The Board of Optometry is a consumer protection agency within the Department of Consumer Affairs (DCA). 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 consists of nine members—six practicing optometrists and three public members. The Governor appoints all the optometrist members and one public member; the Assembly Speaker appoints one public member; and the Senate Rules Committee appoints one public member. The Board maintains eight standing committees to assist it in the performance of its duties: Executive, Enforcement, Licensing and Examination, Continuing Education, Credentials, Legislation, Regulation, and Public Relations. The Executive Officer and a permanent full-time staff of six support the Board from its office in Sacramento.

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’s operations are funded entirely through licensing fees. The fee for license renewal is $300, due on a biennial basis. By statute, $16 of each renewal is paid to the University of California for the advancement of optometric research and the maintenance and support of the optometry department.

The Board generally holds four regularly scheduled meetings each year, typically in February, May, August, and November. The meeting locations rotate among Sacramento, Los Angeles/Orange County, San Francisco, and San Diego. However, because of difficulties gathering a quorum, the Board last met to conduct business in December 2000. By statute, a quorum of six members must appear at a Board meeting in order to conduct business. One optometrist member’s grace year expired on June 1, 2000; on June 1, 2001, the grace years of two other optometrist members expire, leaving only the minimum number of members required to constitute a quorum. All three vacancies must be filled by Governor Davis.

**MAJOR PROJECTS**

**Optometrists’ Scope of Practice Expanded Again**

In September 2000, Governor Davis signed SB 929 (Polanco) (Chapter 676, Statutes of 2000), a bill that once again expands the scope of practice for optometrists and the unlicensed assistants they supervise.

The first major scope of practice expansion for California optometrists occurred in early 1996 with then-Governor Wilson’s approval of SB 668 (Polanco) (Chapter 13, Statutes of 1996), an urgency bill sponsored by the California Optometric Association (COA). Prior to the passage of SB 668, the practice of optometry included only measurement and correction of vision defects; “diagnosis” of conditions of the eye was prohibited, as was the prescription of drugs. Optometrists could use certain kinds of topical drugs solely for the purpose of eye examinations, but no other drugs could be dispensed or prescribed. SB 668 required the Board of Optometry to create a new program to “certify” optometrists who meet certain qualifications and—as to those optometrists only—amended Business and Professions Code section 3041 to expand the scope of practice to include diagnosis and treatment of a limited number of specified conditions of the eye. Such treatment may include the use and prescription of a limited number of specified therapeutic pharmaceutical agents (TPA).

To qualify for TPA certification, most optometrists must: (1) complete an 80-hour didactic course provided by an accredited California school of optometry or by a recognized residency review committee in ophthalmology in California, and pass an examination administered upon completion of the course; (2) complete a structured 65-hour preceptorship during no less than a two-month period in either an ophthalmologist’s office or an optometric clinic; (3) complete a minimum of 20 hours of self-directed education; and (4) pass the National Board of Examiners in Optometry’s (NBEO) “Treatment and Management of Ocular Disease” examination or an equivalent exam approved by the Board of Optometry.
SB 668 also created a six-member TPA Advisory Committee within the Board of Optometry, consisting of three optometrists appointed by the Board and three ophthalmologists appointed by the Medical Board of California. The TPA Advisory Committee was charged with recommending protocols that the Board of Optometry could use in its decisionmaking process, including protocols relating to peripheral infectious corneal ulcers and for deciding issues relating to the equivalency of education and training of optometrists licensed outside California.

The 1996 passage of SB 668 was a long time in coming; the bill was preceded by AB 3242 (Isenberg) in 1992 [12:4 CRLR 114; 12:2&3 CRLR 133], AB 2020 (Isenberg) in 1993–94 [14:4 CRLR 89; 14:2&3 CRLR 94], and SB 510 (Maddy) in 1995 [15:4 CRLR 112], none of which were successful in overcoming the opposition of organized medicine. By 1996, however, at least 45 other states permitted optometrists to diagnose and treat a limited category of eye diseases, and the bill’s proponents argued that expanding the practice of optometrists would increase patient access to primary eye care at lower cost. Regardless of its merits, SB 668 did not enjoy much public scrutiny or debate. As it moved through many legislative committees during 1995, SB 668 pertained only to clarification of the duties of ancillary personnel who work in optometrists’ offices. [15:4 CRLR 112] However, that language was gutted in a conference committee on January 31, 1996, and the conference committee report was passed by the legislature and signed by the Governor only three weeks later without the benefit of any legislative policy committee hearing. The legislature included intent language in the bill prohibiting further expansion of the scope of practice of optometry until January 1, 2000.

As 2000 approached, the optometry profession fashioned the next expansion of its scope of practice, which took the form of SB 929 (Polanco). SB 929—also sponsored by COA—was the product of extensive private negotiations between COA and the California Academy of Ophthalmology, which eventually took a neutral position on the bill. Despite the fact that the bill would change its regulatory program substantially, the Board was excluded from the negotiations. The California Medical Association ultimately opposed the bill.

Effective January 1, 2001, SB 929 expands the practice of optometry to include “the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services....” The bill expands the list of services that may be provided by TPA-certified optometrists to include treatment of a specific list of additional conditions detailed in Business and Professions Code section 3041(b). These conditions include:

- infections of limited portions of the anterior segment and adnexa, for patients other than those with AIDS;
- ocular allergies of the anterior segment and adnexa;
- ocular inflammation that is nonsurgical in cause, and that results from specified causes;
- ocular pain associated with conditions that optometrists may lawfully treat, other than pain related to a surgical procedure;
- primary open angle glaucoma, but only if the patient is over the age of 18 and the optometrist has been specially certified by the Board. To become certified, an optometrist must (1) successfully complete a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment, and management of glaucoma, which course must be “developed by an accredited California school of optometry,” (2) provide collaborative treatment with an ophthalmologist of at least fifty glaucoma patients for a period of at least two years, and (3) provide documentation of the qualifying collaborative treatment to the Board; and
- lacrimal irrigation and dilation (excluding probing of the nasal lacrimal tract), but only if (1) the patient is over 12 years of age, and (2) the optometrist is specially certified by the Board. To be certified, the optometrist must complete ten of these procedures under the supervision of an ophthalmologist.

The bill also amends Business and Professions Code section 3041(c) to expand the list of medications that TPA-certified optometrists may use to include topical steroids, topical antiglaucoma agents (provided the optometrist is certified to treat glaucoma), oral antihistamines (subject to specific requirements governing mandatory consultation with and referral of patients to an ophthalmologist), some prescription oral nonsteroidal anti-inflammatory agents (subject to a mandatory referral to an ophthalmologist if the condition has not resolved within three days), specified oral antibiotics, topical antiviral medication and oral acyclovir for the treatment of specified diseases (subject to disease-specific requirements governing mandatory consultation with and referral to an ophthalmologist), oral analgesics that are not controlled substances, and codeine and hydrocodone with compounds as listed in Health and Safety Code section 11000 (limited to three days’ use and referral to an ophthalmologist if pain persists). Where the statute requires an optometrist to consult with and/or refer patients to an ophthalmologist, it also requires the optometrist to maintain specific written records in the patient’s file, and further authorizes the ophthalmologist to have access to those records.

SB 929 also revises the Board’s continuing education (CE) requirements for optometrists who are TPA-certified. Of the 50 hours of CE required every two years, 35 hours must be completed as follows: twelve hours on glaucoma, ten hours on ocular infections, five hours on inflammation...
and topical steroids, six hours on systemic medications; and
two hours on the use of pain medications.

SB 929 amends Business and Professions Code section 2544 to expand the scope of practice of assistants acting under
the direct supervision of an optometrist. Previously limited to fitting prescription lenses, optometric assistants—who
are unlicensed—may now additionally prepare patients for examination; collect preliminary patient data, including tak-
ing a patient history; perform simple noninvasive testing of visual acuity, pupils, and ocular motility; perform automated
visual field testing; perform ophthalmic photography and digital imaging; perform tonometry and lensometry; perform
nonsubjective auto refraction in connection with subjective refraction procedures performed by an optometrist; adminis-
ter cycloplegics, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes; and per-
form pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.

At one point, SB 929 would have created a “Multidisciplinary Committee” within the Board of Optom-
etry. The Committee—consisting of three optometrists appointed by the Board of Optometry, three ophthalmologists
appointed by the Medical Board, and three pharmacists appointed by the Board of Pharmacy—would have been author-
ized to add drugs and laboratory tests to those listed in section 3041 for the purpose of treating diseases and conditions
authorized therein, and to add procedures to be performed by medical and optometric assistants pursuant to section 2544.
Due to opposition by the California Medical Association, this provision was stricken from the final version of the bill. The
bill also repeals Business and Professions Code section 3041.1, which previously mandated the creation of the Board’s
TPA Advisory Committee (see above).

Finally, SB 929 expresses the intent of the legislature that no legislation amending the scope of practice of optom-
etry shall be introduced prior to January 1, 2008, and no such legislation shall be passed prior to January 1, 2009.

Proponents of SB 929 emphasized that, even as expanded, the scope of practice of California optometrists is still nar-
rower than in most other states, and insisted that optometrists are fully trained to perform the newly added functions. Sup-
porters also argued that the bill will provide California consumers with a greater array of treatment options and reduce
unnecessary referrals and duplicative office visits. Due to the bill’s complexity and its numerous requirements for referrals
and co-management of certain conditions by optometrists and ophthalmologists, only time will tell whether patients and
public protection have been served by this bill.

SB 929 Rulemaking

Following the passage of SB 929 (Polanco) (see above), Board President Gerald Easton appointed optometrist mem-
ber Steven Grant and public member Jane Vogel to a special committee charged with making recommendations on whether
the Board should adopt regulations to implement any portion of the bill. On November 7, 2000, the special committee met
and formulated the following recommendations:

(1) regarding the tasks that may be performed by unli-
enced optometric assistants, the Board should define by regu-
lation the phrase “prepare patients for examination” in Business
and Professions Code section 2544 to mean tasks not requiring professional judgment or skills;

(2) the Board should amend section 1567, Title 16 of the
CCR, to define the term “consultation” to include (but not be
limited to) communication by telephone, writing, fax, email,
or other electronic means (except as provided in Business
and Professions Code section 3041(c)(7)(C) regarding glau-
coma consultations);

(3) the Board should define in regulation the process for
certifying optometrists to perform lacrimal irrigation and dila-
tion, as provided in Business and Professions Code section
3041(e)(6);

(4) the Board should adopt regulations implementing
Business and Professions Code section 3041(f)(1), to estab-
lish equivalency criteria for 24-hour glaucoma certification
courses developed by course providers other than “an accred-
ited California school of optometry”;

(5) the Board should define in regulation the process for
certifying optometrists to treat primary open angle glaucoma,
as provided in Business and Professions Code section
3041(f)(3);

(6) the Board should adopt regulations governing the
process and required proof of completion to be provided by
an optometrist as evidence of collaboration with an ophthal-
mologist on fifty glaucoma patients, if the ophthalmologist
fails to provide documentation of the collaboration under
Business and Professions Code section 3041(f)(3); and

(7) the Board should amend section 1531, Title 16 of the
CCR, to require successful completion of Part III (patient care)
of the National Board of Examiners in Optometry’s exami-
nation in lieu of the Board’s clinical skills examination.

At its December 1, 2000 meeting, however, the Board re-
jected most of the special committee’s recommendations. Spe-
cifically, the Board voted to take no regulatory action to imple-
ment Business and Professions Code sections 2544 (tasks of
unlicensed assistants) and 3041(f)(3) (proof of completion of
ophthalmologist collaboration on glaucoma patients if the
ophthalmologist fails to provide documentation). Rather than adopt regulations, the Board decided to create a form to implement
sections 3041(e)(6) (process for certifying optometrists to per-
form lacrimal irrigation and dilation) and 3041(f)(3) (process for certifying optometrists to treat primary open angle glau-
coma). The Board decided to further research the special
committee’s proposals for rulemaking to define the term “con-
sultation” and specify equivalency criteria for the 24-hour
course required for glaucoma certification.

As to the licensing exam, optometrist member Steven
Grant repeated comments he had made at several prior meet-
ings that SB 929 has now expanded California optometrists’
scope of practice sufficiently to permit the Board to adminis-

California Regulatory Law Reporter • Volume 17, No. 2 (Winter 2001) • covers November 1999-April 2001
ter Part III of the NBEO exam in lieu of its own clinical skills examination. By a vote of 5–2, the Board passed a motion authorizing the creation of a committee to draft proposed language and set for hearing a regulatory amendment requiring applicants for licensure to pass Parts I, II, and III of the NBEO examination instead of the Board-administered practical exam. Board president Easton appointed optometrist members Steven Grant and John Anthony to the committee (see below for further details).

Examination Regulation on Hold

On December 29, 2000, the Board published notice of its intent to amend section 1531, Title 16 of the CCR, to permit the Board to use NBEO’s Part III Patient Care test in place of its own clinical skills examination (see above). Under the Board’s proposal, section 1531 would be amended to provide that the Board’s licensure examination requirement consists of passage of Parts I (basic science), II (clinical science), and III (patient care) of the NBEO’s exam, plus passage of a “California laws and regulations” test developed by the Board or its contractor.

After a hearing at a special meeting on February 15, 2001, the Board approved the amendments and forwarded the rulemaking file to DCA. However, the Department—and specifically its Office of Examination Resources (OER)—expressed concern that the Board had not presented sufficient evidence that Part III of the NBEO provides an effective means of assessing the entrance-level competence of prospective California optometrists. DCA suggested that, at minimum, OER and the Board compare OER’s recently-completed occupational analysis of the optometry profession in California (which was completed by OER [17:1 CRLR 56]) and submitted to the Board in April 2001) with the contents of Part III of the national exam to determine if there is a sufficient linkage between Part III and the practice analysis for the examination to be legally defensible in California. At this writing, OER plans to ask NBEO to undertake a comparison of the California practice analysis and Part III of its exam, and to ask the Board to undertake a cross-validation study of its own, independent of NBEO. Upon completion of both studies, DCA will consider the Board’s proposed regulatory change to section 1531.

Update on Other Board Rulemaking Proceedings

The following is an update on Board rulemaking proceedings described in more detail in Volume 17, No. 1 (Winter 2000) of the California Regulatory Law Reporter.

◆ CE via the Internet. At this writing, the Board has indefinitely postponed action on regulatory amendments to section 1536, Title 16 of the CCR, which would have revised the Board’s continuing education (CE) requirements and permitted optometrists to fulfill part of their CE requirement via approved courses offered over the Internet. This proposal has proven somewhat controversial: It was the subject of an August 1998 public hearing, continued discussion at the Board’s November 1998, March 1999, and May 1999 meetings, and a survey of other state optometry boards and DCA occupational licensing boards undertaken by Board staff.[17:1 CRLR 55; 16:2 CRLR 46–47; 16:1 CRLR 67–68]

◆ Disciplinary Guidelines. On February 18, 2000, the Board published notice of its intent to amend section 1575, Title 16 of the CCR. The amendment requires the Board, in reaching a decision in a disciplinary matter, to consider the most recent version of its disciplinary guidelines, last modified in May 1999. The prior language of section 1575 required the Board to use the 1996 version of its “Disciplinary Guidelines and Model Disciplinary Orders.” [17:1 CRLR 55] Following a public hearing at its April 7, 2000 meeting, the Board adopted the proposed change. The Office of Administrative Law (OAL) approved the change on April 25, 2001.

◆ Appeal of Exam Results. Also on February 18, 2000, the Board published notice of its intent to repeal section 1533.1, Title 16 of the CCR, which permitted candidates who failed the Board’s licensing exam to appeal their scores. [17:1 CRLR 55] Following a public hearing at its April 7, 2000 meeting, the Board adopted the proposed change. On April 25, 2001, OAL approved the repeal of section 1533.1.

◆ Inspection of Failed Exam. Also on February 18, 2000, the Board published notice of its intent to repeal section 1533, Title 16 of the CCR, which previously permitted licensure candidates who had failed the Board’s exam to inspect their examination papers in order to review the questions they missed, upon written request. [17:1 CRLR 55] After a public hearing on April 7, 2000, the Board unanimously approved the change. Thereafter, DCA Director Kathleen Hamilton expressed concerns about the Board’s proposal. At its February 15, 2001 meeting, the Board reconsidered and decided instead to modify the language of section 1533. As modified, the provision would permit an examinee who has failed any section of the Board’s exam to request that his/her examination papers be rescoring by the Board. Such a request must be made within 75 days after the date the examination results are mailed. At this writing, OAL is reviewing the rulemaking file on this proposed regulatory change.

◆ Repeal of Diagnostic Drug Formulary. Also on February 18, 2000, the Board published notice of its intent to repeal section 1560, Title 16 of the CCR. Section 1560 set forth the kinds of topical pharmaceutical agents that optometrists may use and the concentrations in which they may be used. According to the Board, regulatory section 1560 has been superseded by Business and Professions Code section 3041(a)(5), added by SB 929 (Polanco) (see 2000 LEGISLATION). That section now provides that optometrists may use topical pharmaceutical agents “including mydriatics, cycloplegics, anesthetics, and agents for the treatment of mydriasis.” [17:1 CRLR 55] OAL approved the Board’s repeal of section 1560 on April 6, 2001.

Board to Form Consumer Advisory Committee

After discussing the matter at its April and July 2000 meetings, the Board voted to appoint a Consumer Advisory
HEALTH CARE REGULATORY AGENCIES

Committee at its December 2000 meeting. According to Executive Officer Karen Ollinger, the next step will be to submit a budget change proposal to DCA in order to arrange for payment of the costs associated with such a committee. Public member Sunil Aghi, who made the original motion to create the committee, reported that he had been in contact with DCA officials and that they were supportive of the idea and willing to help the Board request the necessary funding.

2000 LEGISLATION

SB 929 (Polanco), as amended August 24, 2000, expands the definition of optometry and the scope of practice of optometrists; enlarges in detailed fashion the types of conditions a TPA-certified optometrist may treat (to include primary open angle glaucoma) and under what conditions; expands the list of TPAs that certified optometrists may dispense and prescribe under specified circumstances; requires optometrists to consult with and/or refer patients to ophthalmologists in certain circumstances, and requires optometrists to adhere to detailed recordkeeping requirements in those circumstances; expands the list of tasks that unlicensed optometric assistants may perform under the direct responsibility and supervision of an optometrist; abolishes the Board’s previously-existing TPA Advisory Committee; and expresses the legislature’s intent that the scope of practice of optometrists remain unchanged until 2009 (see MAJOR PROJECTS for detailed background information). SB 929 was signed by Governor Davis on September 24, 2000 (Chapter 676, Statutes of 2000).

SB 1889 (Figueroa), as amended August 23, 2000, clarifies Business and Professions Code section 27, which currently requires the Board and other DCA agencies to post certain information on the Internet regarding their licensees. SB 1889 requires the Board to allow its licensees who use their home address as their official “address of record” to provide a post office box or other alternate address which will be posted on the Internet. The bill also specifies that it does not preclude an agency from also requiring a licensee who has provided an alternative mailing address as his/her address of record to also provide a physical business address or residence address only for the entity’s internal administrative use and not for disclosure as the licensee’s address of record or disclosure on the Internet. This bill was signed by the Governor on September 29, 2000 (Chapter 927, Statutes of 2000).

AB 368 (Kuehl), as last amended August 7, 2000, would have required health plans that provide prosthetic or visual aids, health insurers, and Medi-Cal to provide coverage for prosthetic or visual aids for individuals with “low vision.” [17:1 CRLR 56] The bill died in the Senate Appropriations Committee.

2001 LEGISLATION

AB 269 (Correa), as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including the Board of Optometry). Further, the bill would require the executive officer of each DCA board to be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor’s appointments secretary. [A. B&P]

AB 1095 (Wright), as amended April 30, 2001, would require every child, within 90 days of entrance into the first grade of a public or private school, to undergo a comprehensive eye examination by an optometrist or ophthalmologist that includes testing of vision skills that may impact a child’s ability to read. [A. Ed]

SB 606 (Vasconcellos), as amended April 17, 2001, would require periodic screening of the tracking and fixation (the ability of the eyes to track movement), focusing (how quickly the eyes can focus on an object), and eye-teaming (how well the eyes work together) of the eyes of schoolchildren; currently, the eye exams required of schoolchildren test only visual acuity and color vision. If the screening reveals any abnormalities suggesting a vision-related problem that may affect a child’s ability to learn, the individual administering the test would be required to provide the child’s parent or guardian with a written statement that it may be advisable for the child to see a physician or optometrist. [S. Ed]

AB 919 (Romero), as introduced on February 23, 2001, and SB 1208 (Romero), as introduced March 19, 2001, are identical bills. With certain exceptions, existing law establishes eight hours as one day’s work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. The Industrial Welfare Commission (IWC) is permitted to establish exemptions from the overtime requirements for executive, administrative, and professional employees meeting certain criteria, one of which is that the employee must earn a monthly salary equivalent to no less than double the state minimum wage for full-time employment. These bills would allow the IWC to exempt a licensed physician, podiatrist, optometrist, or dentist earning less than two times the minimum wage from the overtime requirements, provided that he/she is employed to perform duties for which licensure is required. [AB 919—A. Floor; SB 1208—S. Appr]

LITIGATION

After six years of litigation, several major contact lens manufacturers and the American Optometric Association (AOA) recently settled a federal antitrust class action in which the Attorneys General of 32 states—including California—accused the defendants of conspiring to ensure that disposable contact lenses are sold only through optometrists and other eye care professionals who often mark up prices considerably, and not through lower-priced pharmacies, Internet businesses, and other outlets permitted to sell contact lenses.
The case was originally filed by the Florida Attorney General in 1994. [15:4 CRLR 113-14] Thirty-one other states eventually joined the suit, In Re Disposable Contact Lens Antitrust Litigation, No. MDL 1030 (M.D. Fla.), against Bausch & Lomb, Ciba Vision, Vistakon (a subsidiary of Johnson & Johnson), AOA, and several individual optometrists. The states claim that the conspiracy began when disposable contact lenses were first introduced in 1987. According to the National Association of Attorneys General, defendants allegedly made a concerted effort to prevent lenses from being sold by anyone other than a licensed eye care professional who was selling to his/her patient. Additionally, the states charged that AOA and individual optometrists shared ideas on how to keep patients from obtaining their contact lens prescriptions, in order to prevent them from purchasing lenses elsewhere. The New York Attorney General’s Office, one of the lead prosecutors of the action, asserted that 25 million Americans who wear soft contact lenses may have been overcharged by as much as $600 million from January 1, 1988 to the present.

Ciba Vision settled the charges against it in 1997, agreeing to pay an estimated $30 million in rebates to consumers who had purchased its products during the time period in question plus $5 million in attorneys’ fees and fines. In February 2001, Bausch & Lomb settled just before trial, and agreed to pay a total of $17.5 million to end the lawsuit. Vistakon and AOA refused to settle until several weeks after trial started on March 19, 2001. Vistakon will pay $30 million in rebates and $25 million in attorneys’ fees and costs; AOA agreed to settle for $750,000. All four defendants admitted no wrongdoing.

The litigation is expected to prompt states and potentially Congress to enact legislation requiring optometrists and ophthalmologists to release contact lens prescriptions to patients so they can choose where to purchase replacement lenses. After surveying its non-DPA licensees and considering the responses, the Board decided to take no action at this time to eliminate the non-DPA category of licensure.

Also in November 1999, the Board decided to drop the idea of potentially seeking legislation to eliminate the licensure category of 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. DPA certification is optional, and is not currently required to maintain licensure as an optometrist. However, with the passage of 1996 legislation authorizing optometrists to pursue TPA certification to treat a limited number of eye conditions, the Board had previously expressed the opinion that DPA certification should be a minimum requirement for optometric practice in California.

The litigation is expected to prompt states and potentially Congress to enact legislation requiring optometrists and ophthalmologists to release contact lens prescriptions to patients so they can choose where to purchase replacement lenses.

RECENT MEETINGS

At the Board’s November 15, 1999 meeting, Board public member Sunil Aghi addressed his colleagues during the public comment session. Aghi expressed his desire for a private meeting with the Attorney General’s Office to discuss what he perceived to be misconduct by the Board’s Executive Officer, Karen Ollinger, for allegedly giving Board members misinformation about the Board’s budget status during prior closed-session meetings to discuss enforcement-related litigation the Board had previously approved and then abandoned. According to Aghi, he had repeatedly requested an opportunity to discuss his concerns during a closed session, but his requests were ignored or denied by optometrist Board members. Aghi’s comments were interrupted by Deputy Attorney General Kent Harris, who warned Aghi about the dangers of speaking about closed-session matters publicly. Public member Jane Vogel inquired as to when would be an appropriate time to hold a closed meeting to discuss the issues that Aghi had introduced. The Board passed a motion to hold a special board meeting with the Attorney General’s Office as soon as possible. The special closed session meeting was scheduled for January 9, 2000, but was delayed several times for various reasons before it actually took place in the fall of 2000. Unfortunately, the 1999 incident portended a growing rift between the Board’s public members and its optometrists members—a rift that has subsequently paralyzed the Board.

Also in November 1999, the Board decided to drop the idea of potentially seeking legislation to eliminate the licensure category of 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. DPA certification is optional, and is not currently required to maintain licensure as an optometrist. However, with the passage of 1996 legislation authorizing optometrists to pursue TPA certification to treat a limited number of eye conditions, the Board had previously expressed the opinion that DPA certification should be a minimum requirement for optometric practice in California.
HEALTH CARE REGULATORY AGENCIES

as posted on the Board’s Web site. However, at this writing, the most recent newsletter available on the Board’s Web site dates back to 1997. According to EO Ollinger, DCA must first approve all Web site postings; apparently the new newsletter was misplaced for some time in DCA bureaucracy, but is now back on track and should be electronically posted in the near future.

At its December 2000 meeting, the Board unanimously reelected Gerald Easton, OD, as Board president and Sheilah Titus, OD, as vice president. Steven Grant, OD, was selected Board secretary.

Due to its failure to muster a quorum, the Board cancelled its scheduled March 16–17, 2001 meeting in Oakland.

FUTURE MEETINGS

2001: June 8–9 in Orange County; September 7–8 in Sacramento; November 30–December 1 in San Diego.

2002: No meetings have been scheduled at this writing.

Board of Pharmacy

Executive Officer: Patricia Harris • (916) 445-5014 • Internet: www.pharmacy.ca.gov

Pursuant to Business and Professions Code section 4000 et seq., the Board of Pharmacy grants licenses and permits to pharmacists, pharmacy interns, pharmacy technicians, pharmacies, pharmacy corporations, nonresident pharmacies, wholesale drug facilities, veterinary food-animal drug retailers, out-of-state distributors, clinics, and hypodermic needle and syringe distributors. It regulates all sales of dangerous drugs, controlled substances, and poisons. The Board is authorized to adopt regulations, which are codified in Division 17, Title 16 of the California Code of Regulations (CCR).

To enforce the Pharmacy Law and its regulations, the Board employs full-time inspectors who investigate complaints received by the Board. Investigations may be conducted openly or covertly as the situation demands. The Board conducts fact-finding and disciplinary hearings, and is authorized by law to suspend or revoke licenses or permits for a variety of reasons, including professional misconduct and any misconduct substantially related to the practice of pharmacy.

The Board of Pharmacy is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board consists of eleven members, four of whom are public members. The Governor appoints two public members and the Senate Committee on Rules and the Speaker of the Assembly each appoint one. The remaining members are pharmacists appointed by the Governor, five of whom must be active practitioners. All Board members are appointed for four-year terms.

In March 2000, Governor Davis appointed Donald W. Gubbins, Jr., Pharm.D., to the Board. Dr. Gubbins is Regional Pharmacy Development Manager for RiteAid Corporation.

In June 2000, the Senate Rules Committee named William Powers as a public member of the Board. Powers is legislative director of the Congress of California Seniors and is also Coordinator of the Capital City Task Force for the American Association of Retired Persons (AARP).

MAJOR PROJECTS

State Auditor Critical of Board’s Enforcement System

In April 2001, the Bureau of State Audits (BSA) released a report entitled Investigations of Improper Activities by State Employees: July 2000 Through January 2001. In a chapter entitled Board of Pharmacy: Gross Inefficiency in Processing Consumer Complaints and Failure to Record and Pay Overtime, BSA noted that it received an allegation that the Board had a backlog of consumer complaints and was not doing its job to investigate incoming complaints. BSA investigated and substantiated the allegation. Specifically, BSA found that the Board’s established timeframes to resolve complaints—up to 290 days for complex complaints and 140 days for all others—are excessive when compared to the timeframes mandated by law or regulation for other consumer protection agencies.

Second, BSA found that the Board fails to meet its own excessive timeframes. Between January 1, 1994 and March 6, 2000, it took the Board an average of 441 days to close 5,265 complaints. Of those complaints, the Board resolved only 35% of its high-risk complaints within 290 days and only 20% of its less complex cases within its 140-day goal. As of March 6, 2000, the Board had not resolved 770 of 1,552 open complaints within its maximum 290-day goal. Although the Board’s goal is to complete the investigation phase of its enforcement process within five months, BSA found that Board staff takes on average nine months to complete investigations after the complaint is assigned to an inspector.

Third, BSA examined the Board’s system for prioritizing complaints. Based on the subject matter of complaints, the Board categorizes its high-risk complaints as Priority 1 (urgent-immediate), Priority 2 (rapid), Priority 3 (active investigation), or Priority 4 (standard, consistent turnaround). BSA found that this system “does not ensure that complaints