



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

Registrar: Mary Lynn Ferreira
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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.



REGULATORY AGENCY ACTION

- Business and Professions Code sections 8516 and 8538 require licensees to submit written structural pest control inspection reports. The Board proposes to amend section 1990 to clarify that the term "structural members" means "wood members," and to state that Branch 2 and Branch 3 licensees must report their findings of any evidence of carpenter ant or carpenter bee infestation. Additionally, existing law requires that the definition of a separated report be included on the structural pest control inspection report; SPCB's proposed amendment would define the term "separated report."

- Existing law specifies procedures for preparing the information required on a written structural pest control inspection report. Section 1991 requires that when a complete structural inspection is performed, recommendations shall be made to remove or cover all accessible evidence of wood-destroying pests, including pellets, frass, or beetle holes. SPCB's proposed amendment would eliminate the requirement to recommend covering all accessible beetle holes; it would also require licensees to recommend replacement or reinforcement of structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their purpose of supporting or adorning the structure.

- Business and Professions Code section 8516 requires that licensees submit various types of inspection reports to SPCB after the initial inspection and reinspection of a structure for the absence or presence of wood-destroying pests or organisms. The Board's proposed amendment to section 1993 would specifically define the various contents of the reports and group all reports under one section of the regulations; require that if a second inspection is required of the same structure, licensees must submit a reinspection report of their findings to the Board; and require that if the licensee cannot reach a part of the structure for inspection upon the first inspection, but upon reinspection is able to access that area, a supplemental report must be completed and submitted to the Board. Section 1993 currently provides that all supplemental reports shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto and shall be on the form prescribed by the Board; SPCB proposes to amend this section to specify that all inspection reports shall comply with the requirements of section 8516 of the Code.

- SPCB proposes to repeal section 1994, which defines the requirements for "limited inspection reports," as this lan-

guage is included in the proposed amendment to section 1993.

- Business and Professions Code sections 8505.4, 8505.6, 8505.9, and 8505.10 specify that prior to fumigation, licensees must ensure that the area is vacated by all occupants and all entrances secured against entry. The Board proposes to adopt new section 1974 to specify that fumigation warning signs must be at least 11"x17", to indicate proper placement of the warnings signs on a structure, and to include the warning sign format in the regulation.

At this writing, SPCB is scheduled to conduct a public hearing on these proposals on February 25 in Oakland.

Rulemaking Update. At its October 21 meeting, SPCB adopted several regulatory changes which were the subject of a public hearing in February 1994. [14:4 CRLR 102; 14:2&3 CRLR 107-08] Specifically, the Board approved amendments to sections 1950.5(h), 1970.4, 1971, 1983, and 1998; adopted new section 1991.1; and repealed section 1999.1, Title 16 of the CCR; SPCB also made minor modifications to its proposed amendments to section 1937.14 and proposed new section 1990.1, Title 16 of the CCR. Among other things, the rulemaking package would make the following changes:

- Section 1937.14 states that all work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect. SPCB originally announced its intention to amend section 1937.14 to require that such work comply with section 2516(c)(1)(2)(4)(6)(13), Title 24 of the CCR. At its October meeting, the Board modified the proposed amendment to require compliance with section 2516(c)(1)(2)(4)(6). SPCB released the modified text on November 4 for a 15-day comment period. The Board delegated authority to its Registrar to adopt the changes if no comments are received.

- SPCB's proposed amendments to section 1950.5(h) would change the number of CE credits available for specified activities. Activities such as teaching approved courses and publishing technical articles would receive from one to six hours per activity, rather than two to six hours, as the regulation currently provides.

- SPCB's amendments to section 1970.4 would require wood roof cleaning and treatment companies, among others, to leave in a conspicuous location a written notice identifying the common, generic, or chemical name of each pesticide applied.

- SPCB's amendments to section 1971 would delete a requirement that all fumigation crews have in their possession on the job antidotes and instructions for administering the antidotes for each type of fumigant used, and would require that crews have proper testing equipment as required by the manufacturer's label instructions and all applicable laws and regulations.

- SPCB's amendments to section 1983 would make technical, non-substantive revisions to the existing language in the section.

- Proposed new section 1991.1 would establish reporting requirements for wood roof cleaning and treatment companies, pursuant to Business and Professions Code section 8516.1(c)(8).

- SPCB's amendments to section 1998 would delete language which duplicates statutory law and instead state that if an inspection report must be filed pursuant to Business and Professions Code section 8516(h)(4), a notice of work completed shall be filed with SPCB for any work recommended and performed pursuant to such report.

- SPCB's proposed new section 1990.1 would specify a procedure for reporting inspections by wood roof cleaning and treatment registered companies. As originally adopted by SPCB in February 1994, this section would have required that completed reports contain the original signature of the wood roof cleaning and treatment licensee who made the inspection. At its October meeting, SPCB deleted the requirement for an original signature. SPCB released the modified text on November 4 for a 15-day comment period. The Board delegated authority to its Registrar to adopt the section if no comments are received.

- SPCB agreed to repeal section 1999.1, which specifies the formula for calculating the amount of time Branch 3 licensees may not work during license suspension; the Board determined the formula is unworkable and should be replaced by another regulation after further study.

SPCB took no action on other rule changes proposed in the February package, including amendments to section 1970 which would make technical and grammatical changes to the existing language regarding fumigation and pest control logs and records, and to section 1996 regarding the format for the completion of an inspection report. SPCB sent section 1990.5 back to its Rules and Regulations Committee for further review of proposed amendments relating to procedures for reporting condominium inspections. [14:1 CRLR 84]



At this writing, these proposed regulatory changes have been approved by the Department of Consumer Affairs (DCA) Director and are expected to be submitted to the Office of Administrative Law (OAL) on January 19.

Fee Increase for Applicator Examinations. Following a public hearing at its October 21 meeting, SPCB adopted a proposal to increase the fee charged for administration of the certified applicator examination from \$10 to \$15; the action would amend section 1948, Title 16 of the CCR. The increase is expected to cover the shortfall experienced by county agricultural commissioners' offices throughout the state which administer the examination on SPCB's behalf. Counties have reported that the current fee of \$10 is insufficient to cover the costs of proctoring and scoring the examination, issuing the temporary applicator certificate, and completing and submitting the required documentation to SPCB. [14:4 CRLR 102] The Board also directed staff to follow up on complaints received during the public hearing regarding examinations which are not being administered on an "as needed" basis; staff will also research the feasibility of proctor-administered exams rather than exams administered by the county agricultural commissioners. At this writing, SPCB is currently preparing the rule-making file for submission to the DCA Director; if approved, the file will be submitted to OAL for review and approval.

Section 8516 Requirement for Structural Reinspection Referred to Attorney General for Opinion. Business and Professions Code section 8516(b) requires that an inspection be made before a registered company or licensee begins work relating to wood-destroying pests or organisms; subsection (b)(12) states that an inspection report shall disclose that a reinspection of the structure must be performed within four months of the original inspection, if the consumer requests such a reinspection and as long as an estimate or bid for making repairs was given with the original inspection. DCA's legal office prepared an opinion which stated that this section requires reinspection of a structure if requested by the person ordering the original report, even if the company bid only on chemical treatment and not structural repair. [14:4 CRLR 102] At its December 9 meeting, the Board directed SPCB staff to request an opinion from the state Attorney General's Office or whether this reinspection requirement is retroactive, thereby requiring licensees to adhere to the reinspection requirements when the customer renews a previously existing annual service agreement or extends a previously purchased warranty.

Board Responds to Legislative Mandate Regarding Africanized Honey Bees.

At its October 21 meeting, the Board voted unanimously to adopt a voluntary certification program developed by the Pest Control Operators of California (PCOC) for the control of Africanized honey bees (so-called "killer bees"). In August 1994, Governor Wilson signed SB 250 (Kelley) (Chapter 298, Statutes of 1994), which requires SPCB to create a voluntary certification training program for licensees of SPCB and the Department of Pesticide Regulation (DPR) in the control of Africanized honey bees. [14:4 CRLR 102] The PCOC voluntary certification program adopted by SPCB consists of a four-hour course on the control of and protection from Africanized honey bees, followed by a forty-question final exam; the registration fee is \$35 for preregistration and \$45 on the day the program is offered. Certification by SPCB is only available through this program; participants who complete the course will be placed on SPCB and PCOC lists of recommended operators. The program is voluntary but, according to SPCB, will offer a higher standard by which to judge licensees and will give the public a way to recognize licensees who are experts in the field of Africanized honey bee control.

LEGISLATION

Future Legislation. At its October 21 meeting, SPCB agreed to seek legislation to amend Business and Professions Code sections 8505, 8518, and 8674(n), as follows:

- Section 8505 currently defines the scope of the terms "pest control" and "structural pest control." The Board voted to seek legislation to amend section 8505 to clarify that agricultural commodities as defined in Food and Agricultural Code section 6000 are excluded from SPCB's jurisdiction.

- SPCB also agreed to seek amendments to section 8518 to give companies ten, rather than five, working days to file with SPCB the notice of work completed; require a registered company to furnish a copy of the notice of work completed and not completed either to the owner of the property, or to the agent of the owner, within ten working days after completing the work; and require each such notice to have affixed thereto a stamp issued by SPCB in the denomination fixed by the Board as the fee for filing a notice of work completed and not completed.

- Section 8674(n) requires that the fee for filing a notice of work completed be not more than \$2; SPCB's proposed change would apply this section to notices of work not completed as well. The Board

directed staff to review the Structural Pest Control Act for other sections that must be amended to change the term "notice of work completed" to "notice of work completed and not completed."

At its December 9 meeting, however, SPCB reversed course and decided not to pursue the proposed changes to section 8505 at this time. Also at its December meeting, SPCB unanimously agreed to join with several other DCA agencies in seeking legislation that would allow them to issue probationary licenses. Currently, most DCA boards may either issue or deny a license; pursuant to Business and Professions Code section 3754, a probationary license may only be issued "after a hearing." The Attorney General has interpreted this section to mean that a board may not grant a probationary license until a statement of issues has been filed and a hearing held, even if the license applicant is willing to stipulate to a probationary license. Currently, the Medical Board of California and the Pharmacy Board have statutes allowing them to issue probationary licenses; after a probationary period, the board votes on whether to grant or deny the license pursuant to the Administrative Procedure Act guidelines on disciplinary matters. DCA is planning to seek legislation to give other interested boards, including SPCB, the authority to issue similar probationary licenses.

RECENT MEETINGS

At its October 20-21 meeting, the Board elected Carl Doucette to serve as SPCB president and Theodora Poloyinis-Engen to serve as vice-president for 1995.

Also at its October meeting, SPCB unanimously approved mission and vision statements prepared by a committee of the Board. The mission statement states that SPCB "will support a fair and competitive marketplace by ensuring consumer protection, promoting fair competition by improving services, and accelerating internal and external communication to better inform and involve personnel and the public." The vision statement states that SPCB's vision is "to become an acknowledged consumer protection board dedicated to excellence, recognizing that a consumer is not just a person who buys a service or product but...a person who provides the service as well." The statement assures the public that the Board will "endeavor to keep, maintain and develop license standards to protect public health and safety" and "promote rational choices in a competitive marketplace." It states that the Board will respond correctly and quickly to inquiries, resolve complaints expeditiously, ensure licensees are qualified, and fully and fairly



prosecute all violations of the law and regulations. The statement assures licensees that SPCB will develop effective examination and licensing procedures, ensure prompt and convenient testing, prosecute licensees who violate the Structural Pest Control Act and the Board's regulations, and quickly and fully investigate unlicensed activity.

Also at its October meeting, the Board reviewed Policy No. E-5, which sets forth its guidelines for disclosing complaint and disciplinary action histories to the public. The policy currently states that the Board shall maintain a system of information regarding complaints received during the preceding two fiscal years, and will provide information to the public, upon request, about the number of closed complaints filed against a licensee/registered company. With respect to each complaint, the Board will provide the date of receipt of the complaint and its disposition, by indicating whether the matter was dismissed as invalid, disposed of through settlement or compromise, referred to formal disciplinary action, or disposed of through any other action, formal or informal, taken against the licensee/registered company. At the Board's October meeting, the discussion centered on section (2)(a), by which the public is informed of complaints filed against a licensee even if the complaint was dismissed as invalid; the issue was whether section (2)(a) should be deleted so that information on invalid complaints would not be disclosed. This issue was not put to a vote, however, and was continued until the December meeting; at the Board's December 9 meeting, the Board appointed a committee to review the issue.

Also at its December meeting, SPCB discussed a draft Joint Licensing Interpretation of Agricultural and Structural Pest Control Activities prepared by DPR on the delineation of the "gray areas" between structural and agricultural pest control. [14:4 CRLR 103] The Board expressed concern about parts of the document and agreed to reopen its discussions on delineation with DPR and PCOC.

At its December meeting, the Board appointed a committee to review SPCB procedure regarding disciplinary action to be taken against companies on probation which commit additional violations of laws or regulations. Currently, disciplinary actions are recommended by the Registrar on a case-by-case basis; the Registrar has asked for guidance from the Board in making such decisions. Pursuant to a draft policy discussed at the December meeting, the additional discipline would be based on factors such as financial im-

pact, the seriousness of the violation, and the repetition of violations for which probation is being served; suggested disciplinary measures under the draft policy range from an informational letter to a formal warning letter to an accusation and petition to revoke probation. The committee will review this procedure and make recommendations to the Board at an upcoming meeting.

Also at its December meeting, the Board directed staff to correspond with all fire departments in the state regarding overlap between the authority of fire departments and SPCB. Many fire departments are requiring permits from fumigators, at fees ranging from \$15 to \$150. SPCB will notify the fire departments that the Food and Agricultural Code states that DPR, in cooperation with SPCB, is the agency designated to regulate pesticides and fumigants in California; the additional fire department requirements may conflict with the Code and therefore should not be enforced against licensees. Staff will also notify fire departments of the passage of SB 2070 (Calderon) (Chapter 844, Statutes of 1994), which prohibits a fire department from charging registered companies a fee in excess of \$25 for receiving required notices of fumigants. [14:4 CRLR 102]

■ FUTURE MEETINGS

February 25 in Oakland.

May 12 in San Diego.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
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Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals, animal health facilities, and animal health technicians (AHTs). The Board evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California State Board Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and unregistered assistants have in administering animal health care. BEVM's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR). All veteri-

nary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members—four licensees and two public members. The Governor appoints all of the Board's DVM members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms. The Board has eleven committees which focus on the following BEVM functions: continuing education, citations and fines, inspection program, legend drugs, minimum standards, examinations, administration, enforcement review, peer review, public relations, and legislation. The Board's Animal Health Technician Examining Committee (AHTEC) consists of the following political appointees: three licensed veterinarians, three AHTs, and two public members.

BEVM is currently functioning with one professional member vacancy.

■ MAJOR PROJECTS

Clinical Competency Test Results Cancelled. At BEVM's January 6 meeting, Executive Officer Gary Hill reported that the Board would disregard the results of the December administration of the Clinical Competency Test (CCT) due to defective test booklets provided by the exam vendor, Professional Examination Service. During the course of the test administration, approximately 30% of the examinees complained that the ink in their assigned markers was either appearing and then fading from the booklets or not appearing at all. After consulting with Dr. Norman Hertz of the Department of Consumer Affairs' Office of Examination Resources and BEVM President Nancy Collins, Hill informed the examinees that the Board had elected to cancel the exam based on the percentage of defective booklets.

In a December 16 memo to BEVM Executive Officer Gary Hill, PES acknowledged that the latent-image ink used to print the December CCT booklets was defective; PES assured Hill that it would conduct a "thorough analysis of the situation that resulted in the printing of the defective booklets" and present its findings to BEVM when its review is completed.

In order to accommodate the affected examinees, PES scheduled a special CCT administration for January 24, and announced that examinees could take either