The Board of Registered Nursing (BRN) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 et seq., BRN licenses registered nurses (RNs) and certifies nurse-midwives (CNM), nurse practitioners (NP), nurse anesthetists (NA), public health nurses (PHN), and clinical nurse specialists (CNS). BRN also establishes accreditation requirements for California nursing schools and reviews nursing school criteria; receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. BRN’s regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR).

The nine-member Board consists of three public members, three RNs actively engaged in patient care, one licensed RN administrator of a nursing service, one nurse educator, and one licensed physician. All serve four-year terms. The Board, which is currently staffed by 92 people, is financed by licensing fees and receives no allocation from the general fund.

Major Projects

OAL Rejects Rules Governing RNs’ Assignment of Nursing Tasks to Unlicensed Personnel

As part of its ongoing commitment to patient safety, BRN has been working for over a year to draft regulations to guide RNs who assign nursing tasks to unlicensed assistive personnel. On September 19, the Board forwarded new sections 1407-1407.3, Title 16 of the CCR, to the Office of Administrative Law (OAL); among other things, the new rules would clarify the role, responsibility, and accountability of an RN in assigning nursing tasks to unlicensed assistive personnel, and specify criteria for assigning—but not assigning—nursing tasks to such individuals. However, OAL rejected the new rules on October 30.

Under section 1407.1, a direct-care registered nurse who wishes to assign a nursing task to unlicensed assistive personnel (defined as an individual, regardless of title, who performs nursing tasks without a current, active nursing license) must first (1) assess the client’s condition through observation of the client’s physical condition and behavior, signs and symptoms of illness, and reaction to treatment; (2) determine the complexity of the nursing task and consider the risk to client safety prior to assigning the task; and (3) instruct the unlicensed individual in the assigned nursing task, and verify or have knowledge of the competence of the unlicensed individual to perform the task prior to assigning it. Further, the direct-care registered nurse must determine the frequency for monitoring the performance of the nursing task and the method for providing supervision; and provide direct, immediate, or indirect supervision adequate to ensure the safety of the client. “Direct supervision” means the direct-care RN is in the same building or in close proximity to the unlicensed assistive personnel and is available to provide supervision; “immediate supervision” means the direct-care RN is physically present during the performance of nursing tasks; and “indirect supervision” means the direct-care RN is not in the same building or in close proximity to the unlicensed assistive personnel, but is available to provide supervision by electronic means or telecommunication.

Under section 1407.2, an RN may only assign a nursing task to unlicensed personnel if it meets all of the following criteria: (1) it is routine nursing care for a specific client; (2) it involves no modification from one client care situation to another; and (3) it has predictable results for the client. Under section 1407.3, an RN may not assign a nursing task to unlicensed personnel if the client is medically fragile (defined in section 1407(f) to mean the client is “acutely ill and in an unstable condition that requires a direct-care registered nurse with the competencies in Section 1443.5 to personally provide the nursing care to ensure client safety”), unless the direct-care RN provides immediate supervision and the nursing task is in accord with section 1407.2. An RN is also precluded from assigning to an unlicensed individual any nursing task which involves performance of an assessment (except for data collection in accord with sections 1407(g) and 1407.2); validation of assessment data; formulation of the nursing diagnosis for the individual client; formulation of the plan of care; evaluation of the client’s response to nursing care; client teaching; invasive lines; assessment of the client’s condition; interpretation of data, or decisionmaking; or sterile technique (except in the operating room if the direct-care RN provides supervision).

OAL rejected these regulations because it found BRN failed to comply with the clarity requirement in Government Code section 11349.1, and because BRN failed to adequately respond to several comments regarding the lack of clarity in some of the language. BRN has 120 days from the date of disapproval in which to modify the language of its new rules and resubmit the rulemaking to OAL.

High School Education or the Equivalent

On November 27, BRN published notice of its intent to amend section 1412, Title 16 of the CCR, which currently

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requires an applicant to provide the Board with evidence of a high school education or the equivalent in order to be licensed. Such evidence may come in several forms (including a General Education Development (GED) certificate, or a junior college, college, or university degree). However, the section does not state the Board’s primary educational requirement, and does not conform to the Board’s current procedure, under which an applicant need not produce evidence of high school education unless the Board requests it.

BRN seeks to amend section 1412 to require all applicants to meet the general education requirement of a high school education in the United States or the equivalent. The amended section requires applicants to produce evidence of such education only if the Board so requests; and also deletes a method of demonstrating educational achievement which has never been used. At this writing, BRN is scheduled to hold a hearing on the proposed changes on January 12, 1999.

Public Health Nurse Certification Program

Effective January 1, 1993, the Public Health Nurse Certification Program was transferred from the Department of Health Services (DHS) to BRN. During 1997, BRN published notice of its intent to amend several existing regulations in Title 16 of the CCR to properly incorporate the PHN program; the following regulatory changes were approved by OAL on September 2 and became effective on October 2, 1998:

• Section 1490 provides that a PHN certificate shall be issued by the Board to a person who completes and submits an application pursuant to section 1492 and who meets the qualifications and requirements under section 1491. The PHN certificate shall remain in effect as long as the applicant’s license to practice as a registered nurse in California is active.

• Section 1491 sets forth the qualifications and requirements necessary to obtain a PHN certificate. An applicant must have an active RN license in California and either a baccalaureate degree in nursing from a nursing school accredited by the National League for Nursing Accrediting Commission, the Commission on Collegiate Nursing Education, or any other accrediting body approved by BRN; or a baccalaureate degree in a field other than nursing and completion of a Board-approved specialty in public health nursing program associated with a baccalaureate school of nursing accredited by the National League for Nursing Accrediting Commission, the Commission on Collegiate Nursing Education, or any other accrediting body approved by BRN. Applicants must also have completed seven hours of training in the prevention, early detection, intervention, California reporting requirements, and treatment of child neglect and abuse.

• Section 1492 prescribes the application procedures for a person seeking a PHN certificate.

• Section 1493 sets forth BRN’s timeframes for processing an application for a PHN certificate.

• The Board repealed section 1494, which previously set forth a process whereby a PHN certificate applicant could appeal the Board’s failure to notify an applicant of its decision to issue or not issue a PHN certificate; this section does not conform to the Board’s existing appeal procedures.

Application for License

Effective June 19, two amendments to section 1410, Title 16 of the CCR, became effective. First, BRN amended subsection 1410(a), which previously required applicants for licensure to submit a "complete transcript on file indicating successful completion of the courses prescribed by the Board for licensure." By implication, this language precluded the Board from accepting an application without a transcript in situations where a transcript is unavailable due to circumstances beyond the applicant’s control (e.g., the applicant is a refugee from a country at war and the official transcript has been destroyed or is not accessible). The Board amended the section to permit consideration of a complete transcript "or documentation deemed equivalent by the Board."

BRN also deleted former subsection 1410(d), which stated that an applicant for license renewal must be made on a form prescribed by the Board and accompanied by the stated renewal fee; according to BRN, that section is duplicative of section 1419, Title 16 of the CCR.

Patient Abandonment

BRN has recently received several inquiries regarding what constitutes patient abandonment by a nurse and what actions may lead to discipline against a nurse’s license.

Mutual Recognition Model for Nursing Regulation

At its September and December meetings, BRN discussed the National Council of State Boards of Nursing’s (NCSBN)
“Mutual Recognition Model for Nursing Regulation.” The National Council is trying to fashion an interstate compact model that would essentially provide for the multistate regulation of registered nurses and licensed vocational nurses (LVNs), and provide nurses with mobility between states while maintaining a state-based system of discipline and licensure. Under NCSBN’s compact agreement, state boards of nursing that agree to participate would recognize an RN or LVN license issued by all states which are parties to the agreement. The RN or LVN would, thereby, be licensed in the home state of residence but authorized to practice in any state in which a compact agreement has been executed. Licensees in one state would be permitted to work in a participating state without obtaining license in the second state. While Utah has already passed legislation adopting the compact, no state is obligated to do so; however, for those states which do participate, implementation is expected to occur after January 1, 2000.

In conjunction with the state Board of Vocational Nursing and Psychiatric Technicians, BRN presented two joint informational forums on the model on October 28–29. Approximately 200 people attended the forums, including nurse administrators, nurse recruiters, program directors, practitioners, and representatives of professional organizations and unions. Both BRN and BVNPT have expressed grave concerns about the compact and its lack of consumer protection. While nurses may practice in any of the compact states, the jurisdiction of a state board to investigate complaints and discipline licenses is generally restricted to its own licensees and its own boundaries; thus, BRN foresees marked increases in enforcement costs relative to cases of interstate regulation. Also, a state entering into the agreement would be required to relinquish sovereignty to take action against the actual license of those nurses practicing within its boundaries, irrespective of the impact on consumer safety. Based on these and other issues, both BRN and BVNPT have decided not to participate in the compact; participants at both forums expressed unanimous support of the boards’ decisions.

Legislation

AB 1439 (Granlund), as amended August 28, requires health care practitioners to wear a name tag indicating their license status; exempted from this requirement are health care practitioners who work in an office or practice and whose licenses are prominently displayed, and those who work in a psychiatric setting or in a setting that is not licensed by the state. The bill also prohibits anyone but a registered nurse or a licensed vocational nurse from using the title “nurse”; however, a certified nurse’s aide may use his/her title. BRN supported this bill, which was signed by the Governor on September 29 (Chapter 1013, Statutes of 1998).

AB 2429 (Knox), as amended August 24, would have provided for the award of grants to community college districts for the purpose of developing two types of curricula and pilot programs, one of which would have provided training for RNs in the nursing specialty areas of critical care, obstetrics, pediatrics, neonatal intensive care, and operating room nursing. The bill would have appropriated $149,000 from the general fund to the Chancellor of the California Community Colleges for expenditure on these curricula. Although supported by the Board, this bill was vetoed by the Governor on September 28. The Governor stated that the bill “duplicates the efforts of the existing Economic Development Program within the community colleges.... While I recognize that the fields identified in this bill are important, I cannot support earmarking funds for specific fields because it overrides the existing process that is better able to respond to shifting demands for industry-related training.”

AB 2721 (Miller), as amended February 23, provides that any BRN licensee who engages in, or aids and abets, certain prostitution-related crimes on the work premises is guilty of unprofessional conduct and subject to disciplinary action, including license revocation. This bill also amends section 130 of Business and Professions Code, specifying that the term of office for BRN members is four years, with terms expiring on June 1. This bill was signed by the Governor on September 29 (Chapter 971, Statutes of 1998).

AB 2802 (Committee on Consumer Protection, Governmental Efficiency and Economic Development), as amended July 23, prohibits a registered nurse from petitioning BRN to reinstate a license that has been revoked while the nurse is required by order to register as a sex offender. Prior law prohibited a petition for reinstatement only if the registered nurse was required to register as a mentally disordered sex offender. This bill was supported by the Board and was signed by the Governor on September 29 (Chapter 970, Statutes of 1998).

SB 1125 (Alpert), as amended August 24, would have prohibited a general acute care hospital, an acute psychiatric hospital, and a special hospital from assigning an unlicensed person to perform nursing functions in lieu of a registered nurse, or from allowing unlicensed personnel under the direct clinical supervision of a registered nurse to perform certain functions (including, but not limited to, administration of medication, venipuncture, moderate complexity laboratory tests, or sterile procedures relating to direct patient care). This bill would also have required general acute care hospitals, acute psychiatric hospitals, and special hospitals to adopt written policies and procedures for training nursing staff, and required DHS to adopt regulations that establish minimum and specific licensed nurse-to-patient ratios by January 1, 2000. This bill was supported by BRN, but was vetoed by the Governor on September 29. The Governor stated that DHS “completely revised regulations regarding nursing services in general acute care hospitals two years ago.... The regulations allow for an individual approach to staffing...[and]
require that nurses be trained and determined competent prior to assignment to a hospital unit. Additionally, unlicensed personnel...working under the supervision of a nurse or physician have been used successfully. The Board of Nursing is currently working on regulations that would clarify the nursing tasks to be carried out by unlicensed personnel" (see MAJOR PROJECTS).

SB 1140 (Committee on Health and Human Services), as amended July 20, requires BRN to consider, in establishing standards for continuing education (CE), a course on the special needs of individuals and families facing end-of-life issues, and authorizes the Board to include a course on pain management in its CE requirements. This bill, which was supported by BRN in order to foster more compassionate and comprehensive patient care, was signed by the Governor on September 23 (Chapter 791, Statutes of 1998).

SB 1816 (Polanco), as amended May 20, would have appropriated $145,000 from BRN's fund to the Board in order to conduct an ongoing assessment of the demographics of the nursing work force in relation to the population of the state, and to make recommendations to the legislature regarding nurse education and training programs. BRN supported this bill, but Governor Wilson vetoed it on September 11. The Governor questioned whether the proposed assessment of the demographics of the nursing work force would accomplish the purpose of the bill, which he characterized as, "directing more resources to nurse education programs." Furthermore, Governor Wilson noted that BRN may make its recommendations to the legislature without this demographic assessment (see RECENT MEETINGS).

SB 1940 (Peace), as amended June 15, requires services provided by nurse practitioners and physician assistants to be included in an official medical fee schedule which establishes reasonable maximum fees paid for by medical services provided under workers' compensation laws. Supported by BRN, this bill was signed by the Governor on August 24 (Chapter 388, Statutes of 1998).

SB 2238 (Committee on Business and Professions), as amended August 26, requires BRN to adopt regulations requiring its licensees to identify themselves to patients as being licensed by the State of California. This bill also requires BRN, by December 31, 1999, to submit to the DCA Director its approach for ensuring periodic evaluation of every licensing exam that it administers. This bill was signed by the Governor on September 26 (Chapter 879, Statutes of 1998).

In 1990, 50% of nurses were at their positions for more than five years; this number increased to 59% in 1997.

Recent Meetings

At its September 11 meeting, BRN reviewed its 1997–98 enforcement statistics. Overall, the Board received 1,675 complaints, opened 1,255 investigations, referred 227 cases to the Attorney General’s Office, filed 160 formal accusations, and took a total of 145 disciplinary actions against licensees. Staff noted that, compared to 1996–97, the number of complaints increased by 10% (from 1,525 to 1,675); the number of investigations opened increased by 35% (from 930 to 1,255); and the number of accusations filed against licensees increased by 23% (from 130 to 160). However, total disciplinary actions against licensees were down by 13% (145 in 1997–98, compared with 164 in 1996–97). Of the 145 licensees disciplined, 43% were by stipulated agreement.

Also in September, the Board announced that it has changed the location of its Los Angeles office. Effective July 1, 1998, BRN’s Los Angeles office is located at 1170 Durfee Avenue, Suite G, South El Monte, CA 91733. The telephone number is (626) 575-7080.

At its December 4 meeting, BRN discussed its involvement in a random sampling of 4,000 California nurses by the Institute for Social Research at California State University Sacramento during the summer of 1997. Staff announced that a draft report describing the latest demographics should be available in January 1999; this report will enable comparisons with the Board’s prior surveys of 1993 and 1990. [14:4 CRLR 98; 10:4 CRLR 103] Initial reports indicate the following statistics about the nursing profession in California: The average age of nurses in California is 45; the average work week is 36.3 hours; the average salary for RNs in 1997 was $45,000; the number of male nurses is up from 5.4% in 1990 to 7.5% in 1997; 44% of nurses receive an associate degree, with 24% receiving their education in California; three-fifths of all nurses are involved in direct care while 6% now act as case managers; and nurses tend to stay in the same position longer and are experiencing fewer breaks in employment. In 1990, 50% of nurses were at their positions for more than five years; this number increased to 59% in 1997. BRN will make the final report available to outside groups and welcomes any additional comments.

Future Meetings

• February 4–5, 1999 in San Diego.
• April 8–9, 1999 in San Francisco.
• June 3–4, 1999 in Los Angeles.
• September 9–10, 1999 in Sacramento.
• December 2–3, 1999 in Los Angeles.