



The Board also agreed to pursue an amendment to Business and Professions Code section 4052, in order to allow recognized schools of nursing to obtain dangerous drugs and devices needed for training. Existing statutory law contains no specific provision authorizing provision of dangerous drugs and devices to nursing schools for training purposes. Currently, the Board's supervising inspectors approve "orders for use" for nursing schools to obtain dangerous drugs and devices; however, the Board would like to add a statutory provision to allow schools of nursing recognized as training facilities by the Board of Registered Nursing to obtain dangerous drugs and devices, not including controlled substances, for training purposes.

The Board will also seek to add new section 4227.4 to the Business and Professions Code in order to provide statutory authority that would implement Title 21, Code of Federal Regulations, section 1301.28, which provides controlled substances to be provided to the masters of ocean vessels so long as "such activity is authorized by state law..." In the past, pharmacies have furnished controlled and non-controlled dangerous drugs to ocean vessels under the condition that the drugs were delivered in a sealed container on board the vessel and the container could not be opened until the vessel entered international waters; however, there is no provision in state law authorizing this practice. The proposed section would permit a pharmacy or wholesaler to furnish dangerous drugs to a master or first officer of an ocean vessel pursuant to a written requisition; the dangerous drugs would have to be delivered in a sealed container, and the wholesalers or pharmacies engaging in such activities would be required to give notice to the Board within thirty days of undertaking such activity.

■ RECENT MEETINGS

At its October 23-25 meeting, the Board completed its strategic planning sessions with facilitator Michael Dues by finalizing its purpose, vision, goals, and objectives for the next five years. [14:4 CRLR 93] According to its mission statement, the purpose of the Board is to protect the health, safety, and welfare of the people of California with integrity and honesty; advocate the highest quality of affordable pharmaceutical care; and promote education, wellness, and quality of life. The Board identified nine general areas in which it has established goals, including enhancing the role of the pharmacist, communication and public education, advocacy, standards of practice, con-

sultant education, automation, customer service, enforcement, and disciplinary guidelines. Within each of these goal areas, the Board further established specific objectives to pursue in the next five years; at the end of the session, the Board adopted the goals and mission statement.

Also at the October meeting, the Board briefly discussed the funding of its proposed "Ask Your Pharmacist" public education program, which would inform consumers about the benefits of the new oral consultation requirement. [14:4 CRLR 94] Although the Board submitted a budget change proposal to fund the program, the Department of Finance disapproved it. Thus, the program would have to be funded via a fee increase; however, the Board's current proposal to increase fees is required to maintain the Board's reserve fund. As a result, the consumer education program is effectively on hold until the Board's funding issues are resolved.

Also in October, the Board again discussed the issue of prescription drug sample distribution. [14:4 CRLR 93-94] Deputy Attorney General William Marcus clarified that restrictions on the distribution and possession of drug samples would require legislative action; the Board could seek authority to do anything from restricting drug sampling to banning it altogether. The Board considered a motion to seek legislation to ban the distribution of drug samples; however, the vote was divided with four Board members in favor of the motion, three against, and one abstaining. The four members who did not vote in favor of the motion felt there should be more discussion about the advantages of samples, the use of "starter packs" which are not defined as samples, and the items which could be used to replace samples. The Board agreed to convene an informational session on this issue.

Also in October, the Board approved the closure of its Los Angeles branch office to take place on January 1, 1995; the Board's decision was based on its establishment of a strong administrative component and a complaint unit in Sacramento, the consolidation of the probation monitoring and interim committee meeting processing into the Sacramento office, and the imminent ability of all inspectors to use computer modems to send documents and itineraries to and from the Sacramento office. Only one office assistant and one secretary position will be moved to the Sacramento office; all inspector and supervising inspector positions will remain in southern California as field positions. The Los Angeles telephone number will be routed to Sacramento and the Board hopes to establish an 800 number

for consumers to call with complaints. Hearings of the Southern Interim Committee (SIC), which handles disciplinary matters in southern California, will continue to be held in southern California so that practitioners and inspectors required to appear are not inconvenienced; meetings of the SIC and office conferences for inspectors will be held at some public site to be selected or possibly at the offices of another state agency, such as the Medical Board, which is willing to occasionally share its facilities.

Also at the October meeting, the Board discussed a letter from the California Retailers Association (CRA) regarding the growing problem of prescription illegibility; the letter described how illegible prescriptions cause pharmacists to spend excessive time deciphering them and are sometimes the cause of mistakes in the dispensing of medications. The letter referred to an American Medical Association report recognizing this issue and requested the Pharmacy Board and the Medical Board to address the problem of prescription legibility. CRA suggested that the Board adopt a requirement that prescriptions be typed or printed; however, the Board noted that such a requirement could only be created by legislation and opined that such a step may not be necessary. The Board acknowledged the problem and directed Executive Officer Patricia Harris to contact the Medical Board and the Board of Dental Examiners in order to seek solutions to this issue.

■ FUTURE MEETINGS

January 25-26 in Los Angeles.
 March 29-30 in Sacramento.
 May 24-25 in Sacramento.
 July 26-27 in San Diego.
 October 25-26 in San Francisco.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Executive Officer:
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The Board of Registration for Professional Engineers and Land Surveyors (PELS) regulates the practice of engineering and land surveying through its administration of the Professional Engineers Act, sections 6700 through 6799 of the Business and Professions Code, and the Profes-



sional Land Surveyors Act, sections 8700 through 8806 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR), sections 400 through 471.

The basic functions of the Board are to conduct examinations, issue certificates, registrations, and/or licenses, and appropriately channel complaints against registrants/licenses. The Board is additionally empowered to suspend or revoke registrations/licenses. The Board considers the proposed decisions of administrative law judges who hear appeals of applicants who are denied a registration/license, and those who have had their registration/license suspended or revoked for violations.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered Practice Act engineers and one Title Act engineer. The Governor appoints eleven of the members for four-year terms that expire on a staggered basis. Additionally, both the Assembly Speaker and the Senate Rules Committee appoint one public member each.

The Board has established four standing committees and appoints other special committees as needed. The four standing committees are Administration, Enforcement, Examination/Qualifications, and Legislation. Committees function in an advisory capacity unless specifically authorized by the Board to make binding decisions.

Professional engineers are registered through the three Practice Act categories of civil, electrical, and mechanical engineering under section 6730 of the Business and Professions Code. Land surveyors, another Practice Act category, are registered through section 8725 of the Business and Professions Code. The Title Act categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering are registered under section 6732 of the Business and Professions Code.

Structural engineering and geotechnical engineering are "title authorities" linked to the civil Practice Act and require an additional examination after qualification as a civil engineer.

PELS is subject to a "sunset" provision. Section 8710 Business and Professions Code, which vests power in the Board, will "become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999 deletes or extends the dates on which it becomes inoperative and is repealed."

MAJOR PROJECTS

Strategic Planning Process Update. Responding to criticism levied during the November 1993 oversight hearing conducted by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, the Board is in the process of formulating a "strategic plan" designed to clarify its role, functions, and constituencies. [14:2&3 CRLR 99] As part of the strategic planning process, PELS adopted "mission" and "vision" statements that, respectively, enumerate the present and future goals of the Board. [14:4 CRLR 94]

To implement the strategic plan, the Board devised a process that identifies issues and major activities and directs them to the appropriate standing Board committees for further investigation. At its September 9 meeting, PELS identified the following issues and major activities for exploration in conjunction with the formulation of the strategic plan: operational support systems, regulation modernization, consumer and public communications, emergency preparedness, mechanized testing, code of ethics, continuing competency, and the North American Free Trade Agreement. The Board delegated these issues to its standing committees for further review.

At its January 6 meeting, the Board directed the standing committees to eliminate redundant goals between committees, prioritize remaining goals, and draft a proposed program for implementation of the top five goals; at this writing, the committees plan to present their implementation programs at the Board's March 24 meeting. Also on January 6, the Board created an ad hoc strategic planning committee to help the standing committees with the tasks listed above; prepare a draft of parts of the overall strategic plan including the history and background of PELS and reasons for creating the strategic plan; and work with the Executive Officer and staff to reorganize PELS to establish a structure where program managers oversee implementation of the various goals of the strategic plan. At this writing, the Board expects to complete its strategic plan development by April 15.

Ongoing Overhaul of the Professional Engineers Act. As part of its strategic planning process, the Board is conducting a comprehensive review of the Professional Engineers Act, the Board's regulations, and the way the state of California licenses and classifies various engineering disciplines; this effort has resulted largely from criticism by the Center for Public Interest Law that PELS' engineer-

ing statutes and regulations are extremely vague and in need of major restructuring and modernization, and former PELS' President Rich Johnson's "white paper" entitled *Confronting the Issues of Engineering Discipline Definitions*, in which Johnson agreed with CPIL that the Board's statutes are internally inconsistent and lack clarity. [14:4 CRLR 95; 14:2&3 CRLR 99; 14:1 CRLR 77] Towards this end, PELS hired attorney/civil engineer Jimmie Wing to help rewrite the Board's statute and regulations. [14:4 CRLR 94-95] At its November 18 and January 6 meetings, the Board reviewed a conceptual outline of proposed changes to the practice section of the Act (Business and Professions Code sections 6730 through 6748); further Board action is expected at future meetings as the conceptual outline becomes more specific.

Board Amends Disciplinary Guidelines to Include Restitution. At its September 30 meeting in San Francisco, PELS narrowly—by a 5-4 vote—approved a change to its Disciplinary Guidelines to include consumer restitution as a viable condition of probation for violations of Business and Professions Code sections 6775(b) (violation of contract) and 8780(f) (breach of contract). Pursuant to Business and Professions Code section 11519(d), PELS is authorized to impose as a term of probation an order of restitution which requires the party or parties to a contract against whom a decision is rendered to compensate the other party or parties to a contract damaged as a result of a breach of contract by the party against whom the decision is rendered; in such a case, section 11519(d) requires that the decision include findings that a breach of contract has occurred and specify the amount of actual damages sustained as a result of such breach. Where restitution is ordered and paid pursuant to section 11519(d), such amount shall be credited to any subsequent judgment in a civil action based on the same breach of contract.

As adopted at the September meeting, the Board's restitution policy stated that the Board views restitution to be an appropriate condition of probation when there is a finding of a violation of Business and Professions Code section 6775(b) for violation of a contract in the practice of professional engineering or section 8780(f) for breach of contract in the practice of professional land surveying; there is a finding that actual damages were sustained as a result of the violation or breach of contract; and the amount of actual damages is specified. The Board further agreed that the restitution should be limited to the amount of fees paid by the consumer to the



respondent and any administrative costs associated with the work.

At PELS' November 17-18 meeting, however, Board member Hoi Wong urged PELS to reconsider its decision regarding restitution, opining that the policy should also include a limit on the amount of restitution available. Accordingly, the Board referred the matter to its Enforcement Committee for further consideration.

At PELS' January 6 meeting, the Enforcement Committee recommended that PELS revise its restitution policy to—among other things—require a finding that the respondent was a party to the contract; require a finding that respondent's action resulted in a breach of the contract, as specified; and provide that restitution be limited to the reimbursement of fees or a portion thereof paid by the consumer to the respondent for contractual services which the respondent failed to perform or performed in violation of the contract. The Board adopted these changes, and additionally amended its policy to set a restitution limit at the maximum amount recoverable in small claims court.

PELS' approval of restitution as a condition of probation has been subject to criticism from Consulting Engineers and Land Surveyors of California (CELSOC); in a letter to PELS President Sharon Reid, CELSOC attorney James Corn contended that the Board engaged in underground rulemaking by not formally adopting the disciplinary guidelines pursuant to the rulemaking procedure set forth in the Administrative Procedure Act. CELSOC also expressed concern that malpractice insurance may not cover restitution and that a license to practice could be suspended or revoked because of an inability to pay restitution to a client.

Board Tightens Comity Registration Policy. At its December 9 meeting, PELS' Examination/Qualifications Committee discussed a proposal to stiffen the Board's comity registration policy. "Comity registration" refers to the Board's issuance of a certificate of registration to practice professional engineering to a person authorized to practice professional engineering under the laws of another state or a foreign country. Business and Professions Code section 6759 permits the Board to issue a comity registration without examination to other-jurisdiction licensees who have passed an "equivalent second division examination," which is defined as an "eight-hour written examination[] prepared by a state or territory...at the level generally administered by the board." Currently, PELS administers a variety of second division examinations, several of which are provided by the National Council of Ex-

aminers for Engineering and Surveying (NCEES). Other states also administer various NCEES-provided exams, and classify engineers differently than does California; consequently, other states may offer NCEES exams which are not offered in California. Where a candidate has taken and passed a NCEES exam not offered in California and applies for comity registration, section 6759 requires the Board to waive its examination requirements and grant registration in the branch which is closest to the applicant's education and experience, provided the applicant's qualifications meet all other California requirements.

At the Committee's December 9 meeting, engineer member Ted Fairfield expressed concern that some comity applicants are making an "end run" around PELS' licensure requirements by going to another state, taking a NCEES examination in any subject, and then applying for California comity registration in one of the Practice Act categories of civil, electrical, or mechanical engineering without having been tested in that subject. Fairfield recommended that the Committee stop issuing comity registrations in a Practice Act category to individuals who have not passed a NCEES exam in that subject. Although audience member Bob Hoerger opined that SB 1030 (Chapter 732, Statutes of 1985)—which amended section 6759 to require the Board to grant comity registration to out-of-state licensees who have passed a NCEES examination—was intended to expand the number of out-of-state engineers who would qualify for California's registration and limit the Board's discretion in granting registration comity, the Committee unanimously adopted Fairfield's motion.

At its January 6 meeting, PELS ratified the Committee's proposal, voting 9-0 to grant comity registration in the civil, mechanical, and electrical engineering branches only to those applicants who meet all education requirements and who have taken and passed the specific Practice Act examination in that branch required by California.

Rulemaking Update. The following is a status update on PELS rulemaking proposals discussed in detail in previous issues of the *Reporter*:

• **Definition of Electrical Engineering.** On January 6, PELS adopted revised language of section 404 and new section 426.70, Title 16 of the CCR, regarding the practice of electrical engineering; since 1992, PELS has been discussing the adoption of regulatory language to clarify the scope of practice of electrical engineers and to specify what constitutes qualifying experience for registration as an electrical

engineer. [14:4 CRLR 96; 14:2&3 CRLR 100-01; 14:1 CRLR 78]

Previously, section 404 defined electrical engineering as that branch of professional engineering which embraces studies or activities relating to the generation, transmission, and utilization of electrical energy, including the design of electrical, electronic, and magnetic circuits and the technical control of their operation and of the design of electrical gear. Among other things, the proposed amendments to section 404 attempt to more specifically define the scope of practice of a licensed electrical engineer. The new definition would require registration for anyone who designs or develops electrical engineering design products in the following areas: electrical power systems; public lighting systems; and communication and broadcast systems and analog systems, and the associated software or firmware (excluding the development or production of commercial software). Some industry representatives view the inclusion of software and firmware as an expansion of the old definition, and believe it will cost them considerable business to the few registered electrical engineers in the communication and power software field. Proposed new section 426.70 would provide, among other things, that experience which qualifies an applicant for registration as an electrical engineer is work that conforms with the definition of the term electrical engineering as specified in section 404. At this writing, the rulemaking file awaits review and approval by the Department of Consumer Affairs (DCA) Director and the Office of Administrative Law (OAL).

• **Delinquent Registrants.** On December 12, OAL disapproved PELS' proposed new section 424.5, Title 16 of the CCR, for lack of clarity; the proposed regulation would define requirements and conditions for the renewal, restoration, reinstatement, or reissuance of a delinquent license or registration. Among other things, section 424.5 would require a person seeking reinstatement of an expired license or registration to submit evidence satisfactory to PELS that he/she is qualified in the branch for which he/she is applying; successfully complete the specified examination(s); and pay all accrued and unpaid renewal fees. [14:4 CRLR 95; 14:2&3 CRLR 100; 14:1 CRLR 78] The Board modified the proposed language in response to OAL's findings; at this writing, the Board is expected to release the modified language for an additional 15-day public comment period and consider the adoption of the revised language at its February meeting.

• **Citation and Fine Program.** On September 30, the Board finally adopted new sections 472.1, 472.2, 472.3, 472.4, 473,



473.1, 473.2, 473.3, 473.4, and 473.5, Title 16 of the CCR, to implement a citation and fine system for use against unregistered or unlicensed individuals who are performing services for which registration or licensure is required, and registered or licensed individuals who violate the Professional Engineers Act and/or the Professional Land Surveyors Act. According to PELS, this program will serve as an enforcement tool to address violations of the Board's enabling acts and regulations that do not merit full-fledged disciplinary action but should not be ignored. [14:4 CRLR 95; 14:2&3 CRLR 100; 14:1 CRLR 78] After many engineers voiced concerns about the proposed regulatory language, the Board adopted changes to section 473 which provide that, before issuing a citation, the Executive Officer must submit the alleged violation for review by at least one registrant or licensee member of the Board; upon conclusion of the review, the reviewer will prepare findings of fact and a recommendation—to which the Executive Officer must give “due consideration” in determining whether cause exists to issue a citation. At this writing, the rulemaking file awaits review and approval by the DCA Director and OAL.

• **Registration of Engineering Professors.** On December 5, OAL approved PELS' amendments to sections 424 and 438, Title 16 of the CCR, which allow engineering professors to waive the engineering-in-training examination and qualify for the professional engineering examinations. [14:4 CRLR 96; 14:2&3 CRLR 101; 14:1 CRLR 79] Section 424 defines qualifying experience as experience gained under the direction of a professional engineer; the amendment provides that qualifying experience may be gained under the direction of any person legally qualified to practice in the applicant's branch of professional engineering, defines what constitutes legal authorization to practice, and adds applied engineering research as work that may be considered as qualifying experience.

Previously, section 438 provided that an applicant for registration as a professional engineer whose qualifications met all applicable statutory and regulatory requirements could only appear for the second division of the written examination prescribed by Business and Professions Code section 6755 if he/she meets one of several specified requirements; the Board's changes to section 438 specify that a person can obtain a waiver for five years from the effective date of the amendments, if he/she either serves in a tenure-track faculty position in a Board-approved engineering curriculum at a level of at least Assistant Professor, or holds an earned doctorate in engineering.

• **Change to Effective Date of Curriculum Accreditation.** On December 9, OAL approved PELS' amendment to section 460, Title 16 of the CCR, which previously defined a curriculum approved by the Board as any engineering curriculum leading to a first degree in engineering accredited by the Accreditation Board for Engineering and Technology (ABET); the Board's amendment to section 460 defines the effective date of accreditation as one year prior to that specified in the ABET yearbook. [14:4 CRLR 95; 14:2&3 CRLR 100] Essentially, this change allows an applicant who has graduated from a school that received ABET accreditation one year in which to have his/her education recognized by the Board.

• **Analysis of Northridge Quake Damage May Prompt Changes to PELS Standards.** On December 1, the Seismic Safety Commission released *Northridge Earthquake: Turning Loss to Gain*, a report analyzing the damage caused by the January 17, 1994 earthquake. Among other things, the report focused on the type of damage to buildings and other structures, noting that “a significant portion of the damage was due to one or more of the following: inadequate engineering, inadequate design reviews, lack of understanding of the building code, misguided or incorrect construction practices, and inadequate inspection or observation of construction.” The report called for improved quality of design and construction, improved building codes, and the strengthening of professional registration laws applicable to engineers and architects “to ensure that those who are responsible for seismic design have the appropriate qualifications.”

With respect to PELS and its licensees, the Commission stated: “The structural engineering profession was established specifically to provide specialized expertise in seismic design. Currently, there is no mandate in law or regulation that defines seismic design expertise, even though various agencies mandate the use of the structural engineering profession for certain types of critical structures. Moreover, there is no continuing education requirement that ensures maintenance of that expertise in this area of rapidly evolving technology. The Commission believes that the expertise expected of the specialized field of structural engineer needs to be defined and that a program of continued education of that profession needs to be implemented and enforced.”

The Commission set forth several recommendations which affect PELS and its licensees. Specifically, the Commission suggested that “the legislature hold licensing boards accountable for the effectiveness of licensing exams, continuing edu-

ation, and enforcement of registration rules through periodic review of agency efforts; that [PELS] raise the level of awareness of Board Rule 415 [which requires engineers to practice and perform engineering only in the field(s) in which they are by education and/or experience fully competent and proficient] and the level of enforcement of that rule; and that the legislature amend the title act for structural engineering to provide an enforceable definition of the seismic design expertise required of title holders.”

At its January meeting, PELS reviewed the Commission's report and referred the Commission's recommendations to the appropriate Board committees.

RECENT MEETINGS

At its September 30 meeting in San Francisco, PELS directed its Geotechnical Engineering Technical Advisory Committee to update the “Fields of Expertise” memorandum which defines the areas of specialization for civil engineers and geologists and when the areas of specialization overlap; the original “Field of Expertise” memorandum, adopted by the Board in October 1989, needs updating because the Board of Registration for Geologists and Geophysicists recently added a new certification program for hydrogeologists. [14:4 CRLR 58]

At its November 18 meeting in Sacramento, PELS appointed Gery Anderson and David Pearson to its Geotechnical Engineering Technical Advisory Committee for two-year terms.

At its January 6 meeting in Orange, PELS unanimously adopted the final report of its validation of the examination for geotechnical engineers, which includes the updated test plan; PELS will use the new test plan to develop the 1995 geotechnical engineering exam.

FUTURE MEETINGS

February 10 in San Diego.
March 24 in Sacramento.
April 28 in San Francisco.
June 9 in Sacramento.
July 14 in Los Angeles.
August 25 in San Jose.
November 17 in Sacramento.

BOARD OF REGISTERED NURSING

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Pursuant to the Nursing Practice Act, Business and Professions Code sec-