



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
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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 admin-

istering 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 "super-board" 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 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).



The Board now plans to compare the results of the occupational analysis with its existing examination.

Regulatory Changes on Disclosure of Contact Lens Prescription Release Policy and Delegation of Functions Await Approval. At its August meeting, the Board adopted proposed amendments to section 1502 and the addition of new section 1566, Title 16 of the CCR. The amendments to section 1502 would delegate and confer solely upon the Board's Executive Officer—instead of upon the Board Secretary—enforcement-related functions involving the filing of accusations, issuing notices of hearings, statements to respondents, statements of issues, and other powers and duties conferred by law on the Board. New section 1566 would require each optometry office to post in a conspicuous place a notice which clearly states the legal requirements and office policy regarding the release of spectacle and contact lens prescriptions. The Board approved section 1566 on a 4-2 vote over the objection of COA, which argued that the notice requirement would be "overly burdensome" and that no other profession has such a requirement (although physicians routinely hand patients their prescriptions, enabling patients to fill their prescriptions at the pharmacy of their choice). [13:4 CRLR 77]

Although the Board modified the language of section 1566 slightly, it considered the modifications to be so minor that they do not require an additional fifteen-day public comment period. On December 9, the Board submitted the proposed regulatory changes to the Department of Consumer Affairs for review and approval; if approved, the rulemaking file will then be forwarded to the Office of Administrative Law for review and approval.

LEGISLATION

Future Legislation. At its December meeting, the Board voted to sponsor two legislative proposals in 1994. First, the Board decided to seek the repeal of Business and Professions Code section 3025.6, which requires the Board to provide notice and a reasonable opportunity for compliance to a licensee who has violated the Board's regulations before it may institute disciplinary action. Second, the Board voted to support legislation allowing it to impose discipline against a licensee based solely on disciplinary action taken by another state.

AB 2020 (Isenberg), as amended June 17, would provide that the practice of optometry includes, among other things, the examination of the human eye, or its appendages and adnexa, and the analysis and diagnosis of conditions of the human vi-

sion system, either subjectively or objectively. This bill would delete an existing requirement that the Board designate pharmaceutical agents which may be used by optometrists in examining the human eye and instead authorize the use of specified diagnostic pharmaceutical agents. It would also authorize the use, prescribing, and dispensing of specified therapeutic pharmaceutical agents to a patient by an optometrist for the purposes of treating the human eye, or its appendages or adnexa, for any disease or pathological condition by an optometrist who meets specified requirements. The bill would establish a seven-member pharmaceutical advisory committee with a prescribed membership to provide advice to the Board as to the use of diagnostic and therapeutic agents. Under this bill, only optometrists who meet several examination and training requirements and agree to accept Medi-Cal patients are permitted to use, dispense, or prescribe therapeutic pharmaceutical agents. AB 2020 would also make it a misdemeanor for any person licensed as an optometrist to refer a patient to a pharmacy that is owned by the licensee or in which the licensee has a proprietary interest. This bill, which is sponsored by COA and opposed by the California Medical Association, was rejected on June 28 but granted reconsideration. [S. B&P]

AB 1807 (Bronshvag). Existing law provides that a person who has obtained an optometry degree from a university located outside the United States, if he/she meets other specified requirements, may take the Board's examination for a certificate of registration as an optometrist. Until January 1, 1994, the Board may refuse to permit a person to take the examination if it finds that the curriculum of the institution granting the degree is not reasonably equivalent to that required of applicants who have graduated from an institution within the United States; on January 1, 1994, that authority expires. As amended September 8, this bill would extend that authority until January 1, 1996. [13:4 CRLR 77-78]

Existing law provides that, until January 1, 1994, a person who graduated from a foreign optometry school prior to 1980 and who was previously sponsored or qualified to be sponsored by the Board for the NBEO examination, shall be sponsored for the national exam. Upon passing the national exam, under existing law, the person is required to be permitted to take the examination for licensure as an optometrist. This bill would extend the repeal date until January 1, 1996.

Existing law provides that in most circumstances, a certificate issued by the Board may be renewed up to five years

after the date of expiration if the applicant passes the regular examination of the Board and pays outstanding fees. This bill would reduce the period for renewal to three years after the expiration of the certificate, if the person passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the Board, and pays all outstanding fees. [A. Inactive File]

AB 1894 (Polanco), as introduced March 5, would authorize ancillary personnel who work under the supervision of an optometrist to assist in the preparation of the patient and the preliminary collection of data. The bill would prohibit an optometrist from permitting ancillary personnel to collect data requiring the exercise of professional judgment or skill of an optometrist, perform any subjective refraction procedures, contact tonometry, data analysis, or diagnosis, or prescribe and determine any treatment plan. [A. Health]

SB 908 (Calderon), as introduced March 4, would provide that the terms "license" and "certificate of registration" are deemed to be synonymous for the purposes of the provisions of law regarding the licensure and regulation of optometry. [A. Health]

SB 921 (Maddy), as introduced March 4, would provide that it is unprofessional conduct for an optometrist to fail to advise a patient in writing of any pathology that requires the attention of a physician when an examination of the eyes indicates a substantial likelihood of any pathology. [S. B&P]

LITIGATION

In Engineers and Scientists of California (ESC), et al. v. Division of Allied Health Professions, Medical Board of California, No. 532588, ESC and COA challenge the validity of the medical assistant regulations adopted by the Medical Board's Division of Allied Health Professions, contending that the regulations permit unlicensed medical assistants to perform optometric tasks and functions. [13:2&3 CRLR 100] A trial-setting conference scheduled for December 6 was postponed until January 3; the parties expect a trial date to be set sometime in April.

RECENT MEETINGS

At its December meeting, the Board reviewed its existing complaint disclosure policy and decided to maintain the current policy until pending litigation in regard to the Medical Board's disclosure policy is resolved. (See agency report on MEDICAL BOARD OF CALIFORNIA for related discussion.)



At its December meeting, the Board vote for President resulted in a tie between John Anthony, OD, and Pamela Miller, OD, JD. Because of the tie, existing president Thomas Nagy, OD, will continue to serve as president until a new vote is taken at the March meeting. The committee chairs will also remain the same until March, as they are selected by the President.

■ FUTURE MEETINGS

March 11-12 in Long Beach.
May 19-20 in San Diego (tentative).

BOARD OF PHARMACY

Executive Officer: Patricia Harris
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Pursuant to Business and Professions Code section 4000 *et seq.*, the Board of Pharmacy grants licenses and permits to pharmacists, pharmacies, drug manufacturers, wholesalers, 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.

At the Board's October 6 meeting, President Raffi Simonian introduced new Board members Holly Ann Strom and Gary Dreyfus, appointed by Governor Wilson on August 19. Strom is drug education coordinator for Kaiser Permanente in West Los Angeles; Dreyfus is president of Moulton Plaza Pharmacy in Laguna Hills, and has fourteen years of experience as a self-employed pharmacist.

■ MAJOR PROJECTS

Board Proposes Regulation on Furnishing to Home Health Agencies. On December 10, the Board published notice of its intent to adopt new section 1751.11,

Title 16 of the CCR, to establish a list of dangerous drugs which may be furnished by a pharmacist to a licensed home health agency and stored in transportable, tamper-proof, sealed storage containers. [13:4 CRLR 82] According to the Board, the drugs on the list are used in parenteral therapy and do not include controlled substances; the sealed storage container would be issued by a licensed pharmacy to a home health agency registered nurse, who could bring a portable container with him/her during home care visits to patients. Under the proposed regulation, drugs could be furnished by the home health agency registered nurse from the portable container to patients pursuant to a prescription or an oral order for emergency treatment or adjustment of parenteral drug therapy; specific administration protocols would be established regarding the furnishing of any dangerous drug from the portable container by the registered nurse.

Among other things, the regulation would establish inventory and record-keeping requirements for the pharmacy that prepares the containers; require the home health agency to keep additional records regarding furnishing; set requirements for the home health agency regarding orally transmitted orders from licensed prescribers to the registered nurse to authorize furnishing drugs from the containers; and establish storage requirements to assure that the container is not exposed to excessive heat or cold which could damage the contents.

At this writing, the Board is scheduled to conduct a public hearing on the proposed adoption of section 1751.11 on January 26 in Sacramento.

Citation and Fine Program. On October 6, the Board held a public hearing on the proposed adoption of new Article 9.5, commencing with section 1775, Title 16 of the CCR; the new article would implement Business and Professions Code section 125.9 and authorize the Board's Executive Officer to issue citations and fines for specified violations of law. [13:4 CRLR 79] At the hearing, several individuals and representatives of professional groups and private pharmacies expressed opposition to the proposed regulations, claiming that they fail to provide adequate due process; delegate powers which only the Board should exercise; create an adversarial atmosphere between pharmacists and the Board; make it difficult to determine who to fine (employee or supervisor); lack a statistical showing of need; provide too broad a range of discretionary fines; cost too much; do not affect major violators; present too large a potential to

clog the system with appeals; preclude further use of facts if stronger disciplinary action is needed; and could potentially be used against a licensee in a civil action.

The Board received other comments in support of the proposal from individuals who contended that many of the above issues could be addressed through modified regulatory language; the legislature enacted the citation and fine program to enable agencies to deal with mid-level problems that do not justify the filing of an accusation and, although the specific facts could not be used for further discipline, further action would not be contemplated unless further evidence becomes available; under the proposed regulations, licensees would continue to have the full Administrative Procedure Act appeal process available; the Board could consider an informal appeal process to the Executive Officer; and the program does not include an admission of guilt on the pharmacist's part. Retired Board Supervising Inspector Ken Sain noted that the citation and fine mechanism is an excellent tool for stopping unlicensed activity, which often goes unaddressed by district attorney's offices and other law enforcement agencies which must handle higher-priority matters.

Following discussion, the Board unanimously deferred action on the proposed regulations and referred the matter to its Enforcement Committee for further review; specifically, the Board directed the Enforcement Committee to closely reexamine the proposed regulations, suggest alternative ways to pursue a citation and fine program, and—if appropriate—develop the necessary language. The Committee is expected to present its findings to the Board at a future meeting.

Fee Increases Postponed. Last August, the Board published notice of its intent to amend sections 1749 and 1793.5, Title 16 of the CCR, to increase specified license fees; according to the Board, the fee increases are necessary to restore the Board's reserve fund and maintain it at a prudent level to enable it to conduct ongoing operations. [13:4 CRLR 79] At the Board's October 6 meeting, Executive Officer Patricia Harris reported new budget information which indicates that a fee increase will not be needed until July 1995, and that an increase in fees to the maximum allowed by statute would result in too high a surplus. Although Department of Consumer Affairs staff counsel Robert Miller noted that the Board could consider adopting the changes with a delayed effective date, the Board unanimously voted to indefinitely table the proposed fee increases.