



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

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



tion 2700 *et seq.*, the Board of Registered Nursing (BRN) licenses qualified RNs, establishes accreditation requirements for California nursing schools, and reviews nursing school curricula. In addition, BRN certifies nurse-midwives (CNM), nurse practitioners (NP), and nurse anesthetists (CRNA). A major Board responsibility involves taking disciplinary action against licensees. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR).

The nine-member Board consists of three public members, three registered nurses actively engaged in patient care, one licensed RN administrator of a nursing service, one nurse educator, and one licensed physician. All serve four-year terms.

The Board is financed by licensing fees, and receives no allocation from the general fund. The Board is currently staffed by 90 people.

MAJOR PROJECTS

Revised Citation and Fine Regulations Set for Public Hearing. In March 1994, BRN proposed to adopt regulations permitting it to levy fines and citations against RNs and unlicensed persons for violations of the Nursing Practice Act and its corresponding regulations; a system of citation and fines would provide BRN with an enforcement tool by which it could discipline minor violations without seeking suspension, revocation, license probation, or judicial relief. In May 1994, BRN held a public hearing on its proposed action and heard numerous concerns about the clarity and effectiveness of the proposed regulations. [14:4 CRLR 97; 14:2&3 CRLR 102-03; 13:2&3 CRLR 106]

At its November 17-18 meeting, BRN agreed to revise its proposed citation and fine regulations and renote the package for an additional 45-day public comment period. Among other things, the revised proposal includes a list of violations by code section which would justify the issuance of a citation, clarifies the range of fines applicable to each specific violation, and adds as criteria to be considered in assessing a fine or order of abatement the length of time that has passed since the date of the violation and the consequences of the violation, including potential or actual patient harm. The citation and fine regulations would authorize BRN's Executive Officer to issue citations and fines against a licensee for violations such as loaning a license to another person, engaging in unprofessional conduct, practicing with a suspended license, and knowingly failing to protect patients by failing to

follow infection control guidelines. The regulations would also establish factors to be weighed in determining the amount of the fine to be levied, set forth procedures by which the cited person may contest the enforcement action, and allow BRN to report the issuance and disposition of a citation to other regulatory agencies.

At this writing, BRN's revised citation and fine regulations are scheduled for public hearing on March 7 in Sacramento.

BRN Considers Draft Regulatory Proposals. At its September 22-23 meeting, BRN approved in concept three draft regulatory actions, all of which BRN plans to publish for notice and comment during 1995:

- Business and Professions Code section 2736.5 provides—among other things—that any person who has served on active duty in the medical corps of any of the armed forces of the United States and who has successfully completed the course of instruction required to qualify him/her for rating as a medical service technician-independent duty, or other equivalent rating in his/her particular branch of the armed forces, and whose service in the armed forces has been under honorable conditions, may submit the record of such training to BRN for evaluation; if such person meets specified qualifications, and if BRN determines that his/her education and experience would give reasonable assurance of competence to practice as an RN in this state, he/she shall be granted a license upon passing the standard examination for such licensure. Section 2736.5 also requires BRN, by regulation, to establish criteria for evaluating the education and experience of applicants under that section. In order to implement section 2736.5, BRN adopted section 1418, Title 16 of the CCR, which currently provides that any person who has served on active duty under honorable conditions, in the medical department of any of the armed forces of the United States and who has successfully completed the courses of instruction required to achieve specified ratings (Army—Clinical Specialist, MOS 91C20 through 91C40; Air Force—Medical Service Technician, AFSC 90270 or Medical Service Superintendent, AFSC 90292; and Navy—Medical Service Technician, Class C, MOS 8424 or Independent Duty Technician, MOS 8424), and who has had two years of direct patient care nursing-related experience within five years of the date of application for licensure shall be deemed to have completed equivalent nursing education.

According to BRN, the level of training and education required for the ratings specified in section 1418 may no longer

meet the equivalent standards of RN education. Accordingly, in order to provide the Board with flexibility to evaluate the military education in the same manner as it evaluates the education of all other applicants, BRN agreed to pursue regulatory amendments to section 1418 to delete the references to the specific military ratings.

- The Permit Reform Act was enacted to ensure the timely and efficient processing of licensure applications by requiring agencies to establish specific deadlines and procedures to expedite the application process. Currently, BRN's regulations establish application processing timeframes for RN applications and license renewals only; the Board's proposed regulatory action would establish initial application and renewal processing timeframes for nurse anesthetists, nurse practitioners, nurse midwives, public health nurses, continuing education providers, temporary licensees, and interim permit holders.

- Finally, BRN will pursue regulatory language to effect a transfer of the public health nurse certification program from the Department of Health Services (DHS) to BRN. According to the Board, this regulatory package would constitute a change without regulatory effect as it would simply transfer DHS' existing regulation to Chapter 14, Title 16 of the CCR, and replace references to DHS with references to BRN.

At this writing, none of these proposed regulatory changes has been published in the *California Regulatory Notice Register*.

DHS Regulatory Changes Affect RN Scope of Practice Regarding Laboratory Tests. In September 1994, Governor Wilson vetoed SB 1834 (Campbell); the bill, which was supported by BRN and opposed by DHS, would have expressly permitted RNs to perform diagnostic testing, including the use of point-of-care laboratory testing devices. In his veto message, Governor Wilson supported the bill's intent to allow RNs to use point-of-care testing devices but found that the bill's use of the phrase "perform diagnostic testing" was overbroad and could be construed in a manner that would expand the existing scope of RN practice. [14:4 CRLR 97]

Also in his veto message, the Governor instructed the DHS Director to adopt emergency regulations permitting RNs to use point-of-care testing devices. On December 27, DHS adopted sections 1053, 1054.1, 1054.2, 1054.5, and 1054.6, Title 17 of the CCR, authorizing RNs to use certain point-of-care laboratory testing devices if specified conditions are satisfied. On January 13, DHS proposed additional regulatory changes which would set



forth the specific conditions under which RNs may engage in clinical laboratory practice by using point-of-care laboratory instruments; at this writing, DHS is scheduled to hold a public hearing regarding these regulations on March 1 in Sacramento. BRN is maintaining its longstanding position that RNs may perform laboratory tests under Business and Professions Code section 2725, and worked to ensure that DHS' proposed language allows RNs to perform such tests under standardized procedures and without the requirement that lab directors supervise RNs in the performance of these tests. However, Senator Maddy is expected to introduce legislation in 1995 which would clarify the authority of RNs and other health care practitioners to perform clinical laboratory tests and invalidate DHS' regulations related to point-of-care clinical laboratory testing devices by RNs on January 1, 1996 (see LEGISLATION).

Clinical Nurse Specialist Task Force Update. AB 518 (Woodruff) (Chapter 77, Statutes of 1993) added section 2718(a) to the Business and Professions Code, directing BRN to conduct a study of clinical nurse specialists (CNS) and the use of the title "clinical nurse specialist" in California; the bill required BRN to report the results of the study to the legislature by January 1, 1995. [14:4 CRLR 97; 14:2&3 CRLR 103; 14:1 CRLR 81] BRN does not currently certify clinical nurse specialists.

On October 27, the Clinical Nurse Specialist Task Force met to analyze data received from a survey it sent to nurses statewide. The Task Force reviewed 925 of the approximately 1,075 responses received and made recommendations to BRN; the Task Force's report and recommendations were accepted by the Nursing Practice Committee on November 9 and by BRN at its November 17-18 meeting.

The Task Force concluded that nurses in California are using the "clinical nurse specialist" title without fulfilling the role of a CNS. According to professional and national standards, use of the CNS title demands both depth of knowledge in a specialty and breadth of knowledge in areas such as nursing theory, research, organization, and teaching/learning models. The Task Force found that while nurses using the CNS title fulfill the depth of knowledge requirement by being expert clinicians in their respective fields, they often lack the required breadth of knowledge. Currently, there is no specific educational requirement entitling a practicing nurse to use the CNS title; nurses who use the CNS title reported having obtained relevant education from master's degree programs, bachelor's degree programs, and

from on-the-job training. The Task Force recommended that the current use of the "clinical nurse specialist" title be changed in order to protect against potential public harm due to confusion in the use of the title; each CNS should obtain a master's degree in nursing which includes a clinical specialty; each CNS who currently has a master's degree in a related clinical or educational field should be "grandparented in" so as not to be displaced by the proposed new requirements; and BRN should add a data-tracking card to license renewal forms in order to update professional and educational advancements achieved by practicing nurses. BRN will also take under consideration a proposal to make the use of the CNS title subject to a Board certification program. At this writing, the Task Force's report has not been submitted to the legislature.

BRN Strategic Planning Project Update. On November 16, BRN met with The Results Group, a consulting firm, to review the results of its August 16 preliminary planning session and of the stakeholder satisfaction surveys sent to BRN staff members, licensure applicants, legislators, RNs, the Department of Consumer Affairs (DCA), and other interested persons. This survey was drafted and mailed to interested parties by an eleven-member task force chaired by Assistant Executive Officer Susan Brank. [14:4 CRLR 97] At BRN's November meeting, Board members reviewed the data received to date and prepared a presentation for review and approval at its February 2-3 meeting in Ontario.

■ LEGISLATION

Proposed Legislation. In 1995, Senator Ken Maddy is expected to introduce legislation regarding DHS' licensure and regulation of clinical laboratories and various clinical laboratory health care professionals. Specifically, the legislation is expected to state the legislature's intent in revising these provisions to, among other things, enact state laws consistent with the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. section 263a, clarify the authority of RNs and other health care practitioners to perform clinical laboratory tests, and provide that DHS' regulations relating to the use of point-of-care clinical laboratory testing devices by RNs are invalid as of January 1, 1996 (see MAJOR PROJECTS).

■ RECENT MEETINGS

At the Board's September 22-23 meeting, President Harriett Clark and Executive Officer Ruth Ann Terry reported on their service as BRN's delegates to the National Council of State Boards of

Nursing's (NCSBN) Delegate Assembly in Chicago on August 3-6. At the Delegate Assembly, NCSBN's Bylaws Committee placed the Nursing Practice and Education Committee into the Bylaws as a standing committee, contrary to BRN's desire to eliminate all standing committees except the Examination and Finance committees. The California delegation successfully lobbied to remove the requirement that a member of the Nursing Practice and Education Committee serve on at least one related subcommittee. Clark was appointed as Chair of the Unlicensed Personnel Task Force, and BRN Vice-President Genevieve Deutsch was appointed to serve on the Nurse Practitioner Task Force, bringing the total number of BRN members serving on national committees to four. In announcing those appointments, Clark explained that there is significant geographical tension within NCSBN, and that California delegates often contribute crucial empirical data not offered by delegates from other parts of the country.

Also in September, President Clark expressed concern that implementation of NCSBN's proposed Nurse Information System (NIS) will invade the privacy of nurses nationwide because there are currently no parameters defining who may have access to the information held on each nurse tracked by the system. BRN agreed to test-pilot the survey form for NIS, which will be included in approximately 10,000 renewal notices sent to RNs whose licenses expire on September 30; BRN will report on the results of this survey at future meetings.

Also at the September meeting, BRN approved several changes to its guidelines on the assignment of tasks to unlicensed caregivers; these guidelines reflect BRN's concern over a legislative trend allowing unlicensed caregivers to increasingly perform tasks previously only performed by licensed nurses. BRN President Clark emphasized that the policy of the guidelines is to describe nursing practice as it is currently being performed rather than to prescribe future nursing practice in any way that might discourage nurses from using their own critical judgment skills.

At its November 17-18 meeting, BRN approved a budget change proposal (BCP) which will reallocate funds to projects intended to improve the Board's service to the public. Included in the services funded by this BCP are the issuance of tamper-resistant pocket licenses, a toll-free number persons may call for license verification, biannual publication of BRN's newsletter, and expanded circulation of quarterly enforcement action reports.



Also at the November meeting, BRN's Diversion/Discipline Committee reported that 32 licensees were admitted into the Board's diversion program from August through October, bringing the year-to-date total to 44 persons. The Committee also reported that during the period from July to October, BRN received 306 complaints, 44 of which were from the general public. During the same period, BRN opened 199 investigations of licensed RNs, bringing the total number of pending investigations of licensed RNs to 733. From July 1 to September 30, the Attorney General's Office filed 25 accusations; BRN took 27 compliance actions (24 of which were violation letters); and BRN revoked 37 licenses.

Also in November, BRN elected Genevieve Deutsch, RNC, OGNP, as Board President and Mary Jo Gorney-Lucero, Ph.D., R.N., as Vice-President for 1995. New committee assignments were made for 1995; the following Board members were chosen to chair committees: Mary Jo Gorney-Lucero for the Education/Licensing Committee, Myrna Allen for the Nursing Practice Committee, Harriett Clark for the Legislative Committee, and Judith Jonilonis for the Diversion/Discipline Committee.

■ FUTURE MEETINGS

February 2-3 in Ontario.
April 6-7 in Oakland.
June 8-9 in San Diego.
September 14-15 in Sacramento.
December 7-8 in Los Angeles.

STRUCTURAL PEST CONTROL BOARD

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The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs (DCA). SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform struc-

tural repairs and corrections; and (4) Branch 4, Wood Roof Cleaning and Treatment, the application of wood preservatives to roofs by roof restorers. Effective July 1, 1993, all Branch 4 licensees must be licensed contractors. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license. With the enactment of SB 2070 (Calderon) (Chapter 844, Statutes of 1994), SPCB has a new licensing category of "structural pest control applicator," defined as any individual licensed by SPCB to apply a pesticide, rodenticide, allied chemicals, or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branches 2, 3, or 4 on behalf of a registered company. [14:4 CRLR 102] Prior to the passage of SB 2070, "applicators" were unlicensed individuals who received non-transferable applicator certificates after passing an examination; now such applicators must meet specified examination, application, and renewal requirements to receive a license.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

■ MAJOR PROJECTS

Board Proposes New Rulemaking Package. On January 6, SPCB published notice of its intent to amend sections 1911, 1919, 1950.5, 1970.3, 1973, 1990, 1991, and 1993, repeal section 1994, and adopt new section 1974, Division 19, Title 16 of the CCR. Specifically, the changes include the following:

- Existing section 1911 states that the "address" of a licensee is the address of the registered company by which he/she is employed or associated. The proposed amend-

ment would require licensees to maintain both an "address of record" which is the address of the registered company and a separate mailing address for purposes of receiving mail; it would also require each licensee to file his/her mailing address with the Board and to notify SPCB within ten days of any address change.

- Business and Professions Code section 8674 requires SPCB to maintain a Research Advisory Panel (RAP) to solicit and review research proposals; SPCB's proposed amendments to section 1919 would delete a requirement that the Board representative to the RAP be a public member of the Board. The purpose of the change, according to SPCB, is to expand the opportunity for other Board members to serve on the Research Advisory Panel.

- Existing section 1950.5(d) requires providers of approved continuing education (CE) courses to administer a final examination before licensees may receive CE credit; section 1950.5(d) states that CE course providers may offer reexamination if the licensee fails the first exam. The Board proposes to amend this section to state that providers shall administer a second examination and that such reexamination will be administered within 60 days of the first exam.

- Section 1970.3 prescribes the requirements for entry locks when a site is fumigated by a licensee; it currently states that a secondary lock is any device that will prevent a door from being opened by anyone other than the licensee in charge of the fumigation. The regulation also states that a clamshell lock or keyway locking device shall be used as the secondary lock when the door mechanism will accept it, and a pin may be used only when no other type of secondary locking device is capable of securing the structure. SPCB proposes to amend this section to provide that any locking device, including a clamshell lock or keyway locking device with pins, may be used as a secondary lock.

- Business and Professions Code sections 8505.3 and 8505.7 specify that licensees must ensure that an area is safe for re-entry following fumigation; existing section 1973 states that a "Notice of Re-Entry" sign must be posted on the structure after fumigation. The Board proposes to amend this section to require licensees to personally perform proper testing after aeration using the appropriate testing equipment as required by the manufacturer's label instructions and all applicable laws and regulations to ensure the area is safe for re-entry; the amendment would also change the color of the printing on the required "Notice of Re-Entry" sign from red to black, on a white background.