experience (RPE) shall be creditable toward the experience requirement, and section 1399.163(e), which requires RPE supervisors to conduct monthly evaluations of RPE applicants and retain written documentation of the evaluations signed by the supervisor and the licensure candidate. Additionally, OAL approved SPAEC's repeal of section 1399.180(c), which previously classified as unprofessional conduct "[d]iagnosing or treating individuals for speech-language or hearing disorders by mail or telephone unless the individual has been previously examined by the licensee and the diagnosis or treatment is related to such examination." *[13:4 CRLR 73; 13:2&3 CRLR 96–97]*

• On October 4, OAL approved SPAEC's amendments to section 1399.159(b), Title 16 of the CCR, which define the criteria which will be applied by SPAEC in deciding whether to grant a request for an exam waiver under Business and Professions Code section 2532(e). *[13:4 CRLR 73–74;* 13:2&3 CRLR 96]

Ad Hoc Committee to Investigate Invasive Procedures. At its October 8 meeting, SPAEC received a report from Dr. David Alessi of the Ad Hoc Committee which is investigating several invasive procedures which are not presently covered by statutes establishing the scope of practice of SPAEC licensees—specifically, endoscopy (both nasal and oral) for speech-language pathologists, and cerumen management for audiologists. [13:4 CRLR 74]

Dr. Alessi reported on a recent position paper produced by the Pennsylvania Academy of Otolaryngology which suggests that the practice of endoscopy by speech-language pathologists should be limited to specified settings wherein a team approach is used and a physician is involved; the position paper also suggests that speech-language pathologists who wish to perform endoscopy should receive special training and even certification.

DCA legal counsel Greg Gorges stated that SPAEC should consider two approaches, both of which would require legislative changes. First, SPAEC or another state body could administer a certification program which would certify speech-language pathologists to perform endoscopy after the completion of specialized training and experience; this option would require the preparation of an examination and would cost SPAEC a considerable amount of money which would have to be recouped through certification fees. The other option, which would require less Committee involvement, would simply permit speech-language pathologists to perform the procedure but only under the supervision of a physician in specified settings and upon a showing of certain qualifications.

SPAEC agreed to continue researching these issues, and will revisit the matter at a future meeting.

LEGISLATION

AB 1807 (Bronshvag), as amended September 8, would require SPAEC licensees to notify the Committee of any change of address within thirty days and authorize SPAEC to establish by regulation a system for an inactive category of licensure. *[A. Inactive File]*

SB 595 (Rogers). Existing law permits physicians and audiologists to certify that a person is deaf or hearing impaired for purposes of receiving specialized or supplemental telephone equipment from telephone corporations regulated by the Public Utilities Commission. As amended April 19, this bill would permit such certification to be made by a hearing aid dispenser if a physician has evaluated the hearing of the applicant. *[S. E&PU]*

AB 1392 (Speier), as amended July 1, would require SPAEC to notify DCA whenever any complaint has gone thirty days without any investigative action, and would require the DCA Director to determine when a backlog of complaints justifies the use of DCA staff to assist in complaint investigation. *[S. B&P]*

SB 993 (Kelley), as introduced March 5, would state the intent of the legislature that all legislation becoming effective on or after January 1, 1995, which either provides for the creation of new categories of health professionals who were not required to be licensed on or before January 1, 1994, or revises the scope of practice of an existing category of health professional, be supported by expert data, facts, and studies, including prescribed information, and be presented to all legislative committees hearing the legislation prior to its enactment. *[S. B&P]*

RECENT MEETINGS

At its October 8 meeting, SPAEC discussed the possible effects of the North American Free Trade Agreement on its licensing practices. Legal counsel Greg Gorges explained that one of the goals of the agreement is to prevent barriers against foreign practitioners. He stressed that the agreement does not entitle every foreign practitioner to licensure; however, all occupational licensing agencies may need to scrutinize their licensing standards to ensure they do not include any artificial barriers to entry.

Also in October, the Committee discussed an ongoing problem with university training programs in speech-language pathology and audiology. According to SPAEC Chair Robert Hall, these programs are overenrolled by as much as 20%, despite recent funding cutbacks. He suggested that SPAEC work in the future to encourage development of more university programs. The Committee took no action on this issue.

FUTURE MEETINGS

April 22 in Sacramento or Monterey.
July 22 in Irvine.
October 28 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer:
Pamela Ramsey
(916) 263-2685

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

BENHA currently has one public member vacancy, which must be filled by the Assembly Speaker.

MAJOR PROJECTS

Board Chooses Permanent EO. On November 30, BENHA appointed Pamela Ramsey as its permanent Executive Officer; Ramsey had been serving as Interim Executive Officer following the September 20 resignation of former Executive Officer Ray Nikkel. *[13:4 CRLR 75]* Ramsey has worked in the Department of Consumer Affairs (DCA) since 1984, most recently in the position of Assistant Executive Officer for the Respiratory Care Examining Committee of the Medical Board of California.

BENHA Focuses on Disciplinary Process. At an October 19 meeting of BENHA's Disciplinary Committee, Committee Chair Dr. Orrin Cook explained the existing disciplinary process. The process begins when the Department of Health Services (DHS) conducts either an annual certification survey and/or complaint visit to a skilled nursing facility. If a facility is found in violation of DHS' Title 22 regulations, DHS issues a citation to the facility. DHS issues citations against facilities, and forwards the citations to BENHA for consideration whether the license of the NHA of a cited facility should be disciplined. BENHA tracks two types of citations received from DHS: "AA" citations include an act or violation that resulted in the death of a patient, while "A" citations are for violations that seriously endanger a patient's safety with a substantial probability of death or serious bodily harm. Citations received from DHS are logged in BENHA's enforcement tracking system and the designated administrator of the facility at the time the violation occurred is notified that the Board has received the citation issued to him/her. The administrator is given thirty days to respond to BENHA; that response is kept in his/her file. If an administrator accumulates one "AA" citation or three "A" citations over a five-year period, the administrator is considered to have demonstrated a pattern of poor performance. In that case, a series of enforcement actions is implemented. When an extreme case arises, the Board asks the Attorney General's (AG) Office to prepare and file a formal accusation seeking license suspension or revocation.

Board member Sheldon Blumenthal noted that BENHA's tracking of citations against NHAs and of NHA movement from facility to facility is critical. DHS will deal with a facility which receives a citation or two; but when an administrator moves from facility to facility, and citations follow at each new facility run by that NHA, the Board should be able to detect that pattern, step in, and discipline the NHA's license to protect the public.

Deputy Attorney General (DAG) Elizabeth Hong was present at the Disciplinary Committee meeting to explain the AG's involvement in BENHA's disciplinary process. Hong explained that once an accusation is filed and the administrator has been served, the administrator has fifteen days to respond with a notice of defense. If a response is not received within that time period, a courtesy letter is sent informing the NHA that a response has not been received; the administrator is then given an additional two weeks to respond. If no response is received, a notice of default decision is prepared and presented to the Board for adoption. If a default decision is adopted by the Board, the NHA's license is revoked. If a notice of defense is filed, the matter is set for an evidentiary hearing before an administrative law judge (ALJ) of the Office of Administrative Hearings. Prior to the hearing, a settlement stipulation may be prepared and taken before the Board. If the Board accepts the stipulated agreement, the disciplinary action agreed upon goes into effect. If the Board does not agree with the terms of the stipulation, the case will go before the ALJ for hearing. Following the hearing, the ALJ prepares a proposed decision which is presented to BENHA. If the ALJ's decision is acceptable to the Board, the disciplinary action is enforced. If the ALJ's decision is not acceptable, the Board reviews the hearing transcripts and issues its own decision.

DCA legal counsel Dan Buntjer reiterated that under existing law, Board members may not become involved in any particular individual case while it is pending because they are the final decisionmakers in BENHA discipline cases. Board members should neither receive information on pending cases nor discuss cases with others. If a member receives information which has not been made part of the official record of the disciplinary proceeding, he/she may be prejudiced by that information and may be disqualified from participating in the final decision.

Hong also distinguished the two separate processes: DHS is authorized to request an accusation and seek revocation of a nursing home's facility license, and BENHA may request an accusation and seek revocation of the NHA's license. Hong stated that revoking an NHA's license is easier for the AG's Office when DHS is also seeking to revoke the home's license, because DHS takes a greater interest in the case and forwards all relevant documents (including investigation notes) to the AG's Office. However, Hong noted that DHS' care in preparing and checking these documents and speed in forwarding them to the AG's Office is not always adequate when DHS is not proceeding against the license of the home, even though those same documents are frequently needed by the AG when BENHA seeks to revoke the license of the home's administrator. Hong suggested that BENHA and DHS establish an arrangement whereby important DHS materials will be copied for BENHA when it seeks to take disciplinary action.

Also at its October 19 meeting, BENHA's Disciplinary Committee discussed with DCA's Division of Investigation (DOI) the possibility of utilizing DOI's services to enhance the Board's enforcement program; DOI provides investigative services to DCA's boards and bureaus on an as-needed basis. DOI Chief Don Hauptman was in attendance at that meeting and expressed his willingness to meet with DHS' Division of Licensing and Certification to determine whether there are some tasks that could be accomplished jointly, thereby expediting the process and saving enforcement expenditures.

At the full Board's October 19 meeting, BENHA decided to form a Disciplinary Task Force to review and make recommendations for revising the current disciplinary process. At the same meeting, Dr. Cook reported the Disciplinary Committee's recommendation that BENHA direct staff to prepare disciplinary guidelines which reflect the Board's preferred penalties for specified statutory and regulatory violations. Following discussion, the Board directed staff to prepare the disciplinary guidelines upon the completion of the work of the Task Force.

The Disciplinary Committee also recommended that BENHA establish a fingerprinting program for all applicants for licensure or Administrator-in-Training (AIT) program participation; the Board has fingerprinted applicants in the past, but currently does not conduct such a program. Fingerprinting enables an agency to check an applicant's past criminal history. Following discussion, the Board agreed to pursue this proposal.

BENHA Enforcement Statistics. From September 1 through November 30, DHS referred to BENHA three citations for "AA" violations and 55 citations for "A" violations. During those three months, BENHA conducted four informal telephone counseling sessions, issued ten Medi-Care letters, conducted no formal telephone counseling sessions, and issued no letters of warning. BENHA did not receive any accusations from DHS for review during that time period, but did request one accusation against an NHA and revoked one license.

License Examination Revision. On October 6, DCA's Central Testing Unit (CTU) responded to BENHA Executive Officer Pamela Ramsey's request for an overall evaluation of BENHA's examination program; CTU is the unit within DCA that assists licensing boards with their examination programs. According to CTU, BENHA's examination questions have not been formally reviewed by subject matter experts within the past six years. CTU also noted that, while there are approximately 180 test questions in BENHA's item bank, the test bank has been drawn from several times per year during that six-year period, and repeated use of the same examination questions jeopardizes the validity and integrity of the examination.

At BENHA's request, CTU conducted a one-day workshop to review and revise the items in the test bank and to create two new test forms differing substantively from past test forms; five subject matter experts participated in the item writing workshop, which was conducted on October 4. In its selection of the item writers, CTU did not consider NHAs with "A" or "AA" citations or NHAs from facilities which have a pattern of deficiencies, as cited by DHS. The subject matter experts represented both for-profit and nonprofit facilities, and the group was geographically balanced. CTU noted that the item writing workshop only addressed BENHA's immediate need for two new test forms, and recommended that BENHA undertake a project to update its exams and offered its assistance in this task.

Also in its October 6 memorandum, CTU responded to BENHA's inquiry as to the advisability of implementing an oral examination program; CTU advised against such a program, citing the low reliability of oral examinations and their high cost to develop and implement. CTU also noted that BENHA's examination program appears to be an ideal candidate for automation. While BENHA's travel, examination site rental, and staff costs will probably decrease as a result of a computer-based examination program, CTU predicted that the costs to be incurred by NHA candidates would increase. Finally, CTU noted that while DCA favors the increased use of computer-based testing, BENHA must first evaluate and revise its current item bank of exam questions.

At its October 19 meeting, BENHA discussed the administration of its October 14 examination in San Diego, at which the questions written at the October 4 item writing workshop were utilized. While the examination went relatively smoothly, the Board noted that technical changes could be made to facilitate the examination administration, such as check-in and security procedures. Specifically, the Board addressed the issue of how late arrivals to the examination should be handled; BENHA decided that examination candidates should be notified in advance that late arrivals will not be permitted to sit for the examination.

Education and Training Activities. At BENHA's October 19 meeting, Executive Officer Pamela Ramsey recommended that the Education Committee review all aspects of the Board's preceptor training program. Ramsey asked the Board for guidance as to whether a preceptor should receive full credit for attending only part of a training session; the Board decided that a preceptor must attend the full preceptor training session in order to receive credit.

At the same meeting, BENHA reviewed its process for approving requests to accelerate completion of the AIT program. Because BENHA's regulations do not contain a maximum cap for hours of training allowed per week in this program, requests for approval to accelerate AIT program completion have historically been handled on an individual basis. The Board decided that until the Education Committee has reviewed the AIT program in detail, the Board will allow a maximum of 60 hours training per week, with approval being at the discretion of the Executive Officer.

Also at the October 19 meeting, BENHA discussed whether to award continuing education (CE) credits to NHAs for attending Board meetings; although BENHA currently grants two CE credits for attending a Board meeting and restricts CE credit to one meeting per year, the Board's regulations do not address this issue. DCA legal counsel Dan Buntjer stated that if the Board wants to continue this policy, it should amend its regulations. The Board took no further action on this matter at that time.

LEGISLATION

Future Legislation. During the 1994 legislative session, BENHA intends to seek a provision making the unlicensed practice of nursing home administration an infraction, as well as the authority to sanction persons who knowingly employ unlicensed NHAs. At this writing, BENHA is in the process of preparing language that will provide the Board with the authority to enhance its Practice Act in the areas of unlicensed practice and aiding and abetting.

Also during the 1994 legislative session, BENHA will seek to have its name changed from the Board of Examiners of Nursing Home Administrators to the Board of Nursing Home Administrators; Board members and DCA believe that the name change is appropriate because the Board's functions extend beyond administering examinations. BENHA has already prepared language regarding this name change for inclusion in DCA's 1994 omnibus bill.

AB 1807 (Bronshvag). Existing law generally requires that every prescription for a Schedule II controlled substance be in writing; however, when failure to issue a prescription for a Schedule II controlled substance to a patient in a licensed skilled nursing facility, an intermediate care facility, or a licensed home health agency providing hospice care would, in the opinion of the prescriber, present an immediate hazard to the patient's health and welfare or result in intense pain and suffering to the patient, the prescription may be dispensed upon an oral prescription. As amended September 8, this bill would instead provide that any order for a Schedule II controlled substance in a licensed skilled nursing facility, intermediate health care facility, or a licensed home health agency providing hospice care may be dispensed upon an oral or electronically transmitted prescription. This bill would also require each such facility to forward to the dispensing pharmacist a copy of any signed telephone order, chart order, or related documentation substantiating each oral prescription transaction. *[A. Inactive File]*

AB 1139 (Epple). Existing law authorizes an attending physician and a skilled nursing or intermediate care facility to initiate a medical intervention, that requires the informed consent of the patient, for a resident of that facility when the physician has determined that the resident lacks the capacity to provide informed consent and after the facility conducts an interdisciplinary team review, as described, of the prescribed medical intervention. Under existing law, this authority expires on January 1, 1995. As amended April 22, this bill would require DHS to convene a committee of specified composition to assess the need for changes to the process for the initiation of medical intervention for long-term health care facility residents. This bill would require the committee to make recommendations to the legislature regarding any identified changes to be made to that process by January 1, 1995. *[S. H&HS]*

RECENT MEETINGS

At its October 19 meeting, the Board decided to change the NHA license renewal cycle from the current biennial

cycle to a cyclical renewal cycle. The Board further decided to set up a procedure for annual review of its Executive Officer.

Also at BENHA's October 19 meeting, DCA Director Jim Conran addressed the Board; among other things, Conran noted that the Board's function is to protect the public by ensuring that its licensees maintain quality standards and that problems are looked at fairly, honestly, and expeditiously, particularly if there is a health and safety concern. Conran reminded the Board that effective January 1, the Board will have interim suspension authority under SB 842 (Presley) (Chapter 840, Statutes of 1993), which will allow the Board to immediately suspend a license pending conclusion of the formal discipline process, which can take up to three years. *[13:4 CRLR 76]* Conran concluded his remarks by stating that the DCA has confidence in the Board and offered DCA's assistance in the Board's effort to move forward.

On November 30, BENHA held a strategic planning session in Los Angeles. The public was invited to attend the meeting, but was not allowed to offer comment or testimony. The purpose of the session was to establish Board priorities for 1994–96; it was not a decisionmaking meeting. Among the issues considered at this meeting were the possibility of adding a committee to exclusively address licensing issues; residential care for the elderly; changing the Board's enabling act to refer to the Board President and Vice-President instead of Chairman and Vice Chairman; whether BENHA should establish a pool of qualified preceptor trainers and/or enter into a formal contract with the America College of Nursing Home Administrators; BENHA's complaint disclosure policy; the need to review current policy specific to citations issued by DHS; the possibility of utilizing DOI's investigative services to improve its enforcement program; the possibility of developing a pool of qualified expert witnesses for case evaluation; and the establishment of a citation and fine program.

FUTURE MEETINGS

April 21 in Los Angeles.
July 21 in Sacramento.
October 27 in San Diego.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger (916) 323-8720

Pursuant to Business and Professions Code section 3000 *et seq.*, the Board of Optometry is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board establishes and enforces regulations pertaining to the practice of optometry, which are codified in Division 15, Title 16 of the California Code of Regulations (CCR). The Board's goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory eye care by inept or untrustworthy practitioners. The Board consists of nine members—six licensed optometrists and three public members.

Kenneth H. Woodard, OD, resigned from the Board in November. Woodard, the first corporate optometrist to be appointed to the Board, had only served one year of his term.

MAJOR PROJECTS

Board Rejects Proposed Change to Licensure Exam. At its December meeting, the Board considered whether to administer the National Board of Examiners in Optometry's (NBEO) Part III examination instead of the California clinical competency examination. Presently, applicants must successfully complete Parts I and II of the NBEO examination before they are permitted to take the California examination; both parts of the NBEO exam and the California exam must be passed before an individual is licensed to practice optometry in California.

Those who favor use of the NBEO Part III exam as a substitute for the Board's exam argue that the NBEO is a more consistent method of testing applicants; the test is very uniform in its assessment of knowledge of pathology, clinical skills, and patient management; on the clinical section, candidates are not required to participate as patients for other candidates (as they must in the California exam), thus preventing the severe and costly implications which may arise if a candidate is accidentally injured while serving as a patient or the candidate serving as the patient is not cooperative; and adoption of the exam would save the Board time and money which would be better spent on enforcement. Proponents generally argue that there is nothing uniquely "California" about the practice of optometry which requires a state-specific clinical competency exam, and that use of an established standardized exam is thus appropriate. About 25 states administer Part III of the NBEO instead of their own clinical exam.

The California Optometric Association (COA) expressed support for maintaining the California-administered exam, arguing that the Board's exam is now adequately funded by examination fees; the Board's staff may be cut if it ceases administering its own exam; the Board's exam is offered at a much lower cost to the applicant ($275 compared to $700); the NBEO exam does not provide an appeals process, whereas the Board permits examinees to appeal a failing grade (although the Board attempted unsuccessfully last year to abolish its appeals process) *[13:1 CRLR 59]*; and the results of the Board's exam are available twice as fast as the NBEO, thus allowing successful applicants to begin practicing months earlier. COA also contended that the Board would be risking its independent existence if it eliminates its clinical competency exam; COA noted that if the only function of the Board is to enforce the laws governing optometry, the legislature may decide that such enforcement activities could be combined with the enforcement activities of other health care boards—perhaps resulting in the placement of optometry within a "superboard" that may be "medically dominated."

Following discussion, the Board agreed to continue its administration of the California exam instead of NBEO's Part III exam.

Occupational Analysis Completed. At the Board's December 1 meeting, HRStrategies (HRS) presented its occupational analysis of the practice of optometry. Since January 1993, HRS has been conducting a comprehensive occupational analysis of the profession in order in order to precisely identify the knowledge, skills, and abilities (KSAs) of licensed optometrists currently practicing in California. The analysis will be used to evaluate the Board's current licensing examination to ensure that it is testing relevant KSAs. *[13:4 CRLR 79; 13:1 CRLR 59]*

The final analysis presented 75 different task statements, each identifying a particular aspect or requirement of the practice of optometry. For example, the analysis identified the following tasks performed by optometrists: questioning patients or caregivers either verbally or with a written questionnaire to retrieve relevant information for proper diagnosis and/or treatment; testing patients using ophthalmic equipment and optometric tests to gather general information; refracting patients to achieve the proper prescription for glasses by using a phoropter/auto refractor; performing trial fitting or framing of tentative prescriptions using trial frames and/or trial lenses in order to determine proper contact lens and/or glasses prescriptions; examining patients to evaluate ocular health; performing or ordering lab tests; and observing ocular structure to assess variations from normal using pharmaceutical agents (dilating drops).