

licentiates to provide notice to patients that they are licensed in California. The bill also requires BPM to report the method used for period evaluation of its licensing examinations to the DCA Director by December 31, 1999. The Governor signed SB 2238 on September 26 (Chapter 879, Statutes of 1998).

AB 1439 (Granlund), as amended August 28, adds section 680 to the Business and Professions Code, and requires a health care practitioner to display his/her name and license status on a name tag in large type. Alternatively, a health care worker may prominently display his/her license in the practice or office. This bill was signed by the Governor on September 29 (Chapter 1013, Statutes of 1998).

AB 2721 (Miller), as amended August 10, provides that any BPM licensee who engages in, or aids and abets, certain prostitution-related crimes in the work premises is guilty of

unprofessional conduct and subject to disciplinary action. AB 2721 also amends section 130 of the Business and Professions Code, specifying that the term of office of BPM members is four years, expiring June 1. The Governor signed AB 2721 on September 29 (Chapter 971, Statutes of 1998).

Recent Meetings

At its November 6 meeting, BPM elected public member Iva P. Greene as Board President and Michael A. DiGiacomo, DPM, as Vice-President for calendar year 1999.

Future Meetings

- February 5, 1999 in Sacramento.
- April 30, 1999 in San Francisco.
- November 5, 1999 in Los Angeles.

Board of Psychology

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

The Board of Psychology (BOP) regulates licensed psychologists, registered psychologists, and psychological assistants under 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, and no member may serve for more than two consecutive terms.

Major Projects

BOP Undergoes Sunset Review

During the fall of 1997, the necessity and performance of BOP were reviewed by the Joint Legislative Sunset Review Committee (JLSRC) and DCA under the "sunset review" process set forth in SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). Under the sunset process, the legislature inserts an expiration date into the enabling act of each DCA regulatory board; prior to that date, the JLSRC must review the need for and performance of the board, and the legislature must pass a bill extending the life of the agency or it ceases to exist. [15:4 CRLR 32] As required under the statute, BOP submitted a lengthy report describing its mission, functions, and activities, and answered questions from JLSRC members at a hearing on November 19, 1997.

In February 1998, DCA issued its report and recommendations on BOP. Citing the great potential of harm to consumers of psychological services if those services are provided in an incompetent manner, DCA recommended that the state continue to regulate psychologists through BOP. The Department also suggested increasing the Board's membership from eight to nine members, continuing the use of the Board's oral examination, and adding incompetence as grounds for disciplinary action. In its report released in April, the JLSRC concurred with DCA, and added other recommendations: (1) the clarification of statutory provisions which prohibit therapist-client sexual relations, (2) authorizing the Board to adopt standards of ethical conduct relating to the practice of psychology, (3) amendments to the Business and Professions Code to permit the Board to immediately suspend the license of a psychologist if the licensee has been incarcerated after conviction of a felony; and (4) legislative amendments requiring licensees to display consumer information. SB 1983 (Greene) (Chapter 589, Statutes of 1998) and SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) implement many of the reforms suggested by DCA and the JLSRC (see LEGISLATION).

Board Adopts Emergency Regulations to Implement SB 1983

At a special meeting held via teleconference on December 22, BOP amended sections 1388(b) and 1388.5, Title 16 of the CCR, on an emergency basis to implement a provision of SB 1983 (Greene) which requires the Board to establish, by regulation, passing grades for its licensing examinations



(see LEGISLATION). The Board justified the special meeting on grounds that SB 1983 became effective on January 1, 1999, and oral examinations for licensure were scheduled to be administered on January 9 and 16, 1999. The passing scores must be in regulation by the time of the examinations.

BOP amended section 1388(b), regarding the written Examination for Professional Practice in Psychology (EPPP), to specify that it would apply the national pass point to the EPPP as recommended by the Association of State and Provincial Psychology Boards (ASPPB). Currently, the national recommended pass point is 140.

The Board also amended section 1388.5 to address the pass point for its oral examination. New subsection (d) states that the process to determine the pass point on the oral exam will be overseen by DCA's Office of Examination Resources. The pass point on the oral exam shall be at a level of minimally acceptable competence, which shall be empirically defined by applying a criterion referenced methodology. The final score on the oral licensing examination shall be pass/fail.

At this writing, the Office of Administrative Law (OAL) is expected to approve the Board's emergency regulations during the first week in January; thereafter, they will be effective for 120 days. During that period, the Board must engage in the formal rulemaking process in order to permanently adopt these regulatory changes.

BOP Amends CE Regulations

Following a public hearing at its November 14 meeting, BOP adopted several amendments to sections 1397.60-.65 and 1397.68, Title 16 of the CCR, which implement the Board's continuing education (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 are intended to define certain terms in the regulations, 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. The Board's amendments include the following:

- The CE regulations permit psychologists to gain CE credit for participation in conferences, grand rounds, and in-service training programs. However, none of these terms are defined in the regulations; the adopted amendments define all three terms for the purposes of gaining CE credit.
- The Board's existing regulations generally prohibit credit for home study and require onsite participation. The amendments authorize a licensee who qualifies for a reasonable accommodation under the Americans with Disabilities Act to complete all or part of his/her CE requirement through a "distance learning program" approved by an accrediting agency. The amendments define "distance learning programs" to include courses delivered via the Internet, CD-ROM, satellite downlink, correspondence courses, and home study. Other licensees may also take advantage of distance learning programs to satisfy up to 20% of the CE required in each renewal cycle.

- BOP also amended section 1397.64(a)(1)(A) to specify that acceptable CE courses must be pertinent to the practice of psychology "at a post-licensure level. Courses predominantly focused on business issues, or marketing, or that are predominantly designed to explore opportunities for personal growth are not eligible for credit. Course material must have a clinical relevance or direct application to a consumer of psychological services." At the hearing, representatives of the California Psychological Association (CPA) expressed concern that the regulations do not allow credit for CE courses that improve the "professional development" of psychologists. They argued that such courses would benefit both the licensee and consumers of psychological services. CPA offered substitute language that would allow such courses to make up a limited part of the CE requirement. The Board rejected CPA's substitute language and adopted the changes as proposed.
- The proposed regulations amend section 1397.65(c)(8) to state that the required evaluation mechanism used to assess the achievement of CE course participants "shall be appropriate to the length of the course and complexity of the material being presented and in accordance with generally accepted adult education evaluation models."
- Amendments to section 1397.68 increase the course attendee fee which CE providers must pay to the course accrediting agency from \$5 to \$7 per licensee; and establish a CE conference fee of \$100 to be paid by the CE provider to the accrediting agency. This fee would replace the \$35 per course fee currently charged to conference providers.

Following the hearing, the Board adopted the proposed changes with several minor modifications. BOP published the modifications for a 15-day comment period on December 15; at this writing, the Board has not yet submitted the rules to OAL.

Board Holds Informal Hearing on Proposed Changes to Supervision Regulations

On November 13, the Board held an informal hearing during its San Diego meeting to discuss possible changes to section 1387, Title 16 of the CCR, its supervised professional experience (SPE) regulation. Business and Professions Code section 2914(c) requires applicants for a psychologist license to complete two years of SPE "under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations"; section 1387 is the regulation which fleshes out the precise parameters of the SPE requirement. Board staff prepared a document detailing the changes it believes are necessary to reorganize the existing regulation and to address two main issues raised by section 1387(b): (1) its requirement that qualified primary supervisors have three years of post-licensure experience, and (2) its requirement that qualified primary supervisors be onsite and available to trainees for 50% of the supervisee's work schedule ("a minimum of one-half time in the same work setting at the same time as the person supervised").

The Board's informational document recommended that the three-year post-licensure experience requirement for supervisors be eliminated. In its place, the Board suggested amendments requiring a supervisor to provide, under penalty of perjury, a "self-documenting certification" that he/she is qualified to supervise psychology trainees by virtue of education, training, and experience. Board member Emil Rodolfa, Ph.D., explained that the current literature does not support the notion that three years of post-licensure experience contributes to better supervision. The data do indicate, however, that supervisors who have training in the process, procedures, and theories of supervision tend to do a better job of supervising trainees.

The Board also sought comments on its proposal to amend the portion of section 1387(b) that requires a supervisor to be onsite with the supervisee one-half of the time that the supervisee is accruing SPE.

BOP's draft would eliminate the 50% onsite rule, and state instead that the supervisor should be "available to the supervisee 100% of the time the supervisee is accruing SPE."

BOP's draft would eliminate the 50% onsite rule, and state instead that the supervisor should be "available to the supervisee 100% of the time the supervisee is accruing SPE." Such availability could be in person or via telephone, beeper, or other appropriate technology. This proposal received criticism from several attendees at the hearing. The critics felt that the proposed rule would weaken the supervisor-intern relationship, and lead to poorer supervision and poorer performance by interns. One witness noted that a supervisee would be less likely to beep or telephone his/her supervisor if he/she were offsite, for fear that the intern might "bother" the supervisor needlessly. He noted that trainees are more likely to seek advice if they could pop their head in their supervisor's door and ask a quick question.

At this writing, BOP is scheduled to hold another informal hearing on its proposed changes to section 1387 at its March 5 meeting in Sacramento.

BOP Adopts Declaratory Decision Regulation

Following a public hearing at its August 28 meeting, the Board adopted section 1380.7, Title 16 of the CCR, entitled "Declaratory Decisions." Government Code section 11465.10 *et seq.*, part of the state's Administrative Procedure Act, permits BOP to issue a declaratory decision, in effect an advisory opinion concerning assumed facts submitted by an interested party. Proposed section 1380.7 states that no decision or opinion issued by the BOP is a declaratory decision unless the decision or opinion specifically states that it is a "declaratory decision." At this writing, the proposed amendment is pending at OAL.

BOP Amends Citation and Fine Regulation

Following a public hearing at its August 28 meeting, the Board voted to amend section 1397.51, Title 16 of the CCR, which identifies all statutes and regulations the violation of which is grounds for a citation and fine under Business and Professions Code section 125.3. The amendment to section 1397.51 allows the Board to issue a citation and fine to su-

perisors who fail to supervise as required by the Board's statute and regulations, and to licensees for failure to complete continuing education requirements. At this writing, the proposed amendment is pending at OAL.

Board Amends Child Abuse Assessment Training Regulation

On December 1, OAL approved BOP's amendments to section 1387.7, Title 16 of the CCR, which implements Business and Professions Code section 28's requirement that BOP initial and renewal licensure applicants must, in addition to all other requirements, have completed seven hours of training in the area of child abuse assessment and reporting. Previously, section 1387.7 restricted the required seven hours to classroom hours; the Board's amendment elimi-

minates that restriction by changing the term "classroom hours" to "instructional hours." All other requirements for the training remain intact. The Board's amendment took effect on December 31, 1998.

Board Amends Exam Waiver Regulation

Also on December 1, OAL approved the Board's amendments to section 1388.6, Title 16 of the CCR. That section implements Business and Professions Code section 2946, which permits the Board to waive all, or parts of, the oral or written examinations for applicants who have demonstrated competence in the areas covered by those parts of the examinations. Previously, section 1388.6 waived the written examination for persons licensed for at least three years in another state, Canadian province, or U.S. territory, if certain other requirements are met; such candidates are required to take and pass a specified portion of the oral examination. BOP's amendments now require such applicants to be licensed for at least five years in another state, Canadian province, or U.S. territory in order for the written exam to be waived; such applicants are still required to take and pass a portion of the oral exam.

BOP's amendments to section 1388.6 also waive the written examination for applicants holding a Certificate of Professional Qualification issued by the ASPPB. Such applicants are still required to successfully pass that portion of the oral examination which examines knowledge of California laws governing the practice of psychology.

The Board's amendments became effective on December 31, 1998.

Written Examination Fee to Increase by \$100

On October 22, OAL approved BOP's amendment to section 1392, Title 16 of the CCR, which increases the written examination fee from \$332 to \$432 to offset the \$100 increase in the fee it pays to the ASPPB, the exam's provider. The fee increase takes effect on April 1, 1999, the date of the next written examination.

BOP Continues Consumer Education/Customer Service Effort

The Board continues its efforts at consumer education and customer service via its Internet website and through its quarterly publication entitled *BOP Update*. Instantly available on the Board's website are "recent updates" on newly-adopted regulations, Board interpretations of court decisions, and other emerging issues; a "consumer guide" and directions for filing a complaint against a Board licensee; back issues of *BOP Update*; and an interactive customer service evaluation form that allows the public to evaluate the service provided by the Board staff.

Legislation

SB 1983 (Greene), as amended July 23, extends the Board of Psychology's existence until July 1, 2005 (see MAJOR PROJECTS), and removes BOP from the jurisdiction of the Medical Board of California. The bill also increases the membership of the Board to nine members by adding one public member; establishes the code of ethics of the American Psychological Association as the Board's standards of ethical conduct relating to the practice of psychology; makes ineligible for license or registration any person who must register as a sex offender pursuant to Penal Code section 209; and assures automatic license suspension during any time that a licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Finally, the bill requires BOP to establish, by regulation, passing grades for license examinations; previous law specified a passing grade of 75%. The Governor signed SB 1983 on September 17 (Chapter 589, Statutes of 1998).

SB 2238 (Committee on Business and Professions), as amended August 26, requires BOP to initiate the process of adopting regulations on or before June 30, 1999, to require licensees to provide notice to clients that they are licensed in the State of California; the bill also requires BOP to submit to the DCA Director, by December 31, 1999, its method for ensuring periodic evaluation of every licensing exam that it administers.

SB 2238 also clarifies current law prohibiting BOP licensees from having sexual relations with former patients. The bill specifies that, effective January 1, 1999, any act of sexual relations with a patient or former patient within two years following termination of therapy is unprofessional conduct and grounds for discipline. The bill sunsets this prohibition as of January 1, 2001, and requires BOP to report on the efficacy of the prohibition by January 1, 2000. SB 2238 was signed by the Governor on September 26 (Chapter 879, Statutes of 1998).

SB 2050 (Polanco and Rainey), as amended April 13, would have authorized psychologists who meet specified criteria to prescribe medication; existing law prohibits psychologists from prescribing medication. The bill would have required the BOP to administer a certification process to grant licensed psychologists the authority to write prescriptions. The bill was sponsored by the California Psychological Association and was intended to address the mental health needs

of patients in rural counties, especially their need for prescription medication. The bill failed passage in the Senate Business and Professions Committee on April 27. In response to the failure of SB 2050, SB 983 was introduced to deal with this same issue of psychologists and medication, albeit in a more modest way (see below).

SB 983 (Polanco and Rainey), as amended July 20, requires BOP to encourage licensed psychologists to take CE courses in psychopharmacology and the biological basis of behavior; encourage institutions offering doctorate degree programs in psychology to include education and training in psychopharmacology and related topics; and develop education and training guidelines for psychologists whose practice includes patients who may require psychopharmacological treatment. SB 983 was signed by the Governor on September 24 (Chapter 822, Statutes of 1998).

AB 2721 (Miller), as amended August 10, sets the term of office for BOP members at four years, expiring on June 1. The bill also provides that any licensee of BOP who engages in, or aids and abets, prostitution in the workplace is guilty of unprofessional conduct and is subject to disciplinary action against his or her license; the bill also provides for the imposition of a civil penalty in such cases. The Governor signed AB 2721 on September 29 (Chapter 971, Statutes of 1998).

AB 2802 (Assembly Consumer Protection Committee), as amended July 23, amends Business and Professions Code section 2984 to provide that a license which has expired may be renewed at any time within three years after its expiration on filing of an application for renewal, payment of the renewal fee in effect on the last regular renewal date, and payment of any applicable delinquency fee. The Governor signed this bill on September 29 (Chapter 970, Statutes of 1998).

Recent Meetings

At its August 28–29 meeting, BOP discussed minor changes to its draft "Statement on Medication." The statement attempts to describe the role psychologists play in assisting physicians in prescribing medication to mental health patients. While recognizing that current law prohibits psychologists from prescribing medication, the statement notes that psychologists are often the first mental health professional to treat patients who may need psychotropic medications prescribed by a physician. The Board agreed to insert the following sentences in the draft statement: "A psychologist has primary responsibility to monitor a patient's progress in psychotherapy, which includes assisting in monitoring the changes caused by drug therapy. Psychologists must maintain a close consultative relationship with physician caregivers in order to assure appropriate overall treatment of the patient." After hearing from Dr. Charles Faltz of the California Psychological Association and two other witnesses in favor of the policy statement, the Board voted 4–2 to adopt the policy.

Also at the August meeting, the Board acknowledged receipt of the recommendations of the CPA concerning BOP's disciplinary process. The CPA had sent the Board a document listing sixteen specific recommendations about the

Board's disciplinary procedures. While standing by its current procedures, BOP promised to continue the dialogue with the CPA over these issues.

Karen Johnson, BOP's Licensing Exam Coordinator, presented the results of the April 8 administration of the EPPP. One hundred sixty-eight (168) candidates (53%) passed the exam, and 152 (47%) failed. The results of the June oral examination were also released; of the 512 candidates who took the oral exam, 287 (56.05%) passed, and 225 (43.95%) failed. The passing rate for the June oral exam was substantially higher than the 44.3% passing rate for the oral exam administered in January. Ms. Johnson also reviewed the results of a candidate exit questionnaire, which was distributed to oral exam candidates for the first time at the June oral exam. Of 512 candidates taking the exam, 271 responded. The majority of the responses were favorable.

Also at the August meeting, the Board discussed its 1997-98 enforcement statistics. The number of accusations filed is down: 20 were filed in 1997-1998, versus 34 in 1996-1997. The number of cases sent to the Attorney General's Office

for prosecution, however, was up: 65 cases were forwarded to the AG in 1997-98, compared to 55 in 1996-1997. Overall, in 1997-98, BOP received 521 complaints, opened 141 investigations, sent 65 cases to the AG, filed 20 accusations, and took a total of 66 disciplinary actions.

At its November 13-14 meeting, the Board discussed a document prepared by staff entitled "Time Line: Legal/Ethical Landmarks: Psychologist/Patient Sexual Misconduct." The document outlines the progress the Board and the legislature have made since 1980 in combating this difficult problem, up to and including the recent prohibition of sexual relations with a former patient within two years after termination of therapy (see LEGISLATION).

Future Meetings

- January 15, 1999 in Burlingame.
- March 5-6, 1999 in Sacramento.
- May 14-15, 1999 in Los Angeles.
- August 13-14, 1999 in San Francisco.
- November 5-6, 1999 in San Diego.

Respiratory Care Board

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

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

RCB is charged with examining and licensing qualified RCPs, setting standards for the practice of respiratory care in California, inspecting hospitals and other facilities in which respiratory care is delivered, investigating alleged wrongdoing by licensees, and taking appropriate disciplinary action, including license suspension or revocation, in order to ensure public health and safety.

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

Approximately 30% of applicants for RCP licensure have either criminal conviction or substance abuse histories.

Major Projects

RCB Undergoes Sunset Review

During the fall of 1997, the necessity and performance of RCB were reviewed by the Joint Legislative Sunset Review Committee (JLSRC) and DCA under the "sunset review" process set forth in SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). Under the sunset process, the legislature inserts an expiration date into the enabling act of each DCA regulatory board; prior to that date, the JLSRC must review the need

for and performance of the board, and the legislature must pass a bill extending the life of the agency or it ceases to exist. [15:4 CRLR 32] As required under the statute, RCB submitted a lengthy report describing its mission, functions, and activities on October 1, and answered questions from JLSRC members at a hearing on November 17, 1997.

During those years, RCB was required to cease its use of the Attorney General's Office to file accusations and prosecute enforcement cases by February or March. Those fiscal problems started in 1990, when the legislature transferred \$785,000 from RCB's reserve fund to the general fund in order to assist in resolving the state's severe financial crisis. [12:4 CRLR

During those years, RCB was required to cease its use of the Attorney General's Office to file accusations and prosecute enforcement cases by February or March. Those fiscal problems started in 1990, when the legislature transferred \$785,000 from RCB's reserve fund to the general fund in order to assist in resolving the state's severe financial crisis. [12:4 CRLR

