be prohibited from maintaining, adopting, or enforcing any policy or practice of linking payments made by VSP to any VSP panel optometrist to fees charged by the optometrist to any non-VSP patient or any non-VSP plan; differentiating its payments to, or other treatment of, any VSP panel optometrist because the optometrist charges any fee lower than that charged by the optometrist to the VSP, to any non-VSP patient, or to any non-VSP plan; taking any action to discourage any VSP panel optometrist from participating in any non-VSP plan or from offering or charging any fee lower than that paid to the optometrist by VSP to any non-VSP patient or to any non-VSP plan; monitoring or auditing the fees that any VSP panel optometrist charges any non-VSP patient or non-VSP plan; and communicating in any fashion with any VSP panel optometrist regarding the his/her participation in any non-VSP plan or regarding the his/her fees charged to any non-VSP patient or to any non-VSP plan. *[15:1 CRLR 83–84]* At this writing, the court has not yet approved the proposed consent decree.

In ***State of Florida v. Johnson & Johnson, et al.***, No. 94-619-CIV-J-20, the Florida Attorney General filed a nationwide class action in U.S. District Court for the Middle District of Florida against Bausch & Lomb Inc., Johnson & Johnson Vision Products Inc., the American Optometric Association, the Contact Lens and Anterior Segment Society, and nine optometrists; the Attorney General contends that the defendants engaged in a conspiracy to restrict the sale of soft contact lenses. According to the action, the defendants made soft contact lenses available only to optometrists, ophthalmologists, and opticians—who often mark up the lens prices significantly—and not to alternative channels of distribution such as pharmacies, mail-order firms, and similar entities which may offer discounted prices on the lenses. The action further claims that the named optometrists and the Society tried to persuade lens manufacturers not to distribute soft lenses to alternative chains of distribution, and that the Society threatened not to prescribe the lenses of any manufacturer which sold its product to pharmacies or mail-order channels of distribution. At this writing, the matter is not expected to be heard until at least late 1996 or early 1997.

RECENT MEETINGS

At its March 9–10 meeting, the Board decided to pursue legislation authorizing it to convert its annual license renewal system to a biennial license renewal system.

Also at its March meeting, the Board received testimony in support of and opposition to a proposal to allow optometrists to use collagen punctal plugs as a diagnostic tool. Those in support of the proposal testified that it is a quick and progressive procedure; those opposed contended that it is invasive surgery which exceeds an optometrist's scope of practice. Following discussion, the Board agreed to accept collagen punctal plugs as a diagnostic tool for optometrists which falls within the scope of practice of optometry. This policy appears to conflict with the Board's earlier position on this issue; in May 1991, the Board determined that "the use of collagen implants by an optometrist would not be within the current scope of optometric practice." *[11:3 CRLR 99–100]*

FUTURE MEETINGS

May 22–23 in San Francisco.
August 24–25 in Sacramento.
December 1–2 in Orange County.

BOARD OF PHARMACY

Executive Officer: Patricia Harris (916) 445-5014

Pursuant to Business and Professions Code section 4000 *et seq.*, the Board of Pharmacy grants licenses and permits to pharmacists, pharmacies, drug manufacturers, wholesalers, medical device retailers, and sellers of hypodermic needles. It regulates all sales of dangerous drugs, controlled substances, and poisons. The Board is authorized to adopt regulations, which are codified in Division 17, Title 16 of the California Code of Regulations (CCR). To enforce its regulations, the Board employs full-time inspectors who investigate complaints received by the Board. Investigations may be conducted openly or covertly as the situation demands.

The Board conducts fact-finding and disciplinary hearings and is authorized by law to suspend or revoke licenses or permits for a variety of reasons, including professional misconduct and any acts substantially related to the practice of pharmacy.

The Board consists of ten members, three of whom are nonlicensees. The remaining members are pharmacists, five of whom must be active practitioners. All are appointed for four-year terms.

On January 30, Governor Wilson appointed Caleb Zia to the Board as a public member. Zia is the President and Executive Director of the Minority Business Council of Orange County, as well as the President of Chesterfield Corporation, a business consulting and management firm; he also serves on the board of Allied Biotechnology International, Inc., a research and manufacturing company which produces bio-pharmaceuticals, diagnostic assays, and health care products.

MAJOR PROJECTS

Medical Device Retailer Locked Storage. AB 1807 (Bronshvag) (Chapter 26, Statutes of 1994) authorizes a medical device retailer to establish a locked storage facility for furnishing dangerous devices in emergencies or after working hours; provides that the locked storage may be installed or placed in a service vehicle of the medical device retailer for after-hours or emergency delivery to patients who have prescriptions for dangerous devices; and authorizes the Board to adopt regulations to permit an exempt person to direct a non-licensed employee of a medical device retailer who operates a service vehicle equipped with locked storage to deliver a dangerous device from the locked storage to patients having prescriptions for dangerous devices. *[14:1 CRLR 74]* However, under existing section 1748.1, Title 16 of the CCR, only an exemptee (either a California registered pharmacist or someone who becomes licensed by the Board as an "exemptee" after passing a Board-administered exam) may furnish dangerous devices from a locked storage of a medical device retailer.

On March 17, the Board published notice of its intent to amend section 1748.1 to implement AB 1807 and expand the personnel authorized to provide emergency or after-hours delivery of dangerous devices to patients of a medical device retailer to include an employee who operates a service vehicle. The proposed amendments would require that dangerous devices be furnished from the locked storage only by an exemptee or upon the oral or written direction of an exemptee to an employee of the medical device retailer who operates the service vehicle. The amendments further provide that the exemptee is responsible for checking the contents of the locked storage and for noting on the inventory the dangerous devices furnished within 72 hours of the furnishing of the dangerous device from the locked storage to a patient.

At this writing, the Board is scheduled to hold a public hearing on the proposed amendments to section 1748.1 on May 24 in Sacramento.

Examination Admission Requirements. Also on March 17, the Board published notice of its intent to amend section 1719, Title 16 of the CCR, which specifies

the requirements which applicants must satisfy prior to admission to the pharmacist licensure examination; the existing regulation requires that all candidates for the pharmacist licensure examination who are graduates of a foreign pharmacy school must demonstrate proficiency in English by obtaining a score of at least 220 on the Test of Spoken English (TSE), which is administered by the Educational Testing Service (ETS). In October 1994, ETS announced that it will begin administering a revised TSE that will replace the current exam in July 1995; the reviewed TSE will have a very different scoring scale from the one used for the current exam. To accommodate the new version of the exam, the proposed amendments would specify that candidates taking the TSE after June 30, 1995, must achieve a score of at least 50; candidates taking the TSE before June 30, 1995 must continue to achieve a score of at least 220. The proposed amendments would also make technical, nonsubstantive changes.

At this writing, the Board is scheduled to hold a public hearing on the proposed amendments to section 1719 on May 24 in Sacramento.

Revisions to Building and Security Standards Proposed. On May 15, the Board published notice of its intent to repeal sections 1711, 1712, 1713, and adopt new section 1714, Title 16 of the CCR, to streamline the pharmacy licensure application process; allow for latitude in the design of pharmacy facilities; and provide for adequate staff work areas and security in pharmacies by eliminating unnecessarily restrictive building and security standards and consolidating the existing standards, with some modifications, into a single regulation. Proposed new section 1714 would provide that any pharmacy, except hospital inpatient pharmacies, initially licensed after July 1, 1996, must contain an area suitable for confidential patient counseling; beginning January 1, 1998, all pharmacies must contain such an area. The counseling area must be easily accessible to patient and pharmacist; must not allow patient access to prescription drugs; and must be designed to maintain confidentiality and privacy for pharmacist/patient communication. In evaluating whether an area is suitable for counseling, the Board may consider such factors as proximity of the counseling area to the check-out area; the volume of pedestrian traffic in and around the area; the presence of walls or other barriers; and any evidence that confidential information can be overheard by others.

The proposed regulation would also incorporate modified versions of the standards currently set forth in sections 1711, 1712, and 1713. New section 1714 would require that each pharmacy licensed by the Board maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured, and distributed, and maintain the pharmacy, fixtures, and equipment in a clean and orderly condition. The pharmacy shall be of sufficient size to accommodate the safe practice of pharmacy; be dry, well-ventilated, free from rodents and insects, and properly lighted; and be equipped with a sink with hot and cold running water for pharmaceutical purposes. The proposed regulation would also specify that each pharmacist, while on duty, shall be responsible for the security of the prescription department, which includes having provisions for effective control against theft or diversion of dangerous drugs and devices or the records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist. The proposed regulation would also provide that an applicant for a licensed premise or for a renewal of that license must certify that it meets the requirements of section 1714 at the time of licensure or renewal; however, the Board may, at its discretion, waive any provisions of certain specified sections for good cause shown.

At this writing, the Board is scheduled to hold a public hearing on the proposed changes at its July 26 meeting in San Diego.

Related to the proposed building and security standards, at its March 29 meeting the Board discussed and agreed to initiate a pharmacy and wholesaler self-inspection program which would require a pharmacy or wholesaler licensure applicant to complete a self-inspection form that covers the building and security standards required when initially applying for a license and periodically thereafter. In this way, Board inspectors are not required to inspect the pharmacy prior to opening, but may do so shortly thereafter while the pharmacy is actually operating, thus avoiding delays in opening. The Board noted that such a program would also serve to further educate and provide guidance to pharmacists because the self-inspection form could be reviewed and discussed with the pharmacist after the inspector has conducted the inspection.

Automation of the Triplicate Program. On March 28, the Board's Oversight Committee on the Automation of the Triplicate Program met to discuss the draft Feasibility Study Report (FSR) prepared by the Hawkins Data Center. *[15:1 CRLR 86]* The goal of the study was to develop an automated information system for an effective statewide method to electronically monitor and track controlled substance prescriptions as an alternative to the current triplicate system. Through a detailed analysis, the FSR documents the problems of the current triplicate system; sets out the objectives, functional requirements, and costs of implementing an automated electronic monitoring system; and presents alternatives to such a system. The recommendation of the FSR is presented in two phases: data collection and application. The report recommends that data collection be contracted to an outside vendor who would collect Schedule II prescription data from pharmacies; the application phase would then involve the development of a new open platform system, which is a simple data collection system to record and combine the reported information on one platform. The FSR estimates that the preliminary start-up costs for the automation project would be $2 million, with maintenance costs of $1.5 million; the maintenance costs for the current triplicate system are $700,000.

After the presentation of the FSR, the Oversight Committee agreed that the system should be an online, real-time system; the ultimate goal of the project is to eliminate the triplicate prescription, although it will be retained for the present; and the automated system should be evaluated for effectiveness within three months of implementation so that legislative efforts to eliminate the triplicate requirement can be pursued. The Committee also discussed the costs of implementing and maintaining the automation system; stated that resources currently used for processing and maintaining triplicate prescriptions could eventually be redirected to the automation program; and appointed a subcommittee to research and pursue funding sources such as federal grants and private foundations. The Committee also determined that legislative authority would be required to implement an electronic monitoring system for controlled substances and discussed proposed language for such legislation.

At its March 29 meeting, the Board received the Committee's FSR. The Board expressed its continued support for the implementation and funding of an automated, real-time electronic monitoring system and agreed to support legislation that would authorize the implementation of such a system.

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

• On February 2, the Office of Administrative Law (OAL) approved the Board's adoption of new sections 1751.11 and 1751.12, Title 16 of the CCR. Section 1751.11 establishes a list of dangerous drugs which may be furnished by a pharmacist to a home health agency or licensed hospice and stored in transportable, tamper-proof, sealed storage containers; it also creates inventory and recordkeeping requirements. Section 1751.12 provides that a pharmacy shall not issue portable containers unless the home health or licensed hospice complies with the provisions of section 1751.11. *[15:1 CRLR 86; 14:4 CRLR 91; 14:2&3 CRLR 95–96]*

• At its January 25 meeting, the Board held a public hearing on the proposed adoption of new Article 9.5, commencing with section 1775, to Title 16 of the CCR, which would establish a citation and fine program. The regulations would authorize a Board inspector or committee to issue citations containing orders of abatement and/or fines for the unlicensed practice of pharmacy and for violation of the pharmacist's duty to provide oral consultation before dispensing medication. The regulations would also set forth the criteria which must be considered when determining the amount of an administrative fine (when a fine is assessed with a citation); provide for the correction of violations after an order of abatement has been served; specify the consequences of failing to pay a fine or comply with an order of abatement; and provide for a process of contesting a citation by appealing to the Board and requesting an office conference and/or public hearing. *[15:1 CRLR 84; 14:4 CRLR 91–92; 14:2&3 CRLR 95]*

At the hearing, the Board received testimony from the California Retailers Association (CRA) questioning the necessity of the proposed regulations. CRA's spokesperson contended that the new program would be unduly burdensome on the profession; the current system of enforcement is adequate and in fact makes a more forceful impression on violators and would-be violators, as violators now must appear before the Board's Northern or Southern Interim Committees (NIC/SIC); the cite and fine system fails to create uniform and consistent results because the evaluation required of inspectors is very subjective; and the proposed program would result in undue costs to the Board by establishing office conferences and could increase the cost of doing business in California. The Board responded by explaining that the implementation of the cite and fine program is an augmentation to the existing enforcement system, not a substitute; citations and fines may only be issued for unlicensed activity and patient consultation violations; and there will be consistency because only the NIC and SIC will cite and fine pharmacists for violations of the oral consultation requirement; while the inspectors will cite and fine only unlicensed activity.

Following the discussion, the Board adopted the proposed regulations by a vote of 6–2. The regulations were approved by the Department of Consumer Affairs (DCA) on April 17 and the rulemaking file was submitted on April 21 to OAL, where it is pending at this writing.

• Also on January 25, the Board held a public hearing on its proposed amendments to sections 1749 and 1793.5, and the addition of new section 1749.1, Title 16 of the CCR, which specify the schedule of fees and penalties for the licenses, permits, and registrations issued by the Board. The proposed amendments would increase specified fees to ensure that the Board's reserve fund is restored and maintained at a prudent level for conducting ongoing operations. *[15:1 CRLR 85]* In late December, the Board modified the proposed regulatory language by creating proposed new section 1749.1, which would set forth the revised fees scheduled to take effect on July 1, 1995, and released the language for a 15-day comment period. The Board decided to create new section 1749.1 to set forth the new fee schedule rather than amend the fee schedule in section 1749 in order to avoid confusion about the effective dates of each schedule. Proposed section 1749.1 would, among other things, increase the fee for the issuance of a permit to conduct a pharmacy from $340 to $400; increase the annual permit renewal fee from $175 to $250; increase the penalty for failure to renew from $87.50 to $125; and increase the fee for the biennial renewal of a pharmacist's license from $115 to $150. The amendments to section 1749 would specify that the current fee schedule remains in effect until June 30, 1995. The amendments to section 1793.5 would increase the fee for registration as a pharmacy technician from $25 to $50.

During the hearing, several witnesses questioned the need for the fee increase; the Board expressed its reluctance to increase fees, but stated that if fees are not increased, the Board will have to cut its expenses by $1 million in fiscal year 1995–96. The Board also noted that its fees still tend to be lower than those of other state boards of pharmacy, and are substantially lower than those of many other regulatory boards in California that govern healing arts professions.

Following discussion, the Board adopted the fee increases and agreed to form a small committee to identify Board cost requirements, aggressively reduce expenditures, and pursue cost savings. DCA approved the regulations in March and OAL approved them on April 27.

• On January 25, the Board held a public hearing on its proposed adoption of new section 1717.4, Title 16 of the CCR, which would authorize the electronic transmission of prescriptions by prescribers to pharmacies while ensuring the security and confidentiality of electronically transmitted prescriptions. As proposed, the regulation would provide that an electronically transmitted prescription must include the name and address of the prescriber, a telephone number for verbal confirmation, date of transmission, and the identity of the recipient, as well as any other information required by state or federal law. An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice; the pharmacy receiving the electronic transmission must either receive or have the capacity to retrieve the prescription in hard copy form; and any hard copy of a prescription shall be maintained on paper of a permanent quality. The regulation also provides for an interim storage device, which is an electronic file into which a prescription is entered for later retrieval by an authorized individual; specifies information it shall record; and requires that the interim storage device be maintained so as to prevent unauthorized access and use of prescription information. The regulation further requires that any person who transmits, maintains, or receives any prescription or prescription refill orally, in writing, or electronically shall ensure the security, integrity, and confidentiality of the prescription and any information contained therein. *[15:1 CRLR 85; 14:4 CRLR 89; 14:2&3 CRLR 98]*

In response to comments made at the hearing, the Board added a provision specifying that the prescriber's address and telephone number for verbal confirmation may be omitted if they are already on file in the receiving pharmacy. The Board agreed that modifying the regulation to ease the requirement of transmitting this information each time a prescription is electronically transmitted would be more efficient and would save costs. The Board also added a provision specifying that the requirement that an electronically transmitted prescription be transmitted only to the pharmacy of the patient's choice shall not apply to orders for medications to be administered in an acute care hospital. The concern was that the choice of a pharmacy outside the hospital made by a patient in an intensive care unit could severely disrupt that patient's care.

At the conclusion of the hearing, the Board adopted the modified language of new section 1717.4. The modified regulation was released for an additional 15-day comment period in February and approved by DCA in early March. OAL approved the new section on April 19.

• In July 1994, the Board adopted modified amendments to section 1707.2, Title 16 of the CCR, which would apply the same requirements and standards for oral consultation to out-of-state pharmacies which ship, mail, or deliver prescriptions to California residents as are applied to in-state pharmacies. However, the Board postponed administrative approval and implementation of the amendments in order to consider further comments and pursue further discussions with mail-order pharmacy representatives and the Department of Consumer Affairs, both of whom disagree with the regulation. *[15:1 CRLR 86; 14:4 CRLR 90–91; 14:2&3 CRLR 95]*

On February 9, DCA hosted a roundtable discussion of the Board's proposed amendments. The purpose of the forum was to provide an opportunity for the exchange of views and ideas between those who support and oppose the regulation as applied to out-of-state pharmacies, as well as to determine if there is any common ground on how pharmacies that ship, mail, or deliver prescriptions could provide the most effective means of consultation. Participants in the forum discussed their concerns about the existing and proposed regulations, including the increased costs to out-of-state pharmacies, the difficulty of providing consultation, the ability to enforce the regulations, interstate commerce questions, the need for patient education and consultation, the need for equal treatment of patients despite the chosen channel of distribution, and the creation of a competitive advantage or disadvantage within the industry. Participants also formulated goals for the consultation regulations, discussed possible methodologies for consultation, and suggested optional solutions to achieve the goals agreed on. The forum produced two alternatives to the proposed regulations. One would require the Board to reevaluate its regulation as applied to all pharmacies, including in-state and out-of-state pharmacies, and adopt a regulatory framework that would establish the same consultation standard for all practice settings regardless of where the prescription is filled or how it is received; consultation would be triggered by factors established by the Board rather than the method of delivery. The second alternative recommends the use of an affirmative check-off box for prescriptions that are mailed, shipped, or delivered, by which a patient would indicate by checking a box that he/she wants a pharmacist to call for consultation.

At its March 30 meeting, the Board discussed the results of the forum and the alternative proposals, as well as a University of Southern California (USC)/Kaiser study currently being conducted which addresses consultation triggered by specific patient and/or drug criteria. *[12:4 CRLR 116]* The Board agreed that oral consultation is important, but members disagreed as to the best approach; some members wished to wait until the USC/Kaiser study is completed while others wanted to pursue the check-off box option. The Board finally decided by a vote of 5–4 to take no action on the regulation and to review the final USC/Kaiser study as well as other studies about patient consultation. As a result of this decision, the Board dropped its proposed amendments to section 1707.2, which had been tabled during these discussions.

LEGISLATION

SB 988 (Polanco). Existing law provides for the licensure, regulation, and discipline of pharmacists and pharmacies by the Board; existing law exempts certain activities, drugs and devices, and facilities from the application of this law. As amended April 25, this bill would also exempt the furnishing of dangerous drugs and devices, as defined, to recognized schools of nursing, in certain circumstances. This bill would also authorize a wholesaler or pharmacy to furnish dangerous drugs to certain officers of an ocean vessel in accordance with certain procedures and federal regulations. *[15:1 CRLR 87]*

Existing law also sets forth the requirements for licensure as a pharmacist for applicants who graduate from a foreign pharmacy school. This bill would revise those requirements. *[15:1 CRLR 86]*

SB 988 would also revise requirements relating to the filing of petitions for reinstatement of a revoked or suspended certificate, or any other license, registration, permit, or exemption issued by the Board, and would require the automatic suspension of a pharmacist's certificate if the pharmacist or other licensee, certificant, permittee, registrant, or exemptee is incarcerated after conviction of a felony in accordance with specified procedures. *[S. Floor]*

AB 611 (Aguiar), as amended May 4, would create a new licensure program to be administered by the Board—the veterinary food-animal drug retailer, defined as a place (other than a pharmacy) that holds a valid wholesaler certificate, license, permit, or registration, from which veterinary drugs for food-producing animals are dispensed pursuant to a prescription from a veterinarian, and which is issued a permit for that location by the Board of Pharmacy. The bill would define the term "veterinary food-animal drugs" to include any drug intended for use in food-producing animals that, by federal or state law, may be dispensed only by the prescription of a licensed veterinarian.

Under AB 611, a veterinary food-animal drug retailer must be placed under the charge of a responsible person exempt from the pharmacist registration requirement, who has completed a training program approved by the Board and passed an examination administered by the Board; may dispense veterinary food-animal drugs for food-producing animals under specified conditions; and may dispense veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a veterinarian's prescription.

AB 611 is nearly identical to AB 2973 (Aguiar), which was vetoed in September 1994 by Governor Wilson, who claimed that the fees charged were not sufficient to make the regulatory program self-supporting. *[14:4 CRLR 92]* The author and the sponsor, the California Veterinary Medical Association, claim that the Department of Finance cost estimate of $100,000 annually for the program was erroneous, and that it will cost only $20,000 annually. *[S. Floor]*

AB 1107 (Campbell). Under existing law, the right to sell or furnish prescription lenses is limited exclusively to licensed physicians, optometrists, and registered dispensing opticians. As amended May 15, this bill would, notwithstanding that limitation, authorize a pharmacist to dispense replacement contact lenses, as defined in accordance with certain requirements.

Existing law requires nonresident pharmacies, as defined, to register with the Board and to disclose certain information to the Board. This bill would instead require that nonresident pharmacies comply with certain requirements, maintain certain records, and disclose certain information to the Board. This bill would also add a requirement that those pharmacies maintain records of all replacement contact lenses shipped, mailed, or delivered to California residents. *[A. Appr]*

AB 1163 (V. Brown). Existing law provides for the licensure and regulation of pharmacists and provides that a violation of the provisions regulating the practice of pharmacy is subject to criminal sanction. Existing law also provides that a registered nurse who is authorized by administrative regulations and is employed by or serves as a consultant for a licensed

skilled nursing, intermediate care or other health care facility, may orally or electronically transmit to the furnisher a prescription lawfully ordered by a person authorized to prescribe drugs or devices, and requires the furnisher to record the name of the person who transmits the order. As introduced February 23, this bill would similarly permit a registered nurse who is employed by a home health agency to orally transmit a prescription, and require the furnisher to record the name of the person who transmits the order. *[A. Floor]*

AB 1529 (Vasconcellos). Existing law generally prohibits the possession of marijuana or concentrated cannabis and prohibits the planting, cultivating, harvesting, drying, or processing of marijuana. As amended May 9, this bill would provide that these prohibitions do not apply to any person who possesses marijuana or plants, cultivates, harvests, dries, or processes marijuana for his/her own personal medicinal use or for the personal medicinal use of another for whom the person is the legal guardian or caregiver, where the medicinal use has been approved in writing by a licensed physician for the treatment of AIDS, cancer, glaucoma, or multiple sclerosis. *[S. Floor]*

AB 1136 (V. Brown). Existing law imposes various requirements on health care service plans and insurers, and permits those plans and insurers to enter into various contracts with health care providers. As amended April 17, this bill would provide that the offer or delivery by any health care service plan or insurer, or the receipt or acceptance by any pharmacist, of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for substituting drugs is unlawful. *[A. Appr]*

AB 322 (Alpert). Existing law categorizes controlled substances into five schedules and places the greatest restrictions on those contained in Schedule I. Existing law provides that while only the controlled substances in Schedules II through V may be prescribed, the controlled substances in Schedule II may be prescribed only pursuant to a triplicate prescription, as specified. As introduced February 9, this bill would transfer the controlled substance methylphenidate from Schedule II to Schedule III. *[A. PubS]*

SB 641 (Craven). Existing law authorizes a licensed pharmacist to dispense drugs upon a transmittal order of a physician assistant (PA) who has been delegated that authority by a physician. As introduced February 22, this bill would state the intent of the Legislature to enact guidelines for pharmacists who accept Schedule II prescriptions from PAs in accordance with those provisions. *[S. B&P]*

SB 922 (Mello). Existing law requires the Board to adopt regulations that apply the same requirements or standards for oral consultation to certain out-of-state pharmacies that are applied to certain in-state pharmacies, and provides that the regulations shall not result in any unnecessary delay in patients receiving their medication. As introduced February 23, this bill would additionally provide that the regulations shall also not result in any unnecessary expense to patients receiving their medication. *[S. B&P]*

SB 959 (Mello), as introduced February 23, would state the intent of the legislature that pharmacists be prohibited from receiving compensation for the dispensing of prescription drugs beyond a predetermined dispensing fee established by the patient's insurance carrier. *[S. Rls]*

SB 777 (Polanco). Existing law provides for the licensure and discipline of psychologists administered by the Board of Psychology (BOP), and defines the practice of psychology. Existing law excludes from the practice of psychology the prescribing of drugs, the performance of surgery, and the administration of electroconvulsive therapy. As amended May 2, this bill would require BOP to establish and administer a certification program to grant licensed psychologists prescriptive authority, as defined, and to develop procedures for that certification with the advice of the state Department of Health Services and the Board of Pharmacy. The bill would require each applicant for certification to satisfy certain educational and training requirements. This bill would also delete the exclusion of the prescribing of drugs by certified psychologists from the practice of psychology. *[S. B&P]*

SB 510 (Maddy), as amended May 2, would authorize optometrists to use specified diagnostic drugs and to prescribe specified therapeutic pharmaceutical agents (TPAs) incidental to their practice of optometry (excluding controlled substances). Currently, California optometrists have no prescriptive authority. This bill would make it a misdemeanor for any optometrist to refer a patient to a pharmacy that is owned by the optometrist or in which the optometrist has a proprietary interest (*see* agency report on BOARD OF OPTOMETRY for a detailed discussion of this bill). *[S. B&P]*

AB 1969 (Isenberg), as amended April 5, is substantially similar to SB 510 above; however, instead of providing that any use, prescribing, or dispensing of TPAs to a patient by an optometrist is limited to that which is incidental to the practice of optometry, AB 1969 would require that such use, prescribing, or dispensing of a pharmaceutical agent be limited only to the practice of optometry. *[A. Health]*

AB 1572 (Allen), as amended May 2, would, among other things, repeal the existing Pharmacy Law and reenact it as revised as reorganized. The purpose of the bill is not to change any substantive provision of existing pharmacy law, but to recast it into a more organized format and to eliminate duplication and archaic language. This bill is sponsored by the Board of Pharmacy and is the product of several years of work by the Pharmacy Law Committee. *[A. Health]*

RECENT MEETINGS

At its January 25 meeting, the Board adopted draft scope of practice guidelines in order to implement SB 1759 (Chapter 1161, Statutes of 1994), which became effective on January 1, 1995, and authorizes pharmacists to perform expanded functions in a variety of settings including unlicensed facilities operated by a health care service plan, a licensed clinic, or a provider who contracts with a licensed health care service plan. *[14:4 CRLR 92]* A pharmacist may now order or perform routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration; order drug therapy laboratory tests; administer drugs by injection pursuant to a prescriber's order; and adjust the drug regimen of a patient pursuant to a written specific order by the patient's prescriber. Pharmacists are authorized to perform these expanded functions in accordance with the policies, procedures, or protocols of the facility, licensed clinic, or health care service plan. The Board's guidelines were drafted to aid in the development of those policies, procedures, or protocols, which are not subject to prior approval by the Board. The guidelines state that the procedures must be in writing, dated, and signed by the personnel authorized to approve it; specify which functions the pharmacist may perform and under what circumstances; state any specific requirements to be followed by the pharmacist in performing those functions; and specify any experience, education, or training requirements for performance of those functions. The procedures must also establish a method for initial and continuing evaluation of the competence of the pharmacists authorized to perform those functions; specify the scope of supervision required; state the limitations on settings, if any, in which the functions may be performed; set forth any specialized circumstances

under which the pharmacist is to immediately communicate with a patient's physician; provide for a method of periodic review of the functions performed by pharmacists; and describe the method used in developing and approving the procedures. The draft guidelines also include example formats adopted from existing standardized procedures to be used as a guide in developing the procedures for the expanded functions pharmacists may perform.

At the Board's March 29 meeting, the Board discussed the development and implementation of its proposed "Ask Your Pharmacist" public education program which would inform consumers about the benefits of the new oral consultation requirement, among other things. *[15:1 CRLR 87; 14:4 CRLR 94]* With the help of DCA's public affairs unit, the Board staff developed a logo and the slogan "Be Aware & Take Care: Talk to Your Pharmacist!" Several designs incorporating the logo and slogan for a brochure were submitted to the Board for consideration; the Board agreed on a design and went on to discuss three- and six-month plans for implementing the public education program. The three-month plan involves incorporating the logo on all printed material, developing a Board pamphlet and series of fact sheets, developing new signage for pharmacies, and beginning discussions with drug companies regarding partnering activities with respect to funding and marketing assistance. The plan for the subsequent six months includes printing and distributing the Board pamphlet and fact sheets, sending new signage to pharmacies for posting, developing events for awareness month, and continuing to work with drug companies on funding and marketing. The Board also discussed sources of funding and methods of distribution. It was determined that the cost of printing brochures will be minimal and the brochures could be distributed with consumer complaint forms, sent to legislators, and distributed to consumer groups as well as interested parties in the profession. The Board agreed to proceed with the three- and six-month plans, although it removed from those plans a proposal to issue press releases on disciplinary activity and the development of investigative stories for the media so as to maintain a positive focus for the program.

FUTURE MEETINGS

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:
Harold L. Turner
(916) 263-2222

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 Professional 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/licensees. 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.

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.

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.

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

Professional Engineers Act Rewrite Goes to Public Forum. PELS is currently in the midst of a comprehensive review of the Professional Engineers (PE) Act, its regulations, and the way the state of California licenses and classifies various engineering disciplines; this effort has resulted largely from November 1993 criticism by the Center for Public Interest Law (CPIL) that PELS' engineering statutes and regulations are extremely vague and in need of major restructuring and modernization, and former Board 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]*

At its September 1994 meeting, PELS announced that it had hired attorney/civil engineer Jimmie Wing to assist in developing legislative language for the rewrite; Wing filled the Board's Staff Counsel III vacancy. *[15:1 CRLR 88]* According to State Personnel Board specifications, one distinguishing characteristic of the Staff Counsel III position is that the person is "expected to be [an] expert in the most complex area of the law within the departmental legal program"; additionally, the specification states that "[a]pplicants must have active membership in the State Bar before they will be eligible for appointment." State Bar records show that Wing's State Bar license was on inactive status from July 1, 1994 until January 1995; however, in January Wing's status was returned to active status.

At its February 10, March 17, and April 28 meetings, the Board reviewed regulatory schemes used in other states, discussed existing problems with the PE Act, and developed a conceptual outline of the rewrite. Significantly, the Board wants to