HEALTH CARE REGULATORY AGENCIES

increased steadily from 1990 to 1997. The standard work week has remained constant since 1993 at 36.3 hours. The sample was evenly split between working eight-hour days and nine-to-twelve-hour days, yielding an average of 9.1 hours per day. Working one to four hours per week of unplanned overtime is a common experience shared by two-thirds of the respondents. The survey also revealed that mean nursing income jumped dramatically between 1990 and 1997, up 43% from $31,504 to $45,073, and constituted a larger share of household income.

According to the survey, California has the lowest number of employed nurses per 100,000 residents of any state (566, compared with a national average of 798).

According to the survey, California has the highest rates are found in Napa/Sonoma (756), San Francisco and the East Bay (686), and San Jose (647). Employment opportunities for California's RNs improved markedly in the 1990s. Since 1990, the portion of non-retired respondents currently working in nursing has increased from 83% to 89.6%, while the proportion working outside nursing has declined 25% (from 5.6% to 4.2%), and the proportion unemployed has been cut almost in half (from 11.4% to 6.2%).

FUTURE MEETINGS

- June 3–4, 1999 in Los Angeles.
- September 9–10, 1999 in Sacramento.
- December 2–3, 1999 in Riverside.

Board of Optometry

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The nine-member Board of Optometry is a consumer protection agency within the state Department of Consumer Affairs (DCA). The Governor appoints six practicing optometrists and one public member; the Assembly Speaker appoints one public member; and the Senate Rules Committee appoints one public member. In addition to the statutorily-mandated Therapeutic Pharmaceutical Advisory Committee, the Board maintains eight standing committees to assist it in the performance of its duties. The Executive Officer and a permanent full-time staff of six support the Board from its office in Sacramento.

Established in Business and Professions Code section 3000 et seq., the Board is charged with protecting consumers from unsatisfactory eye care provided by incompetent, unlicensed, or unethical practitioners; enforcing the provisions of the Optometry Practice Act; and educating licensees and the public on vision care issues. The Board’s regulations are codified in Division 15, Title 16 of the California Code of Regulations (CCR).

The Board’s duties include licensing individual optometrists and branch offices, and registering optometric corporations; establishing educational and examination requirements for optometrists and additional certification requirements for those optometrists who use and prescribe therapeutic pharmaceutical agents; accrediting optometric educational institutions; administering licensing examinations; and promulgating regulations related to the practice of optometry in California. Assisted by DCA’s Division of Investigation and the Office of the Attorney General, the Board also investigates allegations of incompetent, unprofessional, and unlawful conduct by licensees, and takes disciplinary action, including license revocation, when warranted.

The Board of Optometry meets approximately four times per year, alternating among Sacramento, Los Angeles, San Francisco and San Diego. Working committees meet periodically as the need arises.

MAJOR PROJECTS

Board Establishes Toll-Free Hotline

In response to a 1998 recommendation by the Joint Legislative Sunset Review Committee that the Board become more accessible to consumers [16:1 CRLR 66-67], the Board has been considering the establishment of a toll-free telephone number for consumer information. However, staff had expressed concerns that the Board’s limited budget would be insufficient to pay for the service and that additional staff might be needed to answer calls. Staff also noted that a toll-free number could not be used for consumer complaints (because, under Board policy, complaints must be filed in writing and signed), and might be inappropriately used by licensees rather than consumers.

At the Board’s March 14 meeting, Executive Officer Karen Ollinger reported that staff had conducted a survey of other boards and bureaus within DCA to determine how many have toll-free consumer access; the costs of such services; and the volume of calls received by similar agencies. Of twenty DCA agencies that responded to the survey, seven
indicated that they maintain a toll-free consumer phone line independent of DCA’s Consumer Information Center. Only four agencies reported their costs, which vary from $15 to $575 per month on volumes of about 100 to more than 2,000 calls per month. Based on the survey, the Board decided to establish a toll-free number on a month-to-month trial basis to determine actual costs and consumer use. At this writing, a preliminary report on this pilot program is expected in August.

**Board to Consider Amendment of Disciplinary Guidelines**

At the Board’s March meeting, Board member Sheilah Titus, OD, opened discussion of possible amendments to the Board’s 1996 “Disciplinary Guidelines and Model Disciplinary Orders” which are incorporated by reference into section 1575, Title 16 of the CCR. Currently, Model Order 27 requires licentiates who are on probation to cooperate with the surveillance efforts of the Board. However, the Board has received a number of reports concerning licensees on probation who have refused to permit investigators access to patient records on grounds of confidentiality. The Board agreed to consider amendments to Model Order 27 to specify that licensees on probation must comply with the Board’s probation surveillance program, including but not limited to allowing access to the probationer’s optometric practice(s) and patient records upon request of the Board or its agent.

At this writing, the Board is scheduled to consider the amendment to Model Order 27 at its May 16 meeting. If the Board amends Model Order 27, it will thereafter amend section 1575 to incorporate by reference the 1999 version of its “Disciplinary Guidelines and Model Disciplinary Orders.”

**Update on Recent Board Rulemaking Proceedings**

The following is an update on recent Board rulemaking proceedings described in detail in Volume 16, No. 1 (Winter 1999) of the California Regulatory Law Reporter:

♦ **Consumer Information Regulation.** At its August 1998 meeting, the Board voted to adopt section 1566.1, Title 16 of the CCR, which would require optometrists to supplement the consumer information notice required by section 1566. Under section 1566.1, optometrists would be required to post a notice stating that “the practice of optometry in California is regulated by the Board of Optometry. The Board of Optometry receives and investigates all consumer complaints involving the practice of optometry.” The notice must further direct consumers to forward complaints and grievances involving California-licensed optometrists to the Board; the Board’s address and telephone number must be included in the notice. [16:1 CRLR 67]

In August 1998, the Board adopted proposed section 1566.1 over the objection of the California Optometric Association (COA), which challenged the following statement in the Board’s initial statement of reasons: “Consumers of optometric services are largely unaware of their rights and protections against incompetent, negligent or unscrupulous practitioners.” COA noted that the Board included no evidence for such a statement in its rulemaking file, and argued that—without evidence of an actual problem—the proposed regulation lacks necessity, as required by Government Code section 11349.1.

Thus, on April 28, the Board placed an amended statement of reasons in the rulemaking record. In support of its adoption of section 1566.1, the amended statement includes the results of a 1996–97 survey showing consumer dissatisfaction with the Board’s visibility. According to the Board, the survey indicates that the Board’s existence and purpose are generally not known to the public. The Board reopened the public comment period on section 1566.1 for a 15-day period which, at this writing, closes on May 13.

♦ **Regulations for Issuing Citations and Fines.** Also at its August 1998 meeting, the Board adopted sections 1576–1581, Title 16 of the CCR, to establish a system for issuing citations and fines for violation of the laws and regulations governing the practice of optometry. [16:1 CRLR 67] At this writing, these regulatory provisions are being reviewed for fiscal impact by the Trade and Commerce Agency before submission to the Office of Administrative Law.

♦ **Continuing Education Via the Internet.** At its March meeting, the Board continued its discussion of proposed amendments to section 1536, Title 16 of the CCR, which would revise the Board’s continuing education (CE) requirement and permit optometrists to fulfill part of their CE requirement via approved courses offered over the Internet. These proposed amendments have proven somewhat controversial; they were the subject of an August 1998 public hearing, continued discussion at the Board’s November 1998 meeting, and recent a survey of other state optometry boards and DCA occupational licensing boards conducted by Board staff. [16:1 CRLR 67-68]

At the March meeting, Executive Officer Ollinger presented the preliminary results of the survey of other agencies’ practices regarding CE via the Internet. The survey revealed that a majority of state boards of optometry accept CE via the Internet, although less than half the responding DCA boards do so. The Board postponed further discussion until Ollinger’s survey is completed in May;
at that time, the Board may propose new amendments to section 1536.

Optometrist Information Now Available Online

The Board’s Internet website, first unveiled in 1998, has taken on a colorful new look, with enhanced graphics and improved features.[16:1 CRLR 68] Among the improvements is a feature which allows consumers to check on the license status of California optometrists. Users may search by name or license number and receive information on a practitioner’s current license status, expiration, and certification to use therapeutic pharmaceutical agents.

LEGISLATION

SB 929 (Polanco), as introduced February 25, is a two-year bill that would amend Business and Professions Code section 3041 to significantly expand the scope of practice of optometrists. Specifically, this bill would remove various restrictions on current optometry practice, especially in the area of diagnosis and treatment of diseases of the eye. Under SB 929, optometrists would be permitted to treat diseases such as glaucoma, and perform simple wound repairs and a number of additional procedures that they are not currently permitted to perform (e.g., lacrimal irrigation and dilation; stromal micropuncture; chemical cautery; and subconjunctival, intravenous, and subdermal injection of drugs). Further, optometrists certified to use therapeutic pharmaceutical agents (TPA) would be able to prescribe all topical and oral medications, including Schedule III, IV, and V controlled substances; optometrists who are TPA-certified are currently limited to a restricted formulary of drugs listed in section 3041. This bill would also authorize the Board to adopt and administer regulations implementing the expanded practice of optometry.

SB 929 is sponsored by COA, which calls it the “Vision 2000” bill. COA argues that permitting optometrists to perform additional procedures will increase the availability of vision care for many Californians and reduce costs, especially in rural areas where access to ophthalmologists is limited. COA points out that 41 states permit optometrists to diagnose and treat glaucoma, and contends that “virtually everythine in the bill is a routine part of the didactic and/or clinical training for TPA-certified optometrists in California.” Opponents, including the California Association of Ophthalmologists, are concerned that optometrists may be tempted to diagnose and perform procedures beyond their expertise and training. The Board, which has not yet taken a position on this bill, will closely follow its negotiation over the next year. [S B&P]

AB 794 (Corbett), as amended April 27, would add optometrists to Code of Civil Procedure section 1985.3, and establish requirements for Board licensees whose clients’ records are subpoenaed in civil litigation. Among other things, the bill would: (1) prohibit a licensee from restricting the hours for copying records during normal business hours or requiring that specific appointments be made to copy records; (2) provide an exemption for organizations with ten or fewer employees, which may limit the hours for inspection or copying to any continuous four-hour period on each business day; (3) provide that a client waives the right to object to the release of personal or employment records when his/her attorney signs a written authorization, on the client’s behalf, providing for the release of the records; and (4) provide that deposition officers are not liable for the release of a consumer’s personal or employment records if such officers do not receive proper notice of the consumer’s motion to quash a subpoena duces tecum, as required by law.[A. Floor]

AB 368 (Kuehl), as amended April 27, would require health plans, health insurance providers, and Medi-Cal to provide coverage for prosthetic devices for the partially sighted (i.e., those with a best corrected visual acuity of 20/60 or less). Prosthetics include inexpensive devices, such as magnifiers, as well as more sophisticated equipment, including computer- and video-based devices. AB 368 would also specify that only optometrists or ophthalmologists may initially request these devices for the partially sighted, and only optometrists or ophthalmologists may deny such an initial request.[A. Appr]

RECENT MEETINGS

At the Board’s March 14 meeting, Executive Officer Ollinger reported on the status of the occupational analysis the Board has commissioned. An occupational analysis is designed to capture information on the knowledge, skills, and abilities (KSAs) required of licensed optometrists in order to practice optometry competently. This information is then used to evaluate the Board’s licensing examination for appropriateness of test parameters and criteria.[16:1 CRLR 69] Although DCA’s Office of Examination Resources, which is coordinating the analysis, originally estimated that its analysis of survey data on the KSAs currently required of licensed optometrists would be ready in early 1999, staff in that office have been pulled off the project to work on another priority. Thus, the final report is “on hold” and may not be available in time for incorporation into the June licensing examination. Also at the March meeting, the Board discussed the status of 242 licensees who hold valid California optometric licenses but have never been certified to use pharmaceutical agents. Board Secretary John R. Anthony, OD, summarized the history of pharmaceutical practice by optometrists, which began in 1976 with optional certification for optometrists to use diagnostic pharmaceutical agents (DPA). Beginning in 1980, all new optometry graduates were automatically granted
DPA certification. Legislation enacted in 1996 (SB 668, Polanco; Chapter 13, Statutes of 1996) established a certification program within the Board, whereby the Board certifies qualified optometrists who complete additional training to use specific classes of therapeutic pharmaceutical agents (TPA) for a limited number of eye conditions. However, some optometrists who were initially licensed before 1980 have never applied for DPA or TPA certification.

Dr. Anthony stated that the position of the Board has been to continue licensing non-DPA- or TPA-certified optometrists under the assumption that their number would eventually dwindle due to attrition. He expressed concern, however, that current optometric practice is significantly limited and may be inadequate without the use of pharmaceutical agents. Despite a suggestion by Board President Steven Grant, OD, that the Board issue a mandate requiring optometrists to receive DPA training or lose their licenses, the Board agreed to further investigate the status of uncertified practitioners. Dr. Anthony agreed to draft a letter to uncertified optometrists, inquiring as to whether they continue active practice and whether the nature of their practice is limited by their non-certified status. At this writing, Dr. Anthony expects to present a draft of this letter to the Board for approval at its May meeting.

**FUTURE MEETINGS**

- May 16-17, 1999 in San Jose.
- August 20-21, 1999 in Sacramento.

**Board of Pharmacy**

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

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

The Board of Pharmacy is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board, which meets five times per year, consists of eleven members, four of whom are nonlicensees. The remaining members are pharmacists, five of whom must be active practitioners. All Board members are appointed for four-year terms.

**MAJOR PROJECTS**

**Pharmacy Practice on the Internet**

Over the last few months, the Board and the public have witnessed a surge of pharmacy practice activity on the Internet. While the Pharmacy Law requires a pharmacy which offers to compound, dispense, or refill a prescription for a resident of California to be licensed by the Board as a nonresident pharmacy, the Board's Licensing Committee has requested that the Board sponsor legislation that will require additional disclosure of information on the application form specific to Internet pharmacy practice.

Currently, Deputy Attorney General William Marcus is drafting proposed legislation based on the Licensing Committee's discussions. The legislation would require an Internet pharmacy to disclose specific information on its application for licensure, including its Internet name; its corporate or business name (if different); the names and addresses of its officers, directors, partners, and shareholders; and the location of each pharmacy which will be performing compounding, dispensing, or refilling of prescriptions, maintaining or reviewing patient profiles, or providing patient consultation. Additionally, the applicant must provide proof that it, and any pharmacy or pharmacist it employs or contracts with, is licensed or registered as required by the laws of the host state. Finally, an Internet pharmacy must provide specific descriptive information to consumers on its website.

**CURES Update**

For several years, the Board has been involved in a multi-agency project to automate the current paper-based "triplicate system" used when a physician or other authorized prescriber prescribes, and a pharmacist dispenses, Schedule II controlled substances. Under the triplicate system, prescribers must prescribe Schedule II narcotics on a state-issued triplicate form. The prescriber retains one copy and gives the remaining two copies to the patient. To have the prescription filled, the patient takes the remaining two parts of the form to a pharmacy. The pharmacy endorses the prescription, retains