REGULATORY AGENCY ACTION

AB 1163 (V. Brown). Existing law provides that an RN 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 an RN who is employed by a home health agency to orally transmit a prescription and would require the furnisher to record the name of the person who transmits the order. [A. Humn]

AB 1176 (Cunneen), as amended May 9, would prohibit any person from holding herself/himself out as a clinical nurse specialist unless he/she is a nurse licensed by BRN and also meets the standards for a clinical nurse specialist to be established by BRN (see MAJOR PROJECTS). [A. Appr]

AB 1077 (Hannigan), as amended March 29, would authorize nurse practitioners (NPs) to furnish drugs and devices in accordance with protocols developed by the NP and his/her supervising physician pursuant to standardized procedures. This bill would also specify that no physician may supervise more than four NPs at one time. [A. Floor]

RECENT MEETINGS

At its February 2–3 meeting, BRN approved a November 1994 report written by Michael King of the Survey Research Center at Chico State University (CSU) entitled Changes in Nursing Practice Between 1990 and 1993: A Panel Survey. This report follows an earlier report by King entitled Survey of Registered Nurses in California: 1993, which uses information from a different sample of the same survey performed by CSU in 1993. [14:4 CRLR 98] The new report compares repeated survey results of a panel of nurses. While the earlier cross-sectional report shows how nursing has changed as a result of a variety of factors (such as changes in the characteristics and choices of working nurses), the new report shows how the experience of individual nurses has changed as a result of changes in the workplace and individual choices of the RNs on the panel. Among other things, the report revealed that 93.1% of the RNs were working in 1993 for the same type of organization that employed them in 1990, and approximately two-thirds of RNs had the same position in 1993 as in 1990. Satisfaction with nursing work increased modestly from 1990 to 1993.

At its April 6–7 meeting, BRN approved the submission of a resolution to the National Council of State Boards of Nursing (NCSBN) Delegate Assembly urging NCSBN’s Administration of Exam Committee to conduct a study to determine the effects of time limits and other factors resulting from computer adaptive testing (CAT) on passing rates for diverse groups, including candidates whose first language is not English. In 1991, BRN submitted a similar resolution requesting NCSBN’s Administration of Exam Committee to conduct a study to determine the effect of extending the time period for taking the exam; as a result, ten minutes were added to the exam time. BRN maintains that this additional time was not taken into account when the five-hour time limit was established for the CAT exam. Statistics reviewed by BRN at its February meeting indicate that the overall pass rate has increased since implementation of the CAT exam; however, BRN feels it is important to determine the effect of CAT’s implementation on foreign candidates and candidates whose first language is not English.

FUTURE MEETINGS


STRUCTURAL PEST CONTROL BOARD

Registrar: Mary Lynn Ferreira (916) 263-2540 or (800)-PEST-188

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 structural 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. SPCB also licenses structural pest control applicators, 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. Such applicants 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

SPCB Criticized by Legislative Budget Subcommittee. During the spring, the Board came under fire by the legislative subcommittee chaired by Senator Dan Boatwright which is examining SPCB’s proposed 1995–96 budget. Testifying at the Board’s budget hearings was SPCB licensee Dale Luger, whose company performs inspections but not repairs. Luger presented photographic documentation of numerous instances in which SPCB licensee companies had inspected a structure, made recommendations for extensive repair or replacement, and then bid on the repair job; Luger contended that the repair recommendations were excessive and that this problem is endemic within the structural pest control industry. Senator Boatwright found fault with the overall performance of the Board in failing to detect and police this type of activity; he also discovered that SPCB has never adopted citation and fine regulations because it lacks citation and fine authority. A citation and fine system provides an occupational licensing board with intermediate sanctions for intermediate violations which,
although they may not warrant a full-blown enforcement proceeding and license revocation, should not be ignored. Under Business and Professions Code section 125.9, citations may be accompanied by administrative fines depending on the seriousness of the violation, past violation history, and several other factors. Although most other boards within the Department of Consumer Affairs (DCA) have adopted citation and fine regulations (some only at the repeated, public insistence of Senator Boatwright), SPCB has not been given the authority to do so.

The subcommittee—and subsequently the joint conference committee—negotiating the 1995–96 budget—decided to allocate SPCB only six months’ worth of funding, with the remainder of 1995–96 funding allocated in a budget trailer bill and contingent upon the Board’s fulfillment of several conditions:

- Prior to granting the rest of the funding, “the Board shall act to restrain licensees from excessively pricing services and requiring unneeded work to be done. The Board shall establish guidelines for the adoption of regulations which establish standards as to how much material is to be removed when replacing wood weakened by fungus or wood-destroying pests or organisms.”
- “The Board shall establish guidelines for the adoption of regulations to allow the consumer the option to independently contract with a company for any pest control work which the licensee would otherwise subcontract out.”
- The Board must adopt and implement citation and fine regulations by July 1, 1995.
- The Board must provide written status reports on the actions taken by October 1, 1995 and December 31, 1995 to fulfill these directives.

At this writing, the budget language and the entire state budget are still pending, and must be passed by the legislature and signed by the Governor. However, the Board has taken several actions in response to the criticism and the pending directives. At its May meeting, SPCB considered a proposed citation and fine program outline prepared by Deputy Registrar Maurreen Sharp, and directed staff to publish citation and fine regulations for a public hearing at its next meeting. The Board also agreed to seek a budget change proposal to enhance its enforcement staff by four specialists and one clerical member.

**Board Adopts Fumigation Log Amendment.** On March 24, SPCB published notice of its intent to amend section 1970.4, Title 16 of the CCR, which currently requires that a primary fumigation contractor use a fumigation form signed by the occupant of a structure. The industry uses a standard fumigation form which complies with section 1970.4, but which is not included in the regulation itself; the purpose of this proposed amendment is to adopt into regulation the “Occupants Fumigation Notice and Pesticide Disclosure” form.

At a public hearing on this amendment at SPCB’s May 12 meeting, comments were offered regarding potentially confusing language on the form which recommends action consumers should take if they develop flu-like symptoms after re-entering a structure after fumigation. The Board agreed to send the proposed language back to its Rules and Regulation Committee for further review and clarification.

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

- At its February 25 meeting, the Board held a public hearing on numerous proposed regulatory changes. [15:1 CRLR 93–94]

After the hearing, SPCB adopted proposed amendments to the following sections of Title 16 of the CCR: 1911 (requiring licensees to file address changes with the Board within ten days); 1919 (deleting a requirement that the Board representative on the Research Advisory Panel be a public member); 1950.5(d) (requiring continuing education providers to administer a second examination to licensees who fail the first exam); 1973 (requiring licensees to perform proper testing after aeration to ensure areas are safe for re-entry); and 1993 (defining the contents of reports that must be filed by licensees). The Board also voted to repeal section 1994, which is now incorporated into the proposed amendment to section 1993.

Also on February 25, SPCB modified the proposed language of new section 1974. As originally proposed, the amendment would specify the proper placement of warning signs on a structure, include the warning sign format in the regulation, and require signs to be at least 11” x 15”. Specifically, SPCB changed the minimum size for the warning sign to 11” x 15”, as that is the size of signs fumigators receive from chemical suppliers. SPCB released the modified text on March 24 for a 15-day public comment period; the Board delegated authority to its Registrar to adopt the proposed changes if no comments are received.

**Proposed Amendment on Fumigation Notices.** On March 24, SPCB published notice of its intent to amend section 1970.4, Title 16 of the CCR, which currently requires that a primary fumigation contractor use a fumigation form signed by the occupant of a structure. The industry uses a standard fumigation form which complies with section 1970.4, but which is not included in the regulation itself; the purpose of this proposed amendment is to adopt into regulation the “Occupants Fumigation Notice and Pesticide Disclosure” form.

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On May 12 meeting, SPCB agreed with the TAC's recommendation that any changes to section 1991(a)(5) regarding replacement of wood members should be put on hold until the changes in the rest of the section proceed through the regulation change process; the TAC will meet at a future date to develop revised language for section 1991(a)(5), with special emphasis on wooden decks. SPCB adopted the other proposed changes to section 1991, which now await review and approval by DCA and OAL.

On March 6, OAL approved SPCB's amendments to sections 1937.14, 1950.5(h), 1970.4, 1971, 1983, and 1998; adoption of sections 1990.1 and 1991.1, and repeal of section 1999.1, Title 16 of the CCR. [15:1 CRLR 94] Among other things, these changes require that work completed by licensees and registered companies be in compliance with accepted trade standards for good and workmanlike construction; decrease the range of continuing education hours earned for teaching approved courses and publishing technical articles; require specified licensees to leave written notice at treatment sites identifying the name of each pesticide applied; delete requirements for fumigation crews to have antidotes in their possession and instead require that proper testing equipment be used; specify procedures by which wood roof cleaning and treatment companies must report inspections; establish reporting requirements for wood roof cleaning and treatment companies; and delete duplicative language regarding control service agreements and require filing of inspection reports in specified instances.

On May 17, OAL approved SPCB's amendment to section 1948, Title 16 of the CCR, which increases the fee charged for administration of the certified applicator examination from $10 to $15. [15:1 CRLR 95; 14:4 CRLR 102]

Attorney General Opinion Pending on Retroactivity of Control Service Agreement Requirements. Pursuant to a SPCB request, Senator David Kelley requested an Attorney General's opinion to clarify whether new terms and conditions of control service contracts imposed by amendments to Business and Professions Code section 8516 are retroactive to January 1, 1994, and whether the amendments apply to extended warranties. [15:1 CRLR 95] At this writing, the Attorney General's Office has not yet issued its opinion.

DCA Legal Opinion Indicates That Fire Departments are Overstepping Their Bounds. At SPCB's December 1994 meeting, Deputy Registrar Maureen Sharp reported that some fire districts are imposing various requirements and permit fees on registered companies performing fumigations and that such requirements infringe on the jurisdiction of both SPCB and the Department of Pesticide Regulation (DPR). The Board instructed staff to notify all fire departments that SB 2070 limits the fee which fire departments may charge for permits to $25; SPCB also requested that DCA legal counsel Don Chang research state laws regarding fire departments' authority to impose requirements on companies performing fumigations. [15:1 CRLR 96]

On February 22, Chang issued his opinion that local governments may not adopt or enforce local regulations which supersede SPCB or DPR authority in the area of economic poisons. The opinion states that Health and Safety Code section 11501.1 specifically provides that no ordinance or regulation of a local government may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of economic poisons, and that any such ordinances would be void. Therefore, Chang concluded that regulations adopted by localities under Article 47 of the Uniform Fire Code, which specify procedures for performing fumigations and thermal insecticidal fogging operations are void and unenforceable.

The opinion further states that, even though such provisions adopted by local governments would be unenforceable, structural pest control operators should not ignore the provisions of Article 47 which have been adopted as ordinances, since such action may result in legal proceedings against the operator. The opinion notes that a better course of action would be to work with state agencies to inform local governments of their inability to regulate in this area.

The Board has distributed this opinion to fire departments throughout the state and is currently seeking an Attorney General's opinion on this topic. Additionally, SPCB agreed at its February 25 meeting to request that the State Fire Marshal adopt a regulation stating that structural fumigation procedures are matters governed by state law.

LEGISLATION

AB 568 (V. Brown). Under existing law, certain persons and entities engaged in the practice of structural pest control are exempt from SPCB's licensing requirement, including public utilities, persons engaged in agricultural pest control work, governmental agencies, and educational institutions engaged in research or study of pest control. As amended April 25, this bill would additionally exempt from the licensing requirement persons engaged in the live capture and removal from structures of vertebrate pests (such as bats, raccoons, skunks, and squirrels), bees, or wasps, without the use of pesticides, if the person has a permit or license from the DPR, the Department of Fish and Game, or a county agricultural commissioner. [S. B&P]

AB 1182 (Kuykendall). Under the Board's enabling act, when a registered company completes a project, it must file a notice of work completed with SPCB within five working days. As introduced February 23, this bill would provide that a registered company must file a notice of work completed and not completed within ten working days of completion. [15:1 CRLR 93] The bill would also provide that the registered company must furnish a copy of the notice to the owner or the owner's agent within ten working days of completion. [S. B&P]

SB 378 (Calderon). Existing law prohibits a fire department from charging a fee exceeding $25 for receipt of a notice of fumigation (see MAJOR PROJECTS). As amended April 4, this bill would prohibit a fire department from charging fees totaling more than $25 for any service related to structural pest control activities except for the costs of an emergency response necessitated by illegal or negligent actions. [A. CPG&E/ED]

SB 929 (Petris), as introduced February 23, would enact the Pesticide Poisoning Prevention Act of 1995. The bill would prohibit the registration of any new use for an extremely hazardous pesticide, as defined, after its effective date. The bill would also require the Secretary for Environmental Protection to develop and implement a plan to eliminate the use of extremely hazardous pesticides that were registered prior to the bill's effective date. [S. H&HS]

RECENT MEETINGS

At SPCB's February 24-25 meeting, staff reported on two fumigation-related
 deaths in the state in December and January. No violations were found by the agricultural commissioner’s office; however, SPCB referred the matter to the TAC to discuss ways of ensuring that warning agents used during fumigations are sufficient to keep people from entering a structure while the fumigant level is still high. At SPCB’s May 12 meeting, the TAC reported on changes being implemented by chemical manufacturers regarding the use of chloropicrin as a warning agent in fumigants. The manufacturer of Vikane is requiring fumigators to purchase a corresponding amount of chloropicrin with each purchase of Vikane fumigant to ensure the appropriate amount of warning agent is used. Both the Vikane and chloropicrin manufacturers are looking into changing their labels to more specifically address the use and placement of chloropicrin during the fumigation process. The TAC also discussed the effectiveness of warning signs, as there have been reports in recent months of people entering structures after fumigations even though warning signs were still in place. The TAC was unable to suggest additional ways of preventing people who are aware of the fumigation from entering.

At its May meeting, the Board discussed access by its licensees to records of inspection reports, and whether such access may be restricted under the Public Records Act. SPCB licensee Dale Luger (see above) has allegedly been using inspection records to contact property owners, offer a free re-inspection and, in some cases, advise the homeowner that the original inspection was faulty. He also sent letters to consumers which stated that he had the cooperation of the Board in investigating suspect inspection reports. Other licensees complained that his access to public records created an unfair competitive edge. At the May meeting, DCA legal counsel Don Chang advised the Board that, pursuant to the Public Records Act, access to these records cannot be restricted. Luger was advised that any statements regarding SPCB participation in his program are misleading and should be revised.

Also at its May 12 meeting, SPCB announced the resignation of Registrar Mary Lynn Ferreira, effective July 1; at this writing, a search for Ferreira’s replacement is underway.

**FUTURE MEETINGS**

July 28 in Sacramento.

October 4–5 in Long Beach.

December 7–8 in San Francisco.

**BOARD OF EXAMINERS IN VETERINARY MEDICINE**

*Executive Officer: Gary K. Hill (916) 263-2610*

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 veterinary 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.

In April, Governor Wilson appointed Robert Weber, DVM, to the Board; Dr. Weber, a 1967 graduate of the University of California at Davis School of Veterinary Medicine, currently owns Coming Veterinary Clinic, Inc. Dr. Weber was sworn in at BEVM’s May 11 meeting in Sacramento.

**MAJOR PROJECTS**

**Update on Practice Act Redefinition.** In furtherance of its plans to redefine the practice of veterinary medicine—particularly in light of emerging alternative practices such as acupuncture and chiropractic, BEVM met for a second time with representatives of the Board of Chiropractic Examiners (BCE) on February 23; the boards are attempting to establish legal protocols enabling chiropractors and veterinarians to work in concert and be held accountable for practicing alternative medicine, while also making access to alternative practice safe and easy for the consumer, and to establish protocols for dealing with people not licensed by either board who are practicing chiropractic on animals. [15:1 CRLR 97; 14:4 CRLR 104; 14:2&3 CRLR 110]

At the February meeting, BEVM provided BCE with draft regulatory language regarding animal chiropractic therapy. Among other things, the language provides: that animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of application of mechanical forces applied manually through the hands or through any mechanical device to treat or alleviate impaired or altered functions of related components of the musculoskeletal system of nonhuman animals; the draft language provides that chiropractic and other forms of MSM in nonhuman animals are considered to be alternative therapies in the practice of veterinary medicine. Under BEVM’s proposed language, chiropractic and other forms of MSM in nonhuman animals may only be performed by a licensed veterinarian, or by a licensed chiropractor upon referral from a licensed veterinarian, if specified conditions are met.

After reviewing BEVM’s draft language, BCE made several suggestions for amendments, including the insertion of language stating that alternative therapies are not taught in veterinary college, and may require additional training, education, or consultation with a health professional trained in those areas. BCE’s suggested amendments also state that chiropractic and other forms of MSM may only be performed by a California licensed veterinarian acting in consultation with a licensed health professional trained in the alternative therapy, or by a licensed chiropractor upon referral from a licensed veterinarian, if specified conditions are met; and it shall be the chiropractor’s responsibility to maintain complete and accurate chiropractic records of the patient’s treatment, and to provide the veterinarian with a duplicate copy of those records.

At its May 11–12 meeting, BEVM reviewed a revised version of the draft regulatory language. The revised language provides that animal chiropractic and other forms of MSM may only be performed by: