1) examinees would have no ability to concentrate while taking an exam at a place of business during regular business hours, (2) the company would be incapable of administering the test to prospective licensees during peak tax season, and (3) H&R Block could not possibly ensure adequate security for the contents of the exam or the integrity of the examination process. According to NBRC, H&R Block does not intend to install a security camera or videotape; only a proctor would monitor examinees during test administration. Board members also expressed concern about the increased cost of the computerized exam to licensure applicants—once computerized testing is implemented, the initial exam fee will increase from \$120 to \$190, and the reexamination fee of \$80 will increase to \$150.

Following NBRC's presentation, Board members discussed their other option—moving away from the national exam and developing a California state licensing exam. Under this alternative, the Board and DCA's Office of Examination Resources could enhance RCB's existing competency exam into a licensing exam, and administer it at state-sanctioned secure sites throughout California. The cost of administering a state-specific exam would be much lower than the national exam, probably about \$50 per test. However, of concern to licensees and licensure applicants, the use of a California state exam rather than the national exam would hinder RCB licensees' ability to move to other states and become licensed to practice there without re-

examination. If RCB continues using the national exam that is used in other states, licensees who take and pass that exam in California may be granted reciprocity licensure without reexamination in other states; if RCB moves to a state-specific exam, its licensees will only have taken the California test, and other states will require California-licensed RCPs to take the NBRC exam if and when they move out of state.

Following extensive discussion, the Board determined that it would renew its contract with NBRC only through December 31, 1999, to enable licensure applicants to take the remaining two scheduled paper-and-pencil licensing exams. At the same time, the Board directed Executive Officer Cate McCoy to look into developing a state-specific exam, to be administered at secure sites throughout California, and authorized Board President Kim Kruser, RCP, and Ms. McCoy to continue negotiating with NBRC over the Board's concerns regarding the administration of the computerized version of the exam. Board member J. Michael Thompson, RCP, recused himself from the discussion and vote because he is a trustee of NBRC.

At this writing, the Board is scheduled to revisit this issue and receive reports from staff on proposed future action at its November 19 meeting.

Enhanced Educational Requirements Take Effect In July 2000

The Board continues to remind applicants of the enhanced educational requirements for RCP licensure that take effect on July 1, 2000. Under existing law, an RCP applicant must be at least 18 years of age, must have completed a Board-approved respiratory care training program and passed an examination, and must not have committed acts or crimes constituting grounds for denial of a license.

Following two years of research, debate, and public hearings, RCB adopted new sections 1399.330 and 1399.331, Title 16 of the CCR, in late 1997. Effective July 1, 2000, these sections require applicants for initial RCP licensure to have attained an associate of arts (AA) degree. Although the AA degree may be issued in any discipline, it must contain at least 42 semester units in basic sciences, clinical sciences, and respiratory care curricula; further, 800 hours of student clinical practice are required. Applicants must have attained a grade point average of "C" or better in all work attempted in the curriculum upon which the degree is based, and must have attained a "C" or better in each course in the respiratory care curriculum and its prerequisites.

The Board increased its educational requirement for a number of reasons, including advances in the profession and

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in the procedures performed by RCPs; an increase in the number of disciplinary actions against RCPs who have not attained an AA degree; challenges from other professions questioning the ability of RCPs to perform complex tasks; revisions to the Code of Federal Regulations relating to respiratory care; and amendments to the Clinical Laboratory Improvement Act which require individuals who perform complex testing (including blood gas analysis, a mainstay procedure for RCPs) to have AA degrees.

RCB has published a flier entitled *Education Requirements—July 1, 2000*, which is available from the Board's office.

Provision of Respiratory Care by Unqualified Caregivers

At RCB's July 16 meeting, Board member Richard Sheldon, M.D., led a discussion of the increasingly common occurrence of hospitals and other employers permitting or assigning functions that fall within the definition of respiratory care to non-RCPs, such as registered nurses. Dr. Sheldon stated that he would like the Board to become more of an advocate for its licensees and more proactive on asserting its licensees' rights on scope of practice issues; he also expressed concern for patient safety, as those delegated respiratory care tasks may not be qualified to undertake them.

Board President Kim Kruser, RCP, formed an Interdisciplinary Task Force to gather documentation of this problem and provide recommendations to the Board. The Task Force members are Dr. Sheldon and Barry Winn, RCP. DCA legal counsel Dan Buntjer warned the Task Force and the Board to proceed cautiously on scope of practice issues, and reminded the Board that it lacks jurisdiction to regulate nurses or other health care providers.

LEGISLATION

SB 809 (O'Connell), as amended August 17, establishes a statute of limitations on accusations filed by the Board against RCPs. SB 809 requires the Board to file an accusation against a RCP within three years from the date the Board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years of the date the alleged act or omission that is the basis for disciplinary action occurred, whichever is first. These requirements do not apply if the accusation alleges the procurement of a license by fraud or misrepresentation. Governor Davis signed SB 809 on September 21 (Chapter 459, Statutes of 1999).

AB 60 (Knox), as amended July 1, reinstates previous law requiring employers to pay daily overtime compensation at a rate of one and one-half times regular pay after eight hours of daily work and 40 hours of weekly work; and at a rate of twice regular pay after 12 hours of daily work and eight hours of work on the seventh day of any workweek. The California Society of Respiratory Care expressed concerns about this bill because many RCPs and other health

care workers prefer to work 12-hour shifts. In response to this argument made by CSRC and many business groups, the bill codifies the authority of employees to adopt an "alternative workweek schedule" that permits work by affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of overtime when approved by at least two-thirds of the affected employees in a work unit by secret ballot. AB 60 was signed by the Governor on July 20 (Chapter 134, Statutes of 1999).

AB 1234 (Shelley), as amended June 24, amends the Bagley-Keene Open Meeting Act to require RCB and other state agencies—effective July 1, 2001—to post notice of their meetings on the Internet at least ten days in advance of the meeting, and to include on written notices of meetings the address of the Internet site where the required notice is made available. The bill also extends the statute of limitations for the filing of a court action to invalidate an agency action taken in violation of the Bagley-Keene Act from 30 days to 90 days after the agency action was taken, and expressly supersedes the California Supreme Court's decision in *Regents of the University of California v. Superior Court (Molloy)*, 20 Cal. 4th 509 (1999). The Governor signed AB 1234 on September 15 (Chapter 393, Statutes of 1999).

RECENT MEETINGS

At RCB's July 16 meeting, Executive Officer McCoy noted that, in 1998, federal legislation created the Healthcare Integrity and Protection Databank (HIPDB). After the U.S. Department of Health and Human Services adopts regulations implementing the HIPDB (which has yet to occur), all health care licensing boards will be required to collect and report all disciplinary actions, civil malpractice judgments, and criminal convictions of licensees to the databank; settlements in which no findings or admission of liability have been made will not be reported to the HIPDB. As is the existing National Practitioner Data Bank applicable to physicians, dentists, and a limited number of other health care providers, the new HIPDB is not open to the public. Only state and federal agencies and health plans have access to the information in the HIPDB; its stated purpose is to "combat fraud and abuse in health insurance and health care delivery." Ms. McCoy had several questions about RCB's ability to meet the requirements of the HIPDB and asked legal counsel Dan Buntjer to research them; Buntjer responded that RCB should wait until the final federal regulations are promulgated before preparing to comply with them.

FUTURE MEETINGS

- November 19, 1999 in San Diego.
- January 14, 2000 in Sacramento.
- April 14, 2000 in Los Angeles.
- July 21, 2000 in Sacramento.
- November 17, 2000 in San Diego.