



RECENT MEETINGS

At its October 28 meeting, SPAEC discussed the increasing problem of speech and language "therapy" being offered by paraprofessionals and/or unlicensed individuals who have designed programs which do not conform to established speech-language standards. Many of these programs are offered by individuals with training in the behavioral sciences and directed at autistic and developmentally disabled children. According to SPAEC, these individuals are not licensed to practice speech-language pathology, and may pose a danger to those patients who genuinely need the assistance of a trained speech-language pathologist and present unfair competition for licensed speech-language pathologists. Because many of the people offering these programs have backgrounds in psychology, Executive Officer Richards agreed to ask the Board of Psychology and the Board of Behavioral Science Examiners whether their enabling acts permit licensees to provide speech-language services. SPAEC will address this issue in greater depth at a future meeting.

The Committee also discussed a request by a private audiology firm to allow audiology aides to perform public service "hearing screenings" at health fairs in the absence of licensed audiologists. Although the request was limited to preliminary evaluations rather than comprehensive testing, SPAEC denied the request because of the potential inability of the aides to detect "false normalcies" during the screening procedure.

FUTURE MEETINGS

January 20 in southern California.
April 7-8 in northern California.
July 21 in southern California.
October 27 in northern California.

BOARD OF NURSING HOME ADMINISTRATORS

Executive Officer:
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Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Nursing Home Administrators (BNHA), formerly the Board of Examiners of Nursing Home Administrators, develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend

a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BNHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five BNHA members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

On December 7, BNHA welcomed new member Diana Fortune, who was appointed by the Governor to fill the NHA position left vacant by Martha Lang; Fortune is the administrator of Las Flores Convalescent Hospital and owner of Marina Care Center. Also at the December meeting, public member Gloria Sutton-Clark announced her recent marriage and name change to Gloria Johnson.

MAJOR PROJECTS

BNHA Reviews Disciplinary Guidelines. As part of its ongoing effort to improve its disciplinary process, BNHA is developing an expert witness program (*see below*), drafting a memorandum of understanding with the Department of Health Services (DHS) for coordinated investigations (*see RECENT MEETINGS*), and preparing to adopt a set of disciplinary guidelines. [14:4 CRLR 85-86] Executive Officer Pamela Ramsey recently prepared the first draft of BNHA's proposed disciplinary guidelines, using similar guidelines developed by the Board of Psychology as a model. The document is intended to serve two purposes: It lets the public and the profession know the Board's policies and intent regarding disciplinary matters, and provides a tool to be used by investigators, the Attorney General's Office, and administrative law judges in adjudicatory proceedings.

BNHA's Disciplinary Committee reviewed the first draft of the proposed disciplinary guidelines at its October 21 meeting; the Committee made minor changes to the document, and presented the revised draft to the full Board for review at its December 7 meeting. However, BNHA Chair Dr. Orrin Cook explained that the draft had not yet been reviewed by all appropriate legal counsel, and thus was not ready for Board approval.

The draft disciplinary guidelines include, among other things, BNHA's policies for remedial disciplinary action in response to its receipt of citations issued against nursing home facilities by DHS; penalty guidelines (including recommended maximum penalties for specified violations of the Business and Professions Code); a section on reinstatement/penalty relief hearings; BNHA's complaint disclosure policy [14:2&3 CRLR 90]; and the guidelines for terms and conditions of probation it previously approved in March 1994. [14:4 CRLR 86; 14:2&3 CRLR 90] The California Association of Health Facilities (CAHF), a professional organization representing California licensed long-term health care facilities, previously objected to the Board's disciplinary guidelines and its guidelines for terms and conditions of probation on the basis that they constitute underground rulemaking in violation of the Administrative Procedure Act (APA). [14:4 CRLR 86] In an August 4 response to CAHF's protest, Department of Consumer Affairs (DCA) legal counsel Christopher Grossgart maintained that BNHA has not engaged in underground rulemaking; Grossgart stated that these guidelines do not constitute "regulations" as defined by the APA "because the Board does not apply them rigidly in every disciplinary action." Further, Grossgart opined that "the Board has no authority to adopt disciplinary regulations which purport to bind administrative law judges....Therefore, it is appropriate to view the guidelines as 'administrative suggestions' from the Board regarding appropriate penalty provisions and probationary terms." If CAHF wants to pursue the matter further, it has the option of filing a request for a regulatory determination with the Office of Administrative Law (OAL).

While reviewing the disciplinary guidelines at its December 7 meeting, BNHA made a number of revisions to the proposed language. For example, the first draft included a section which directed staff to send a warning letter to NHAs when Level A requirements for Medicare/Medi-Cal participation are not met; at its October meeting, the Disciplinary Committee had expressed concern as to whether such a letter



is appropriate and whether the Board even has the authority to send such a warning. According to Deputy Attorney General Carol Slatin, no federal or state statute or regulation requires BNHA to send a warning letter to NHAs under such circumstances. Following discussion, the Board agreed that no such letter should be sent, and agreed to remove this language from the guidelines.

At this writing, BNHA is expected to consider the approval of the disciplinary guidelines at a future meeting.

BNHA Develops Expert Witness Program. As part of its effort to improve its disciplinary process, BNHA is developing a program for expert witness review of potential disciplinary actions. According to BNHA's draft disciplinary guidelines, once an administrator has received nine Class "A" citations (those violations that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm), the administrator is asked to appear before the BNHA Chair and Executive Officer; at that point in time, the administrator has already received remedial disciplinary action via telephone counseling and a letter of warning. The Chair and Executive Officer would then determine whether disciplinary action is warranted; this determination may include referral of the licensee's file to an expert witness for review. If the expert opines that the licensee's conduct fails to meet applicable standards, the case may be forwarded to the Attorney General's Office for the filing of an accusation against the NHA. If an accusation is filed, the expert witness may also be required to testify at the disciplinary hearing.

At its December 7 meeting, BNHA directed staff to work closely with CAHF, the California Association of Homes and Services for the Aging (CAHSA), and the American College of Health Care Administrators in developing the expert witness pool. All of the experts in the pool will receive training in their role and responsibilities, and each case will be reviewed by an expert with an area of expertise similar to the allegation being reviewed. The Board also agreed that the NHA's name and facility will not be disclosed to the expert, and the expert's identity will not be disclosed to the NHA; however, BNHA member Sheldon Blumenthal noted that experts should be aware that their identity may become public during the course of an adjudication. BNHA expects to finalize this program by the end of summer.

Examination and Enforcement Statistics. The overall pass rate for the July 1994 state NHA exam was 45%; the national exam pass rate was 58%. The over-

all pass rate for the October 1994 state NHA exam was 44%; the national exam pass rate was 54%.

From July 1 to October 31, 1994, DHS referred to BNHA three citations for "AA" violations (those violations which result in the death of a patient) and 60 citations for "A" violations (those violations that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm). During the same time period, BNHA conducted two telephone counseling sessions and issued six letters of warning. Further, BNHA revoked one license and stipulated to the relinquishment of another with \$1,000 cost recovery from the individual.

BNHA Rulemaking. On October 21, BNHA published notice of its intent to amend sections 3102, 3140, and 3180, and repeal section 3150, Title 16 of the CCR. The proposed amendments are the result of recommendations made by Executive Officer Pamela Ramsey. [14:4 CRLR 87] On December 7, the Board held a public hearing in order to receive comments on these proposed changes:

- Section 3102 currently defines the term "Board" to mean the State Board of Examiners of Nursing Home Administrators. BNHA's proposal would revise the name of the Board to the Board of Nursing Home Administrators, consistent with Business and Professions Code section 3904 as amended by SB 2101 (McCorquodale) (Chapter 1275, Statutes of 1994). [14:4 CRLR 87] Following the hearing, BNHA adopted this proposed change without modification.

- Existing law authorizes BNHA to specify dates for renewal of a NHA's license; section 3140 sets forth procedures for the implementation of a birthdate-based renewal program and a conversion renewal schedule. BNHA's proposed changes would amend section 3140 by deleting references to sections 3180 and 3150. Following the hearing, BNHA adopted this proposed change without modification.

- Section 3150 specifies the Board's requirements for continuing education. BNHA's proposal would repeal section 3150, as these requirements are also set forth in section 3140. Following the hearing, BNHA adopted the proposed change without modification.

- Existing law authorizes BNHA to fix various fees for NHAs; section 3180 specifies the fees for the administrator-in-training (AIT) permit, examination, initial license, renewal for active and inactive licenses, preceptor certification, biennial fee for continuing education provider, and biennial fees for approval of continuing education courses. BNHA's proposal

would make some clarifying changes to section 3180, including the examination fee increases recently authorized by AB 3660 (Caldera) (Chapter 1120, Statutes of 1994). [14:4 CRLR 87] At the hearing, several individuals provided public comment on the impact of the proposed fee increases on current AITs. The Board subsequently agreed to modify the amendments to section 3180 so that individuals participating in an approved AIT program on December 31, 1994, and who have not previously taken the licensure examination, may take the examination at the previous \$70 rate one time within twelve months from completion of their AIT program; AITs will have until December 31, 1995 to take the examination at the reduced rate. BNHA released the modified text on January 6 for an additional 15-day public comment period. Only adverse comments will be brought back to the Board; if no adverse comments are received, the Board authorized Executive Officer Ramsey to adopt the language and forward the rulemaking file to OAL.

Also on October 21, BNHA published notice of its intent to amend sections 3116, 3151, 3152, 3160, and 3162, Title 16 of the CCR; the proposed amendments are the result of review by a two-person Education Subcommittee established in March 1994. [14:4 CRLR 86] BNHA held a December 7 public hearing on these proposed changes:

- Section 3116 specifies the qualifications one must possess in order to sit for the NHA examination. BNHA's proposal would add the following as qualifying alternatives: (1) a baccalaureate degree and completion of a Board-approved AIT program of at least 500 hours in a nursing home for individuals with a minimum of five years' full-time experience during the last ten years in specified capacities; and (2) twenty years of full-time work experience as a nursing home administrator or as a hospital administrator. At the hearing, the Board heard public comment from representatives of CAHF and the Sacramento Association of Health Facilities (SAHF); both groups opined that the proposed amendments to section 3116 are unnecessary and lack clarity. The Board subsequently voted to remove the amendments to section 3116 from the regulatory package and refer the proposal back to the Education Subcommittee for further study.

- Section 3151 specifies activities which qualify toward BNHA's continuing education (CE) requirement. BNHA's proposal would amend section 3151 by providing that two hours of CE credit shall be given for attending a public meeting of BNHA, and eight hours of CE credit will be given



for participating in a Board-sponsored state licensing examination item writing session. Following the hearing, BNHA adopted these changes without modification.

- Section 3152 provides for the approval of CE providers and courses. BNHA's proposal would provide that BNHA may, in lieu of conducting its own investigation, accept the findings of National Association of Boards for Nursing Home Administrators regarding CE courses and providers, and adopt those findings as its own. Following the hearing, BNHA adopted this change without modification.

- Section 3160 sets forth for the qualifications of a preceptor for AITs. As originally proposed, BNHA's changes would have provided that any licensed NHA may be approved to serve as a preceptor if the individual, among other things, has an active NHA license, has no disciplinary actions pending against his/her license, and is not on probation by the Board. CAHF and SAHF objected to the requirement that the preceptor candidate have no disciplinary actions pending against his/her license, commenting that a preceptor should not have his/her preceptor certificate revoked because of pending (*i.e.*, incomplete) disciplinary actions filed against his/her facilities as this abridges the preceptor's right to due process. The Board agreed to delete the disputed requirement and released the modified text on January 6 for an additional 15-day public comment period; if BNHA receives no adverse comments, the Executive Officer will adopt the language and forward the file to OAL.

- Section 3162 specifies the requirements for obtaining Board approval of an AIT program; the section provides that an approved AIT program shall include a minimum of twenty hours per week of supervised training and work experience in a nursing home. The Board's proposal would establish sixty hours as the maximum number of hours an AIT may work and train each week. Following the hearing, BNHA adopted this amendment without modification.

At this writing, all of the revisions adopted by BNHA await review and approval by DCA and OAL.

■ RECENT MEETINGS

At BNHA's December 7 meeting, Executive Officer Pamela Ramsey reported that DHS has agreed to the development of a memorandum of understanding (MOU) between DHS and BNHA regarding the timeframe within which DHS must provide citations and other disciplinary actions to BNHA; this MOU will be in lieu of BNHA pursuing legislation to effect-

ate these deadlines. [14:4 CRLR 86] Ramsey stated that the MOU is still in the draft stage and BNHA staff will continue to meet with DHS staff to further develop the document.

Also at its December meeting, BNHA noted that Dr. Norman Hertz of DCA's Office of Examination Resources will be conducting an occupational analysis (OA) of the AIT program. The Board agreed that the completion date for the OA should be January 8, 1996.

Also on December 7, the Board expressed concern that DHS does not always contact BNHA to verify the status of administrators' licenses. Over 350 NHAs with active licenses are delinquent in renewing them, and 80 of them have been delinquent for six months or longer. Executive Officer Ramsey reported that BNHA staff has prepared a statement to be used when delinquent licensees request that an "inactive" license be placed on "active" status. The statement declares under penalty of perjury that the licensee has not worked as a NHA in California since his/her license was put on inactive status. The Board voted to send a memo to DHS Assistant Deputy Director of Licensing and Certification Brenda Klutz to provide her with information on the Board's verification process.

■ FUTURE MEETINGS

February 16 in Los Angeles.
May 11 in Sacramento.
August 17 in San Francisco.
November 9 in San Diego.

BOARD OF OPTOMETRY

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Pursuant to Business and Professions Code section 3000 *et seq.*, the Board of Optometry is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board establishes and enforces regulations pertaining to the practice of optometry, which are codified in Division 15, Title 16 of the California Code of Regulations (CCR). The Board's goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory eye care by inept or untrustworthy practitioners. The Board consists of nine members—six licensed optometrists and three public members.

■ MAJOR PROJECTS

Board Conducts Retreat. On October 14, the Board held a retreat in order to

build a common understanding of its roles and responsibilities, orient new members to Board functions and activities, and begin to generate ideas about the future direction of the Board. Among other things, the Board discussed whether it should attempt to expand the practice of optometry in California as it has been in other states; whether it should give optometry schools more direction in terms of curriculum oversight; and whether it wants California to be a leader in the profession of optometry. The Board also identified issues that it should address in the areas of consumer education, continuing education, enforcement, legislation, and regulations. For example, the Board discussed the possibilities of producing a media education campaign on what consumers should expect from optometric services; adding an ethics course as part of its continuing education requirements; and clarifying its position on optometric assistants. The Board is expected to consider many of the topics discussed at the retreat at future meetings.

Board Reviews More Draft Regulatory Proposals. At its December 1-2 meeting, the Board reviewed several draft rulemaking proposals which would clarify the Board's examination process and continuing optometric education requirements. Specifically, the Board considered the following proposals:

- Amendments to section 1532, Title 16 of the CCR, would clarify that an applicant who has failed to pass either the Clinical and Demonstration or Laws and Regulations examination sections after a period of five consecutive calendar years from the date of the first examination must retake both examination sections.

- Amendments to section 1533, Title 16 of the CCR, would provide that an inspection by an examinee of the papers he/she wrote while taking the Board examination must be made by that person before the expiration of 90 days after the examination results are mailed.

- Amendments to section 1535, Title 16 of the CCR, would specify that the Board requires successful completion of the National Board of Examiners in Optometry's (NBEO) Basic and Clinical Science examination sections as a condition of eligibility to take the Clinical Demonstration and Laws and Regulations examination sections, and delete language authorizing an applicant to otherwise furnish satisfactory evidence of his/her eligibility pursuant to the provisions of Chapter 7 of Division 2 of the Business and Professions Code.

- Amendments to section 1536, Title 16 of the CCR, would provide that no more than four hours of continuing education (CE) coursework shall be in the area