

HEALTH CARE REGULATORY AGENCIES

which encourages DPMs to provide surgical assistance to MDs, was rescinded because BPM believes its *Information for Health Facilities* fact sheet is a more appropriate medium for the information. Because "Medical Staff Privileges" are regulated by the Department of Health Services (DHS), BPM rescinded that policy (adopted February 25, 1983) as well. The policy on "Admission of Patients/Histories and Physicals," adopted August 26, 1983, was rescinded because the matters it addresses are the focus of both state and federal administrative rules. The "Infection Control Guidelines," which, as adopted January 25, 1994, simply state that BPM licensees are to follow DHS rules to prevent transmission of bloodborne pathogens, have been superseded by Business and Professions Code section 2221.1 and thus were rescinded. The Board also rescinded the "Guidelines for Pain Management" (adopted November 4, 1994), which states that DPMs must follow MBC guidelines for prescribing controlled substances for intractable pain, because Business and Professions

Code sections 2025 and 2241.5 now address the issue. Finally, June 5, 1987's "Residency Programs with 'Candidate Status'" policy was rescinded because it is more appropriately dealt with in BPM licensing forms and information packet. The Board also combined "Minimum Requirements for Consultants and Expert Reviewers" and "Minimum Requirements for Examination Commissioners" into one policy: "Minimum Requirements for Consultants, Experts and Examiners."

At its November 2000 meeting, BPM elected Paul J. Califano, DPM, as president and public member Anne M. Kronenberg as vice-president for 2001.

FUTURE MEETINGS

2001: May 4 in Millbrae; August 15 in San Francisco; November 2 in Los Angeles.

2002: February 13 in Sacramento; May 3 in Millbrae; November 8 in Los Angeles.

Board of Psychology

Executive Officer: Thomas O'Connor ♦ (916) 263-2699 ♦ Toll-Free Consumer Complaint Line: (800) 633-2322 ♦ Internet: www.psychboard.ca.gov

The Board of Psychology (BOP) regulates licensed psychologists, registered psychologists, and psychological assistants under the Psychology Licensing Law, Business and Professions Code section 2900 *et seq.* BOP sets standards for education and experience required for licensure, administers licensing examinations, issues licenses, promulgates rules of professional conduct, regulates the use of psychological assistants, investigates consumer complaints, and takes disciplinary action against licensees. BOP's regulations are located in Division 13.1, Title 16 of the California Code of Regulations (CCR).

BOP is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board is composed of nine members: five psychologists and four public members. Each member of the Board is appointed to a term of four years; no member is permitted to serve for more than two consecutive terms. The five licensed members and two of the public members are appointed by the Governor. One public member is appointed by the Senate Rules Committee, and the fourth public member is appointed by the Speaker of the Assembly. Public members may not be licensed by BOP or by any other DCA healing arts board. At this writing, two psychologist seats are vacant; both must be filled by the Governor.

BOP maintains seven standing committees: Consumer Education, Continuing Education, Credentials, Enforcement, Examination, Legislation, and Personnel.

BOP is funded through license, application, and examination fees. The Board receives no tax money from the state general fund.

MAJOR PROJECTS

Continued Use of Oral Exam Questioned

On March 6, 2001, DCA's Office of Examination Resources (OER) submitted a report to BOP evaluating the oral examination administered by the Board to licensure applicants. The report summarized the outcome of OER's convening of two focus groups consisting of psychologists, the examiners who administer the oral exam, recent Board licensees, and members of academic and training institutions. The purpose of OER's review was to assess: (1) whether BOP needs an oral exam to determine minimal competency for licensure; (2) if so, whether the current format of the oral exam meets this need; and (3) if not, what (if any) additional requirements are indicated to determine minimal competency.

OER identified the three components (other than the oral exam) which are currently utilized to assess minimal competency: (1) the requirement of a doctoral degree in psychology; (2) successful completion of 3,000 hours of supervised professional experience (SPE); and (3) passage of the national written Examination for the Professional Practice of Psychology (EPPP).



HEALTH CARE REGULATORY AGENCIES

OER's study focused on the concept of "added value." That is, what value does the oral exam add to BOP's efforts to determine whether applicants are appropriately prepared for the independent practice of psychology? Although some focus group participants felt that there is value in the opportunity for face-to-face assessment of a candidate's ability to respond to exam questions, OER noted that "the oral examination can only have added value if the results improve the overall reliability and validity of the licensing decision." The study concluded that, viewed from this perspective, the oral exam as currently constituted does not add value to BOP's effort to ensure that its licensees are competent. The report pointed out the strong potential for variation in assessment philosophy and style among the many oral examiners and the likely impossibility of controlling for that variation. OER's report also expressed concern that the current oral examination process "produced an unacceptable number of false negatives to identify a few that may be truly unqualified."

Even though the report concluded that the oral exam does not add value to the licensing process, OER recognized that there may be a need for additional measures to ensure that applicants are minimally competent to practice psychology. On this topic, focus group participants suggested that completion of a more structured SPE requirement might be a better indicator of readiness for practice than the currently-required 50-minute performance in the artificial oral exam environment. Participants also suggested that all licensure applicants be required to take the California Jurisprudence and Professional Ethics (CJPE) examination, a comprehensive exam that covers legal and ethical issues arising out of the actual practice of psychology. Currently, applicants who take the oral examination are not required to take the CJPE exam. In its March 2001 memo, OER expressed support for the focus groups' recommendations, noting that the changes would create a stronger examination from a psychometric perspective.

At this writing, BOP has scheduled two open forums in July 2001 to solicit public comments regarding OER's recommendations.

Board Overhauls Supervised Professional Experience Regulations

On July 6, 2000, the Office of Administrative Law (OAL) approved the Board's regulatory action to adopt new sections 1387.1, 1387.2, and 1387.4, and amend sections 1387, 1387.3, and 1387.5, Title 16 of the CCR. This rulemaking package represents BOP's first comprehensive overhaul of its regulations relating to the SPE requirement in its history. The Board's "reengineering" effort—which involved extensive research, observation of national trends, deliberations at public meetings, and input from interns, supervisors, and training program directors—lasted over five years. [17:1 CRLR 72-73; 16:2 CRLR 61-62; 16:1 CRLR 82-83]

The Board's "reengineering" effort—which involved extensive research, observation of national trends, deliberations at public meetings, and input from interns, supervisors, and training program directors—lasted over five years.

Amended section 1387 now defines SPE as "an organized program that consists of a planned, structured and administered sequence of professionally supervised comprehensive training experiences. SPE shall have a logical training sequence that builds upon the skills and competencies of trainees to prepare them for the independent practice of psychology. SPE shall include socialization into the profession of psychology and shall be augmented by integrated modalities including mentoring, didactic exposure, role-modeling, enactment, observations/vicarious learning, and consultative guidance. SPE shall include activities which address the application of psychological concepts and current and evolving scientific knowledge, principles, and theories to the professional delivery of psychological services to the consumer public."

Section 1387.1 spells out the qualifications and responsibilities of primary supervisors; section 1387.2 sets forth the qualifications and responsibilities of delegated supervisors. Section 1387.3 focuses on SPE for trainees preparing for practice in non-mental health delivery services. Section 1387.4 explains how SPE may be accrued in other jurisdictions and still meet California requirements. Section 1387.5 describes the SPE log that every trainee must maintain.

Unlike the Board's prior SPE rules, the new SPE regulations do not require the primary supervisor to be "onsite" at least 50% of the time that the trainee is performing services. Instead, the primary supervisor must be "employed in the same work setting at least half the time as the supervisee and be available to the supervisee 100% of the time the supervisee is accruing SPE." This provision acknowledges new communications technologies (cell phones, beepers, etc.) that make such constant availability possible and physical presence less essential.

The new regulations no longer require supervisors to have three years of postlicensure experience in order to supervise. Instead, supervisors must certify on the form on which SPE is verified that they are qualified to supervise based upon completion of six hours of formal training in supervision.

Under the new regulatory package, the number of hours that may be accrued under a single supervisor is no longer limited to 1,500 hours. The new regulations require that, in most cases, the primary supervisor must be a licensed psychologist. While marriage and family therapists and licensed clinical social workers are no longer able to serve as primary supervisors in certain settings, they are able to serve as delegated supervisors (who are overseen by the primary supervisor).

Many SPE requirements remain the same as in the previous regulatory scheme. Three thousand hours of SPE are still required for licensure, at least 1,500 of which must be accrued post-doctorally. SPE must still be legally accrued pursuant to sections 2909(d), 2910, 2911, or 2913 of the Business and Professions Code. The primary supervisor must still provide

HEALTH CARE REGULATORY AGENCIES

supervision for at least 10% of the total time worked by the supervisee and must also provide at least one hour per week of direct, individual, face-to-face supervision. The SPE requirements for psychological assistants are entirely unaffected by these new amendments; the parameters of such training are still governed by section 1391 of the Board's regulations.

As participants gain experience with the new SPE regulations, the Board intends to monitor their effectiveness. BOP invites feedback from the supervisors and supervisees who must comply with the regulations.

Board Amends Exam Waiver, Exam Fee, and Continuing Education Credit Regulations

In September 2000, BOP published notice of its intent to amend sections 1388.6, 1392, and 1397.63, Division 13.1, Title 16 of the CCR. Following a public hearing on November 4, 2000, the Board adopted the proposed regulatory changes. OAL approved them on April 5, 2001.

Section 1388.6 specifies the conditions under which applicants for licensure may be exempted from having to take the EPPP. BOP's amendments set forth the exam waiver requirements for applicants in several categories, and clarify that all such applicants must take and pass the CJPE exam, a 100-question multiple choice test on laws and ethics affecting the practice of psychology. The amendments also entirely delete the text of former subsection (c) of section 1388.6 that had allowed, under specified conditions, for the waiver of the EPPP requirement for applicants who were Diplomats of the American Board of Professional Psychology.

Section 1392 deals with psychologist fees. The amendment increases the fee for the EPPP from \$432 to \$532 for people taking the examination on or after July 1, 2001. This fee increase will pass on to applicants a \$100 increase that is being charged to BOP by the exam's vendor, the Association of State and Provincial Psychology Boards (ASPPB).

Previous regulations permitted psychologists who serve as commissioners on oral examinations of licensure applicants or as participants in examination development functions to be awarded four hours of continuing education (CE) credit for each "full day" of such work. Because such days can actually last as long as ten hours, the change to section 1397.63 increases the credit awarded to six hours. The amendment also defines the term "full day's service," and provides that no credit will be granted for less than a full day's participation. Further, CE credit granted to BOP delegates for attending ASPPB meetings has been eliminated.

Board Seeks to Amend Exam Regulations

Since 1977, BOP has contracted with ASPPB to use the EPPP as its written licensing examination. Currently, all 50 states, two United States territories, and nine Canadian provinces administer the EPPP as the required written psychology licensing examination. Starting in April 2001, the EPPP is being offered in a computer-administered format; after January 2002, the EPPP will no longer be offered in a paper/pencil format.

On January 19, 2001, BOP published notice of its intent to amend sections 1381.4 and 1388, Title 16 of the CCR, to address the administrative ramifications of the computerization of the EPPP. As amended, section 1388 would require applicants to first submit a written examination fee to BOP. The Board will then notify the applicants, in writing, of their eligibility to take the test. Applicants receive examination packets from the Professional Examination Service (PES) containing instructions on how to schedule to sit for the computerized examination. The test results are reported to BOP by PES on a monthly basis. BOP then notifies applicants of their scores. New subsection (f) of section 1388 would provide the formula used by BOP to determine the passing score, based on the recommendation of ASPPB.

Subsection (a) of section 1388, as proposed to be amended, would provide for a waiver of the oral examination requirement for applicants who meet certain specified criteria, as provided in section 1388.6 (see above). These applicants will be required to take and pass the CJPE exam.

Currently, applicants are required to complete a minimum of 3,000 hours of SPE prior to taking the EPPP. At least 1,500 of these hours must be completed subsequent to the awarding of a doctorate degree. As proposed to be amended, section 1388(c) would allow applicants to take the EPPP after completion of a doctorate degree and 1,500 SPE hours.

Current section 1381.4 allows the Board to withdraw an application if the applicant fails to appear for two consecutive examinations and also fails to pay the required examination fees. Because the written examination will be computerized, it will be available year-round. Therefore, the proposed amendment to this section allows BOP to withdraw an application for failure to appear for a written or oral examination in any twelve-month period.

After a 45-day public comment period, BOP held a public hearing on the proposed regulatory changes at its March 10, 2001 meeting. No member of the public came forward with comment at the hearing. The Board voted unanimously to adopt the proposed regulatory changes. After BOP staff prepared the rulemaking file on this regulatory package, it was forwarded to DCA, where it is awaiting approval at this writing. Upon such approval, DCA will transfer the file to OAL for final approval.

CE Provider Approval Standards

Current BOP regulations implement the statutory provisions governing the CE requirements for California psychologists. Although those regulations permit a Board-approved continuing education accreditation agency (CEAA) to approve CE providers, they do not currently address the denial, suspension, probation, or revocation of the approval of a CE provider. On January 19, 2001, BOP published notice of its intent to add section 1397.71 to Division 13.1, Title 16 of the CCR. The proposed regulation would set forth the grounds for these procedures.

HEALTH CARE REGULATORY AGENCIES

New section 1397.71 would provide that "a board recognized accreditation agency may deny, suspend, place on probation with terms and conditions, or revoke its approval of an applicant or provider of continuing education for good cause." The section defines "good cause" as: (1) conviction of a substantially related felony or misdemeanor; (2) if the applicant or provider is a BOP licensee, failure to comply with any provision of the Psychology Licensing Law or the regulations adopted pursuant to it; (3) if the applicant or provider is a licensee of another healing arts board, failure to comply with the statutes or regulations governing that board; (4) making a material misrepresentation of fact in information submitted to BOP or to its recognized CEAA; or (5) failure to comply with the laws and regulations applicable to BOP CE providers.

If, after a "thorough case review," the CEAA denies, suspends, places on probation, or revokes its approval of a provider, the agency must give written notice to the provider setting forth its reasons. The provider then has 15 days to appeal such action and request a hearing before a CEAA panel consisting of three people who were not involved in the original determination. This panel must hear the appeal within 60 days of receipt of the appeal request, and must issue its decision in writing within 30 days of the date of the hearing. If the panel sustains the CEAA's original action, the provider would then have seven days to appeal the panel's decision to a Continuing Education Appeals Committee (CEAC) of the Board. CEAC would be appointed by BOP's president and would consist of two BOP members (one public and one licensee member). The decision of the CEAC is final; a provider whose status has been denied or revoked may not reapply for approval for a period of one year from the date of the CEAC's decision.

The 45-day public comment period on this regulatory addition ended on March 8, 2001. BOP held a public hearing on the matter at its regular board meeting on March 10, 2001 and voted to adopt the new regulation. At this writing, the rulemaking file awaits DCA and OAL review and approval.

Update on Other BOP Rulemaking Proceedings

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

◆ **Continuing Education Regulations.** At its November 1998 meeting, BOP adopted several amendments to sections 1397.60-.65 and 1397.68, Title 16 of the CCR, which implement the Board's CE requirements under Business and Professions Code section 2915. Current law requires licensees to complete 36 hours of approved CE during each two-year renewal cycle. BOP's amendments define certain terms, adjust CE fees, address emerging technology issues, and clarify the Board's intent regarding the content of acceptable CE courses and the methods used to evaluate a licensee's participation in a CE course. [17:1 CRLR 75; 16:2 CRLR 63; 16:1 CRLR 82] On October 12, 1999, the Board submitted these

regulatory changes to OAL for review. OAL approved the changes on November 24, 1999.

◆ **Spousal/Partner Abuse Detection Coursework.** Business and Professions Code section 2914(f) requires individuals who began graduate training for psychologist licensure after January 1, 1995 to complete coursework in spousal or partner abuse assessment, detection, and intervention. At its November 5, 1999 meeting, BOP adopted new section 1387.8, Title 16 of the CCR, to specify the requirements for this coursework and to set forth various options for satisfying it. New section 1387.8 requires licensure applicants to submit documentation of completion of two classroom hours focused on spousal/partner abuse assessment, detection, and intervention. The coursework must be completed after January 1, 1995, and may be taken in fulfillment of other educational requirements in the applicant's graduate and/or doctoral training, in a CE course, or in a separate course provided by a sponsor approved by the American Psychological Association. [17:1 CRLR 74]

OAL approved this regulation on February 29, 2000. In this same rulemaking package, the Board amended section 1380.1 to reflect its new principal office address: 1422 Howe Avenue, Suite 22, Sacramento, California 95825-3200.

◆ **Disciplinary Guidelines.** On November 6, 1999, BOP voted to amend section 1397.12, Title 16 of the CCR, to require the Board, in reaching a decision in a disciplinary matter, to rely on the April 1, 1999 revised version of its disciplinary guidelines. BOP formulates disciplinary guidelines to inform its licensees, the deputies attorney general who prosecute its disciplinary cases, the administrative law judges who preside over its disciplinary hearings, and the Board itself on the types and ranges of penalties considered appropriate for given violations of BOP's practice act or regulations. The disciplinary guidelines also include standard terms and conditions of probation. The guidelines themselves are not included in section 1397.12, but are incorporated by reference within the regulation. [17:1 CRLR 75; 16:2 CRLR 63-64] OAL approved this change on March 1, 2000.

◆ **Renewal Fee Reduced.** On November 5, 1999, BOP voted to amend section 1392(c), Title 16 of the CCR, to reduce the biennial licensing renewal fee for psychologists from \$475 to \$400. [17:1 CRLR 74] OAL approved this change on February 14, 2000.

Board Adopts Training Guidelines on Psychopharmacological Treatment

In 1998, SB 983 (Polanco, Rainey) (Chapter 822, Statutes of 1998) added section 2914.3(b) to the Business and Professions Code. This provision requires BOP to "develop guidelines for the basic education and training of psychologists whose practices include patients with medical conditions and patients with mental and emotional disorders who may require psychopharmacological treatment and whose management may require collaboration with physicians and other licensed prescribers." [17:1 CRLR 73-74; 16:2 CRLR 62; 16:1 CRLR 84]

HEALTH CARE REGULATORY AGENCIES

At its November 6, 1999 meeting, the Board adopted the following guidelines to implement SB 983: "A program of didactic courses to prepare psychologists mentioned in section 2914.3(a) of the Business and Professions Code should be an organized program of instruction. The program should have appropriate faculty and facilities for the didactic training and should be from a regionally accredited institution of higher learning. Finally, the program should include, at a minimum, one course from each of the following core content areas: (1) Neurosciences, (2) Pharmacology and Psychopharmacology, (3) Physiology and Pathophysiology, (4) Physical and Laboratory Assessment, and (5) Clinical Pharmacotherapeutics. While suggesting coursework to meet basic educational academic requirements, we recognize that: training in collaborative consultation with physicians, including indicators for referral; educational consultation with patients and families, including information on drugs that are commonly abused and potential therapeutic uses; risks, benefits and treatment alternatives to medication, and indications for physician referral are an implicit part of the practice of psychology."

Board Publishes Consumer Guide

During the spring of 2001, BOP published a new consumer brochure entitled *For Your Peace of Mind: A Consumer Guide to Psychological Services*. This comprehensive pamphlet educates consumers on the psychology profession—the services provided by psychologists, the Board's role in regulating them, the requirements and importance of licensure, how to choose a psychologist and the information consumers are entitled to know in making a choice, and the differences between various types of therapists. Importantly, the brochure sets forth a "patient's bill of rights" and a list of rules psychologists should never break. The brochure also instructs consumers how to file a complaint against a psychologist and explains the Board's enforcement process.

During the spring of 2001, BOP published a new consumer brochure entitled *For Your Peace of Mind: A Consumer Guide to Psychological Services*.

2000 LEGISLATION

AB 400 (Lempert), as amended August 7, 2000, requires BOP licensure applicants to secure a doctoral degree in psychology, education psychology, or education with a specialization in counseling psychology or educational psychology from an accredited institution. The bill eliminates BOP's authority to accept doctoral degrees in other subjects.

Further, degrees from institutions that are not accredited but are merely approved by DCA's Bureau for Private Postsecondary and Vocational Education (BPPVE) will be accepted only if the institution meets the following criteria: (1) the school offers a doctoral degree in psychology designed to prepare students for licensure to practice psychology and was approved by BPPVE on or before July 1, 1999; (2) the school has not, since July 1, 1999, had a new location, as described in section 94721 of the Education Code; and (3)

the school is not a franchise institution. The term "franchise institution" is defined by the bill (and enacted as new section 94729.3 of the Education Code) as "a newly established location of an existing approved institution offering postsecondary education services leading to candidacy for psychology licensure that bears the same name as the existing approved institution and about which either of the following is true: (a) The newly established location is owned or financially controlled by an individual or individuals other than those who own or financially control the existing approved institution; [or] (b) The newly established institution is administered by an individual or individuals other than those persons who administer the existing approved institution."

AB 400 also requires BPPVE-approved institutions to provide prospective students with a specified disclosure notice. New section 94814.5 of the Education Code mandates the use of the "California Unaccredited Graduate Psychology School Disclosure Form" containing all of the following information: (1) the number of graduates of the institution who have taken and passed the EPPP during the immediately preceding four years; (2) the number of graduates who have taken and passed the psychology oral licensing examination during the immediately preceding four years; (3) the number of graduates who have become licensed psychologists in California during the immediately preceding four years; and (4) a description of the practice limitations sometimes imposed on

graduates of unaccredited institutions who hold doctoral degrees in psychology. The statute provides the text for this fourth requirement, which must be printed in large, bold type: "Prospective

students should be aware that as a graduate of an unaccredited school of psychology you may face restrictions that could include difficulty in obtaining licensing in a state outside of California and difficulty in obtaining a teaching job or appointment at an accredited college or university. It may also be difficult to work as a psychologist for some federal government or other public agencies, or to be appointed to the medical staff of a hospital. Some major managed care organizations, insurance companies, or preferred provider organizations may not reimburse individuals whose degrees are from unaccredited schools. Graduates of unaccredited schools may also face limitations in their abilities to be listed in the 'National Register of Health Service Providers' or to hold memberships in other major organizations of psychologists."

AB 400, which was sponsored by the California Psychological Association (CPA) and supported by BOP, was signed by the Governor on September 24, 2000 (Chapter 625, Statutes of 2000).

SB 1554 (Committee on Business and Professions), as amended August 22, 2000, makes a number of changes to the Psychology Licensing Law. SB 1554 amended Business and Professions Code section 2946 to instruct BOP to grant a license to any person who passes the CJPE exam and has been

HEALTH CARE REGULATORY AGENCIES

licensed for at least five years by a psychology licensing authority in another state or Canadian province, as long as its licensing requirements were "substantially equivalent" to California's requirements. The section authorizes such a foreign-licensed psychologist to practice in California without a California license for a period "not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs." Finally, SB 1554 amends section 2946 to delete BOP's authority to waive the exam for "psychologists who have made a significant contribution to psychology and have had at least ten years of experience."

SB 1554 also amends section 2960, which outlines the disciplinary actions BOP may take against a licensee for unprofessional conduct. The amendment eliminates a January 1, 2001 sunset date on the Board's authority to discipline a licensee who has sexual relations with a patient or former patient within two years following termination of therapy.

Newly added section 2969, which is identical to an existing provision in the Medical Practice Act, sets forth penalties for licensed psychologists or health facilities that fail to comply with BOP requests for patients' medical records during enforcement investigations. SB 1554 was signed by the Governor on September 28, 2000 (Chapter 836, Statutes of 2000).

SB 1889 (Figueroa), as amended August 23, 2000, clarifies Business and Professions Code section 27, which currently requires BOP 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 1241 (Rod Pacheco), as amended August 18, 2000, makes several changes to the Child Abuse and Neglect Reporting Act, which requires specified persons—including psychologists and psychological assistants—to report known or suspected child abuse. Generally, AB 1241 clarifies the list of specified persons who are required to report (so-called "mandated reporters"), redefines the term "child abuse" to include "child abuse and/or neglect," deletes the term "child protective agency" and designates a list of county agencies that are authorized and equipped to handle mandated reports, and reorders all sections of the Act dealing with mandated reporters so they are more easily understood and followed. AB 1242 was signed by the Governor on September 29, 2000 (Chapter 916, Statutes of 2000).

SB 1451 (Figueroa), as amended August 11, 2000, would have required the Office of Statewide Health Planning and

Development, in administering the California State Loan Repayment Program, to allocate the maximum loan repayment amount consistent with federal law to eligible mental health professionals. In his September 15, 2000 veto message, Governor Davis stated: "This bill would expand the State Loan Payment [sic] Program by adding mental health professionals to the list of those eligible for the program, which provides loan repayment assistance to health professionals who work in Health Professional Shortage Areas of the state. Because federal funding for this program is limited, this bill would dilute support for current program participants and create a General Fund pressure to fully fund all health care professionals who would become eligible for the program under this measure. Furthermore, the federal government allows states to choose which health professionals they would like to include in their state programs. Given this choice, only two states have included mental health professionals in their programs. Considering California's need for primary care physicians, nursing assistants, and physician assistants in areas of unmet primary care need, I cannot support this bill, which would dilute the funding available to recruit these health professionals."

AB 1975 (Romero and Lowenthal). Existing law mandates that the licensure requirements for professional personnel, including psychologists, working in state and other governmental health facilities should not be less rigorous than for those professionals in privately owned health facilities. However, the Department of Health Services (DHS) is authorized to grant a waiver from licensure requirements for persons employed in publicly operated health facilities who are gaining qualifying experience for licensure. Under previous law, for psychologists, the waiver could not exceed two years in duration from the commencement of state employment, with one additional year to be granted under extenuating circumstances. AB 1975 extends the waiver period to three years, but deletes DHS' authority to grant an additional extension. The new law also conforms the requirements for licensed professionals providing services in the state correctional system to those applicable to professional personnel in other state and governmental health facilities. AB 1975 was signed by Governor Davis on September 17, 2000 (Chapter 356, Statutes of 2000).

The following bills died in committee in 2000: **AB 1144 (Aanestad and Romero)**, which—as amended August 7, 2000—would have required BOP to establish and administer a certification process to grant licensed psychologists the authority to prescribe drugs to 18- to 65-year-old patients for the treatment of psychological disorders; and **SB 125 (Haynes)**, which would have prohibited the Board of Behavioral Sciences from utilizing any type of oral examination as a condition of licensure. [17:1 CRLR 78]

2001 LEGISLATION

SB 349 (Committee on Business and Professions), as amended March 26, 2001, would require payment of all accrued and unpaid license renewal fees in order for an indi-

HEALTH CARE REGULATORY AGENCIES

vidual to renew his/her expired license with BOP. Existing law permits BOP to collect only "the renewal fee in effect on the last regular renewal date." [S. *Appr*]

AB 131 (Corbett), as amended on April 2, 2001, concerns Medi-Cal, a program administered by DHS through which qualified low-income persons are provided with health care services. Under Medi-Cal, benefits are listed on a basic schedule, subject to utilization controls determined by the DHS Director. Utilization controls include restrictions on the number of services within a specified timeframe. This bill would provide that, with respect to specified services (including psychological services), the assigned limit may not be less than 24 visits in one calendar year. The bill would also prohibit DHS from assigning any additional timeframe limitations within that calendar year. [A. *Appr*]

AB 102 (Rod Pacheco), as amended March 29, 2001, is a technical clean-up bill to AB 1241 (Pacheco) (Chapter 916, Statutes of 2000) (see above). It would restore an inadvertently deleted provision of the Child Abuse and Neglect Reporting Act by allowing any mandated reporter—including psychologists and psychological assistants—who has "knowledge of or who reasonably suspects that mental suffering has been inflicted upon a child, or that his or her emotional well-being is endangered in any other way" to make a report to a child protective agency. [S. *PubS*]

AB 805 (Shelley), as amended April 23, 2001, would require each state agency that maintains a Web site (as does BOP) to provide links on its home page to appropriate non-English information. These links would be minimally required to include the following information provided in appropriate non-English languages (at least Spanish and Chinese): (1)

no less than one-half page of content explaining the duties and services of the agency, (2) telephone numbers and addresses for agency contacts, and (3) examples of electronic forms most commonly requested by speakers of the relevant language. The bill would also require each state agency that maintains a Web site to report annually to the Assembly concerning how it is complying with this legislative mandate. [A. *Appr*]

SB 537 (Vasconcellos), as amended April 3, 2001, would create within DCA the California Board of Alcohol and Drug Abuse Counselors (BADAC) and would provide for the registration and licensure by that Board of persons who render, for compensation, alcohol and other drug dependency counseling services. The bill would create three categories of licensure: (1) Licensed Addiction Counselor I, (2) Licensed Addiction Counselor II, and (3) Licensed Addiction Practitioner. The bill would also make it a misdemeanor for an unlicensed person to represent him/herself as licensed by BADAC to perform alcohol or drug counseling functions.

CPA opposes this bill, stating that it would allow "counselors" with minimal education to work with critically ill

drug and alcohol abusers. CPA notes that a substantial portion of drug- and alcohol-addicted individuals also suffer from co-occurring mental illness that can compound the difficulties in treating the patient. The association argues that there are no requirements in the bill for the proposed new counselor licensees to have training to recognize these types of conditions, nor does the bill prevent undereducated counselors from treating these more clinically complicated cases via the authority for counselors to provide "related services." [S. *B&P*]

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 BOP). 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*]

LITIGATION

In *National Association for the Advancement of Psychoanalysis v. California Board of Psychology*, 228 F.3d 1043 (Oct. 2, 2000), the U.S. Ninth Circuit Court of Appeals affirmed a lower court holding and rejected a constitutional challenge to California's requirement that psychoanalysts be licensed by the Board of Psychology. [16:2 *CRLR* 65-66]

Business and Professions Code section 2902(c) requires anyone holding him/herself out as a "psychoanalyst" or offering "psychoanalysis" to be licensed as

a psychologist by BOP. Plaintiff NAAP is a membership association of professional psychoanalysts dedicated to encouraging the study of, and improving the practice of, psychoanalysis. The individual plaintiffs are psychoanalysts who either live in California and wish to practice psychoanalysis here, or live in other states but intend to move to California and practice psychoanalysis; none of the individual plaintiffs are licensed by the Board as psychologists, nor has any plaintiff applied for licensure.

Plaintiffs challenged the licensure requirement on two constitutional grounds. First, plaintiffs alleged that the licensure requirement infringes upon their substantive due process and equal protection rights under the fourteenth amendment. The court first rejected plaintiffs' argument that it should review the licensure requirement under the "strict scrutiny" test, on grounds that psychoanalysts are not a "suspect class" entitled to heightened scrutiny, nor does the licensing requirement impinge some recognized "fundamental right" of either psychoanalysts or their patients. Analyzing the challenge under the more deferential "rational relation" test, the court found

In *National Association for the Advancement of Psychoanalysis v. California Board of Psychology*, the U.S. Ninth Circuit Court of Appeals rejected a constitutional challenge to California's requirement that psychoanalysts be licensed by the Board of Psychology.

HEALTH CARE REGULATORY AGENCIES

that the psychologist licensing scheme is rationally related to numerous legitimate government interests and rejected plaintiffs' fourteenth amendment claim.

Plaintiffs next contended that because psychoanalysis consists primarily of expressive conduct protected by the first amendment's free speech guarantee, a state licensing scheme that restricts that guarantee without a compelling governmental interest should be stricken. The Ninth Circuit rejected this argument, quoting the U.S. Supreme Court's decision in *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949): "[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." The court also quoted from *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978): "[T]he State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity."

In *Franklin v. Terr*, 201 F.3d 1098 (Dec. 9, 1999), the U.S. Ninth Circuit Court of Appeals held that a plaintiff who was convicted of murder using "repressed memory" evidence, but whose conviction was later overturned, failed to state a claim under 42 U.S.C. section 1983 against a therapist who allegedly conspired with others to testify falsely that the therapist had not hypnotized the plaintiff's daughter during her therapy.

In 1990, George Franklin was convicted of murdering Susan Nason twenty years earlier. His conviction was based on the testimony of his daughter, Eileen Franklin-Lipsker, a childhood friend of Nason. Franklin-Lipsker based her accusation against her father on a memory that she claimed was previously repressed but recently recovered during psychotherapy. In 1995, a federal district court overturned Franklin's murder conviction and the district attorney declined to retry him. Franklin then sued several defendants on various conspiracy theories under 42 U.S.C. section 1983, including Kirk Barrett (Franklin-Lipsker's therapist) and Lenore Terr (a psychiatrist who testified as an expert witness for the prosecution in Franklin's murder trial).

To state a claim under section 1983, the plaintiff must allege that he was deprived of a federal or constitutional right and that the defendant acted under color of state authority. The court noted that an allegation that a private person conspired with a state official would satisfy the requirement that the defendant act under color of state authority. Here, however, the defendant therapist was not a state actor, nor were any of his alleged co-conspirators. Therefore, the Ninth Circuit affirmed the district court's dismissal of the section 1983 claim against Barrett.

The Ninth Circuit also affirmed the dismissal of Franklin's section 1983 claim against Terr. According to the plaintiff's allegation, Terr conspired to present her own and

another witness's perjured testimony at trial. The court noted that witnesses have absolute immunity from liability for civil damages under section 1983 for giving perjured testimony at trial, citing *Briscoe v. LaHue*, 460 U.S. 325 (1983). The appellate court held that allowing a plaintiff to avoid the holding in *Briscoe* by alleging that the witness also engaged in a conspiracy to present perjured testimony would undermine the purposes served by granting absolute immunity to witnesses. Absolute immunity from civil liability is based on the policy of protecting the judicial process by ensuring that witnesses can perform their function without fear of harassment or intimidation. The appellate court stated that "because Terr's [the psychiatrist-defendant] alleged conspiratorial behavior is inextricably tied to her testimony, we find that she is immune from damages."

In *People v. Pedro M.*, 81 Cal. App. 4th 550 (June 12, 2000), petition for rehearing denied July 5, 2000, review denied September 27, 2000, the Second District Court of Appeal held that the psychotherapist-patient privilege does not preclude a therapist from testifying about a juvenile's progress in a court-ordered treatment plan.

The Second District Court of Appeal held that the psychotherapist-patient privilege does not preclude a therapist from testifying about a juvenile's progress in a court-ordered treatment plan.

The appellant, a juvenile, was originally placed in the Rancho San Antonio sexual offender program after being declared a ward of the juvenile court upon his admission that he had committed a

forcible lewd act upon a child under 14, as well as second degree commercial burglary. At that time, the juvenile court required as a condition of his probation that he "cooperate in a plan for psychiatric, psychological testing or treatment."

Eighteen months later, Pedro was removed from Rancho San Antonio due to his refusal to comply with his treatment plan. At a subsequent hearing, the juvenile court found that Pedro's noncompliance was a violation of the terms of his probation and committed him to the California Youth Authority. The appellant argued that the testimony of his Rancho San Antonio therapist at this second hearing was erroneously admitted after appellant invoked the psychotherapist-patient privilege (Evidence Code sections 1012 and 1014).

The Second District determined that the juvenile court's ability to evaluate appellant's compliance with his terms of probation would be severely diminished if the therapist were precluded from providing the court with feedback on appellant's progress in the court-ordered psychological treatment program. The court noted that Evidence Code section 1012 by its own terms permits the disclosure of confidential communications between patient and psychotherapist to "those to whom disclosure is reasonably necessary for...the accomplishment of the purpose for which the psychotherapist is consulted...." The court held that "those to whom disclosure is reasonably necessary" "would include the juvenile court, where the patient is a delinquent minor who has been properly directed to participate and cooperate in a sex offender treatment program in conjunction with a disposition

HEALTH CARE REGULATORY AGENCIES

order placing the minor on probation." The appellate court found that the juvenile court had properly limited the scope of the therapist's testimony so that details of the appellant's therapy sessions were not revealed, including any specific statements made by appellant, any advice given by the therapist, or any diagnosis made by the therapist. Thus the court held that under these circumstances "the psychotherapist-patient privilege did not preclude [the therapist] from testifying at the adjudication of the supplemental petition concerning appellant's participation and progress in the court-ordered treatment plan."

In *Johnston v. Yeamans*, No. CV787521 (Oct. 6, 2000), a Santa Clara County Superior Court judge dismissed a family court psychologist's defamation suit. The defendants in the case were a group of former family court litigants who were unhappy with the influence they perceived that plaintiff-psychologist Terry Johnston wielded over custody issues. The defendants had published various documents containing their criticisms of both Johnston specifically and the family court system in general. They had also written letters about Johnston to BOP as well as the American Psychological Association. In labeling Ms. Johnston's claim a "strategic lawsuit against public participation" ("SLAPP suit"), Judge Conrad Rushing ruled that the defendants were merely exercising their legitimate rights to free speech and to petition the government for reform. The judge pointed out that the defendants' complaints had indeed become the basis for the initiation of several family court reforms in Santa Clara County family court. "If the court were to allow this action to go forward, it may very well chill future public participation in the court's system of self-evaluation and administration, which would in turn jeopardize the quality of services the court provides to the community." On December 5, 2000, Johnston appealed the trial court's decision to the Sixth District Court of Appeal, where it is pending at this writing (No. H022369).

In *People v. Cain*, 82 Cal. App. 4th 81 (July 11, 2000, modified August 8, 2000), review denied October 25, 2000, the Fourth District Court of Appeals held that a criminal defendant does not have a state or federal constitutional right at a restitution hearing to call as a witness and cross-examine the psychotherapist who provided counseling to his/her victim.

Defendant pled no contest to a single count of infliction of corporal injury on his spouse and was placed on probation. As one of the conditions of his probation, defendant was ordered to pay \$1,890.75 to the State Board of Control (SBC) as reimbursement for SBC's payment of counseling fees for the victim, defendant's wife. On appeal, defendant challenged the court's restitution order on the grounds that (1) defendant was denied his constitutional rights at the restitution hearing when the judge relied upon hearsay evidence presented by the prosecution concerning the victim's counseling rather than permitting the defendant to call as a witness and cross-examine the therapist, and (2) the prosecution failed to present any evidence that the victim's counseling was directly related to defendant's criminal conduct.

According to the appellate court, "the scope of a criminal defendant's due process rights at a hearing to determine the amount of restitution is very limited." The court found no cases dealing specifically with a defendant's right of confrontation at a restitution hearing. The court noted cases limiting the due process rights of defendants at sentencing hearings, and stated that it could find "no persuasive justification for granting the defendant more due process protection at this hearing than at a sentencing hearing. Therefore, we conclude that the defendant does not have a state or federal constitutional right to cross-examine the psychotherapist who provides counseling to the victim of the defendant's crime."

On March 19, 2001, OAL issued 2001 *Regulatory Determination No. 2*, in which it concluded that a memorandum issued by the Department of Health Services that purported to amend existing regulations permitting clinical psychologists at licensed health care facilities to order patients to be placed in physical restraints is "underground rulemaking."

OAL's regulatory determination, issued in response to a petition filed in 1999 by the Union of American Physicians and Dentists, stems from a complicated mix of legislation, administrative rulemaking to implement the legislation, and litigation to invalidate the rulemaking. In 1978, the legislature enacted Health and Safety Code section 1316.5, which authorizes clinical psychologists to "carry professional responsibilities consistent with the scope of their licensure and their competence" in health facilities. The section also provided that where a health facility offers a service that both licensed physicians and clinical psychologists are permitted by law to perform, "the service may be performed by either, without discrimination." In response to this legislation, DHS promulgated regulations (sections 70577, 71545, 72461, 73409, and 79315, Title 22 of the CCR) prohibiting licensed psychologists from exercising primary responsibility in providing diagnosis and treatment of patients in health facilities licensed by DHS. Specifically, one regulation identified physicians as the only providers authorized to order physical restraint or seclusion for such patients.

DHS' regulations were subsequently challenged in *California Association of Psychology Providers v. Rank*, 51 Cal. 3d 1 (1990), in which the California Supreme Court agreed with the plaintiff psychologists that by enacting section 1316.5, the legislature had manifested its intent to allow clinical psychologists to take primary responsibility for the treatment and care of patients and to be able to function without the need for supervision by physicians. As a result of this holding, CPA filed a petition with DHS requesting that the regulations in question be amended to be consistent with *Rank* and section 1316.5. DHS granted the petition and, in 1994, issued a memorandum stating "Regulatory amendments will be promulgated and filed at a later time....However, effective immediately, the Department agrees to implement its intent to permit psychologists...to order restraint and/or seclusion in the same manner as a physician." DHS failed to follow

HEALTH CARE REGULATORY AGENCIES

through on its promise and never initiated formal rulemaking procedures to properly amend the regulations.

In its determination opinion, OAL noted that the issue in *Rank* was whether clinical psychologists should be allowed to take primary responsibility for patients; the decision did not directly address whether clinical psychologists may order physical restraints or seclusion. Because the court had not expressly decided this specific issue, OAL found that DHS was precluded from arguing that the challenged amendments to the physical restraint and seclusion regulation amounted to a "change without regulatory effect."

DHS next argued that its 1994 memorandum was tantamount to a blanket grant of "program flexibility." Health and Safety Code section 1276 authorizes DHS to grant "program flexibility" to facilities to enable them to use alternate approaches, other than those specifically required by regulation, as long as statutory requirements are still met. However, OAL noted that specific statutory procedures must be followed by applicants and licensees when submitting requests to DHS for program flexibility. OAL determined that program flexibility was intended for use by individual health facilities, after submission of a written request with supporting evidence, and on a case-by-case basis. OAL stated: "We believe section 1276 was not intended to allow the Department to issue general rules applicable to several facilities across the board, thereby skirting the requirements of the APA." Thus OAL found DHS' program flexibility argument inapplicable.

OAL concluded that the amendments to the regulation found in DHS' memorandum were indeed regulations. Thus, to be effective, DHS must adopt them pursuant to APA rulemaking procedures.

RECENT MEETINGS

At BOP's November 6, 1999 meeting, DCA legal counsel Dan Buntjer noted that a mandatory ethics training program for state officials has been implemented by DCA pursuant to the requirements of AB 2179 (Thompson) (Chapter 364, Statutes of 1998). The training consists of viewing a 114-minute video (which will also be available via Internet) with activity segments plus reviewing DCA's "Incompatible Work Activity Statement" and an information sheet on the Political Reform Act of 1974.

Also at the November 1999 meeting, staff noted that it had prepared a new Expert Reviewer Training Manual. The manual was sent to all of BOP's expert reviewers.

At BOP's March 4, 2000 meeting, the Examination Committee announced the results of a questionnaire administered to those who took the oral examination in January 2000. Applicants were generally satisfied with the environment in which they took the test, the application process, and the oral examiners themselves. However, their satisfaction with the vignette and test questions was less pronounced. Forty-one percent of the respondents felt that the oral exam failed to test for minimal competency; 42% said that it did not mea-

sure ability to apply integrated professional knowledge and skills to clinical situations; and 52% found the vignette not relevant to actual practice. The results announced at the August 26, 2000 meeting indicated even less satisfaction when the same questionnaire was administered following the June 2000 oral examination. Sixty-eight percent of the respondents felt that the exam was not administered in a timely manner; 57% stated that BOP staff failed to act in a professional, courteous, and appropriate manner during the application process; 52% said BOP did not provide them with sufficient information and instructions to prepare for the exam; and 54% found the structure of the exam to be inconsistent with the description provided in the candidate handbook. A clear majority exhibited dissatisfaction with the vignette and test questions: 54% said the oral exam failed to test for minimal competency; 56% felt that the oral exam did not measure the ability to apply knowledge to clinical situations; 53% found the oral exam questions irrelevant to actual practice; 57% deemed the vignette irrelevant; and 62% responded that the test questions were not even worded clearly.

At the May 13, 2000 meeting, the Examination Committee revealed the results of a survey given to the oral commissioners at the January examination. On the whole, the commissioners were very satisfied in all three survey areas: atmosphere, organization, and vignette and test questions. The highest percentage of negative responses was to the survey query concerning the amount of questions. Twenty-three percent responded that there were too many. The commissioners were apparently even more pleased with the June 2000 examination. In that survey, the highest negative response rate was to the inquiry concerning the clarity of the wording of the questions. Nevertheless, only 10% of the examiners found the language unclear—as compared to 62% of the examinees.

At BOP's May 13, 2000 meeting, the Consumer Education Committee announced that online license verification became operational April 28, 2000. This system allows consumers to verify the licensure status of psychologists over the Internet.

Also at its May 2000 meeting, BOP elected Martin Greenberg, Ph.D., as Board president and Emil Rodolfa, Ph.D., as vice president.

At BOP's August 26, 2000 meeting, Executive Officer Thomas O'Connor announced that staff had sent two budget change proposals (BCPs) to DCA. The purpose of the first BCP is to obtain three new positions for the Licensing and Exam Program. The second would enable BOP to take over complaint processing and license verification from the Medical Board. This proposal would have diverted funds paid to MBC and authorized BOP to add two new positions to address complaint processing and license verification. At the Board's November 4, 2000 meeting, O'Connor reported that the Department of Finance (DOF) denied both of these BCPs. O'Connor indicated that he would update these two proposals for resubmission in 2001. BOP also requested a realignment of its budget to redirect 15% of its enforcement budget

HEALTH CARE REGULATORY AGENCIES

to other budget line items involving public education. DOF approved this request, which will take effect July 1, 2001.

At BOP's November 4, 2000 meeting, O'Connor revealed that he had met with officials at DCA to discuss BOP's existing policy to issue a press release on every disciplinary action. O'Connor voiced his opinion that not all disciplinary actions are sufficiently newsworthy to warrant a press release, and he expressed concern that the media and public may perceive the Board's policy to be a wasteful utilization of resources, especially since all disciplinary actions taken by the Board are now posted on BOP's Web site and in its newsletter. In response, the Board unanimously voted to amend its press release policy to allow the Executive Officer, in consultation with the Deputy Director of DCA's Consumer Education Division, to determine on a case-by-case basis whether to issue a press release.

On December 6-8, 2000, BOP held its annual strategic planning session in Monterey at the Asilomar Conference Center. At this meeting, BOP adopted its 2001-02 Strategic

Plan in which it reaffirmed its mission statement, vision statement, and strategic goals whose achievement will enable it to fulfill its mission. BOP further identified numerous objectives in each of its major programs (enforcement, licensing/examinations, continuing education, education and outreach, regulation and legislation, and operational efficiency), along with performance indicators which may enable the Board to measure progress toward fulfillment of its objectives. BOP's 2001-02 Strategic Plan is posted on its Web site.

FUTURE MEETINGS

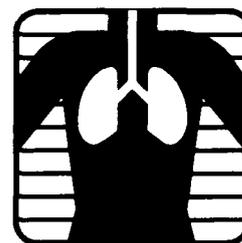
2001: May 4-5 in Riverside; August 17-18 in Sacramento; November 2-3 in San Diego.

2002: March 8-9 in El Segundo; May 10-11 in Riverside; August 16-17 in San Diego; November 15-16 in Sacramento.

2003: February 7-8 in San Francisco; May 9-10 in Los Angeles; August 15-16 in San Diego; November 14-15 in Sacramento.

Respiratory Care Board

Interim Executive Officer: Stephanie Nunez ♦ (916) 323-9983 ♦ Internet: www.rcb.ca.gov



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 (RCPA), 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, to ensure public health and safety.

By law, the nine-member Board is required to consist of four RCPs, four public members, and one physician. The Governor, Senate Rules Committee, and Assembly Speaker each appoint three members. At this writing, two of the three Governor-appointed positions (one RCP and one public member position) have been vacant since May 31, 2000. Fourteen people staff RCB. The Board is financed by licensing fees and receives no allocation from the state general fund.

MAJOR PROJECTS

RCB Negotiating Continued Use of National Licensing Exam

RCB continues to struggle with the issue of whether to continue its use of the national entry-level Certified Respiratory Therapist (CRT) licensing exam prepared and administered by the National Board for Respiratory Care (NBRC), or to develop its own California-specific licensing exam. RCB is dissatisfied with NBRC's 1999 proposal to shift to a computerized format effective January 1, 2000, administer the exam at H&R Block tax preparation locations, and significantly increase the cost of the exam to the Board and its licensure applicants. The Board has also expressed concerns over a 1992 security breach involving NBRC's CRT that was not reported to RCB until 1994.

At RCB's July 1999 meeting, Board members discussed 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 (OER) would adapt RCB's existing competency exam into a licensing exam and administer it at state-sanctioned secure sites throughout California. Under this proposal, the cost of administering a state-specific exam would be quite low—probably about \$50 per test, rather than the \$190 exam fee proposed for NBRC's computerized exam. Further, the security of the exam would be preserved because RCB would administer it only at state-sanctioned testing centers throughout California, for which DCA has recently contracted under a master services agree-