the Board, and pays all outstanding fees. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 2020 (Isenberg), as amended April 28, is a COA-sponsored bill which 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 vision system, either subjectively or objectively; and authorize optometrists to use specified diagnostic pharmaceutical agents. It would also authorize optometrists who meet specified requirements to use, prescribe, and dispense specified therapeutic pharmaceutical agents to a patient for the purposes of treating the human eye, or its appendages or adnexa, for any disease or pathological condition. 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 by optometrists. 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; and require Board licensees to complete, at a minimum, 25 hours of continuing education per year, one-third of which must relate to the diagnosis, treatment, and management of ocular disease. *[S. B&P]*

AB 1894 (Polanco), as amended January 14, 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 that does not require the exercise of professional judgment or the skill of an optometrist and is limited to specified activities; the bill would provide that ancillary personnel are not authorized to perform any data analysis or diagnosis, or to prescribe and determine any treatment plan. *[S. B&P]*

SB 908 (Calderon), as introduced March 4, 1993, 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. Inactive File]*

SB 921 (Maddy), which would have provided 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, died in committee.

LITIGATION

In ***Engineers and Scientists of California (ESC), et al. v. Division of Allied Health Professions*** (DAHP), Medical Board of California, No. 532588, following a one-day trial conducted on April 25, Sacramento County Superior Court Judge Rudolph Loncke ruled in favor of plaintiffs ESC and COA by invalidating two subsections of DAHP's medical assistant regulations which—according to ESC and COA—permit unlicensed medical assistants to perform optometric tasks and functions. *[14:1 CRLR 72; 13:2&3 CRLR 100]* The court found fault with DAHP's procedure in adopting the regulations, and did not reach the merits of ESC/COA's claim.

Specifically, the court ruled that the following two portions of section 1366, Title 16 of the CCR, are invalid and ineffective: (1) section 1366(b)(4), which provided that medical assistants may perform automated visual field testing, tonometry, or other simple or automated ophthalmic testing not requiring interpretation in order to obtain test results, using machines or instruments, but are precluded from the exercise of any judgment or interpretation of the data obtained on the part of the operator; and (2) that part of section 1366(d) which referred to section 1366(b)(4). After removing the objectionable portion of section 1366(d), that section now provides that "[n]othing in these regulations shall be construed to authorize a medical assistant to practice optometry." The offensive sections were added at the final public hearing on the proposed rules and released as a "nonsubstantive change" for a 15-day public comment period; the court found that the changes were substantive and should have been republished for a full 45-day public comment period.

The court restrained and enjoined DAHP from enforcing the invalid provisions; ordered DAHP to immediately inform, in writing, the Secretary of State of the invalidity of those provisions; directed the Secretary of State to publish the same notice in the *California Regulatory Notice Register*; and ordered DAHP to forthwith notify, in writing, all medical licentiates, podiatry licentiates, and all known medical assistants of the invalidity of those provisions. At this writing, it is unknown whether DAHP will appeal the court's ruling.

RECENT MEETINGS

At its March meeting, the Board elected John Anthony, OD, to serve as Board president, Jennifer H.W. Hao, OD, as vice-president, and R. Mona Tawatao to serve as secretary.

FUTURE MEETINGS

May 19–20 in San Francisco.
August 18–19 in Sacramento.

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, 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.

In January, public member Herb Strickline resigned from the Board; at this writing, he has not yet been replaced.

MAJOR PROJECTS

Oral Consultation Regulations. At the Board's January 26–27 meeting, Executive Officer Patricia Harris reported on the Board's enforcement of its oral consultation regulations which have been in effect since November 1, 1992. Under sections 1707.1 and 1707.2, Title 16 of the CCR, pharmacists must maintain patient medication profiles on all ongoing patient-consumers and provide an oral consultation to each patient or patient's agent whenever a new prescription is dispensed, with specified exceptions. *[12:4 CRLR 115–16; 12:2&3 CRLR 135]*

Although she acknowledged a common perception that the Board has not been enforcing the regulations, Harris stated that the Board has been enforcing

them. The Board allowed for a one-year transitional education phase prior to the time it began issuing violation notices because, according to Harris, the majority of pharmacies were not adequately prepared to implement this major practice change, even though the Board delayed the implementation date of the regulations twice and also adopted pharmacy technician regulations to assist licensees with staffing problems which might be occasioned by the oral consultation requirement.

Harris also noted that many pharmacists who work at chain drugstores have informed the Board that they are having difficulty complying with the oral consultation mandate as written. According to these pharmacists, they are caught between the state's requirement to provide oral consultation and their employers' right to determine the amount of staffing within each pharmacy. Following discussion of several options for addressing the concerns of the chain pharmacists, the Board unanimously passed a motion stating Board policy that enforcement of the oral consultation requirement is a priority, and directed that pharmacy owners, pharmacists-in-charge, and pharmacists be held responsible for compliance. Also, the Board agreed that when violations occur, its Northern and Southern Interim Committees are to consider all circumstances contributing to the violation and take appropriate action.

In a related January agenda item, the Board heard from representatives of the University of Southern California (USC) School of Pharmacy and Kaiser Permanente, who presented the fifth quarterly report on the joint Kaiser-USC study on the effects of the oral consultation requirement in the outpatient setting. In June 1992, the Board granted Kaiser an exemption from the oral consultation requirement in all of its facilities, and instead allowed it to implement a research model to compare the effects of three different consultation and pharmacy practice models on patient health outcomes, medication compliance, and resource utilization. *[12:4 CRLR 116]* Kaiser's exemption was scheduled to be in effect for two years from the scheduled implementation date of November 1, 1992. However, due to difficulties in getting the necessary personnel trained and in place, the project did not become fully operational until April 1, 1993; as a result, the Kaiser officials appeared before the Board at its January meeting to ask the Board to extend the waiver for an additional five months, continuing Kaiser's exemption until April 1, 1995. Following discussion, the Board voted 4–3, with two abstentions, to grant Kaiser the five-month extension on its exemption from the oral consultation requirement.

Also at its January meeting, the Board considered a request from the California Pharmacists Association (CPhA) that it implement SB 1051 (McCorquodale) (Chapter 763, Statutes of 1993), which requires the Board to adopt regulations that apply the same requirements or standards for oral consultation to out-of-state pharmacies as are applied to in-state pharmacies. *[13:4 CRLR 80–81]* Specifically, CPhA asked the Board to amend section 1707.2, Title 16 of the CCR, to require all pharmacies (in-state and out-of-state) which ship, deliver, or mail prescriptions to California residents to make a reasonable attempt to contact the patient and provide oral consultation over the telephone. Additionally, CPhA's proposed amendments would provide that when, after a reasonable attempt, the pharmacy is unable to provide oral consultation, and further attempts to contact the patient or agent would result in an unnecessary delay in receipt of the medication by the patient, the pharmacy shall document the reasonable attempt(s) made to contact the patient or agent; ensure that the patient or agent receives written notice of his/her right to oral consultation by a pharmacist; provide the patient or agent with written consultation that is equivalent to the oral consultation required by section 1707.2(c); and provide written notice of a telephone number from which the patient may obtain oral consultation from a pharmacist who has ready access to the patient's record. Following discussion, the Board agreed by a 6–2 vote to pursue the proposed amendments to section 1707.2, and tentatively set the regulatory hearing for its July meeting.

At its March 30–31 meeting, the Board heard from representatives of Caremark, Inc., a mail order pharmacy which fills ten million prescriptions per year, who contended that CPhA's proposed amendments to section 1707.2 are not an effective way to communicate with patients, and requested that the Board review an alternative approach. The Board also heard from a representative of the American Association of Retired Persons' Pharmacy Service, who contended that CPhA's proposed amendments are not authorized by SB 1051; they raise constitutional concerns because they excessively impact interstate commerce *[12:2&3 CRLR 134]*; and they are unnecessary, overly burdensome on nonresident pharmacies, and inconsistent with factual evidence presented to the Board in previous public hearings on the oral consultation issue. Following discussion, the Board considered a motion to postpone the regulatory hearing on CPhA's proposed amendments to section 1707.2, and form a subcommittee to determine an appropriate substitution for oral consultation for nonresident pharmacies that ship, deliver, or mail prescriptions to California patients; that motion was rejected by a 5–3 vote. Thus, on May 13, the Board published notice of its intent to pursue the amendment; at this writing, the public hearing is scheduled for July 28.

Also at the Board's March meeting, Board President Raffi Simonian stated that the Board would continue to address the oral consultation regulations at each meeting until they are appropriately followed by pharmacists; Simonian announced that the Board's inspectors have been directed to enforce the regulations. The Board directed staff to provide for the Board's review at each meeting the total number of correction orders issued by Board inspectors for failure to provide oral consultation, maintain patient profiles, or review patient profiles prior to dispensing to patients; chain stores, community pharmacies, and hospitals will be tracked separately.

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

• Because the Board's Enforcement Committee was disbanded, it was unable to review the proposed citation and fine regulations as directed by the Board after a contentious public hearing at its October 1993 meeting. *[14:1 CRLR 73]* However, the Board continued its review of the proposed regulations at its March meeting, at which time it unanimously agreed to the concept of a citation and fine program to implement its authority under section 125.9 of the Business and Professions Code. In order to improve compliance with the oral consultation requirement (*see above*), the Board decided to modify the proposed language to authorize its Northern and Southern Interim Committees to issue citations and fines, and to review all the public comments received at the October 1993 hearing to determine if further modifications are necessary. At this writing, the Board is scheduled to review the proposed citation and fine regulations at its May 25 meeting.

• At its January 26 meeting, the Board held a public hearing on its proposed adoption of section 1751.11, Title 16 of the CCR, which would (among other things) 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. *[14:1 CRLR 73; 13:4 CRLR 82]* At the hearing, the Board received testimony encouraging the expansion of the list of drugs which may be included in the kit from CPhA, the California Nurses Association, the Home Infusion Therapy Coalition of California, the California Society of Hospital Pharmacists, Critical Care America, and the California Association for Health Services at Home. Many of the hearing participants stated that an expanded list of drugs would allow for the immediate treatment of emergency situations more effectively and efficiently, make it possible to better meet the needs of the various patient populations served, make it easier to provide early treatment and prevent hospitalization and emergency room visits, and allow for the anticipated growth in home health care. Gilbert Castillo, former Board President and registered pharmacist, testified in support of the proposal and urged the Board to adopt the regulation as proposed. According to Castillo, the regulation as originally drafted would accomplish the goal of providing a method by which registered nurses employed by a home health agency could have emergency access to dangerous drugs necessary for the delivery of parental therapy in the alternative setting.

After discussion, the Board agreed to pursue the regulatory action, subject to various revisions. Among the changes was the addition of proposed section 1751.12, which would provide that a licensed pharmacy shall not issue portable containers to any home health agency or licensed hospice unless the pharmacy has secured reasonable assurance from the home health agency or licensed hospice that it will comply with provisions of section 1751.11, and prohibit a licensed pharmacy from furnishing portable containers to a home health agency or licensed hospice if it does not comply with the provisions of section 1751.11. The Board's changes also added normal saline to the list of drugs which may be included in the portable container. In mid-February, the Board released the modified language for an additional 15-day public comment period.

At its March meeting, the Board discussed the various comments it received during the 15-day public comment period. Following discussion, the Board made several more changes to the proposal, including the addition of a number of drugs to the list of drugs which may be included in the portable container, and revision of the language to clarify that it is the pharmacy's responsibility to ensure that specified requirements are met. The Board unanimously adopted the modifications and agreed to release them for an additional 15-day public comment period; at this writing, the Board hopes to finalize the adoption of the provisions at its May 25 meeting.

• On January 7, the Office of Administrative Law approved the Board's amendment to section 1732.3, Title 16 of the CCR, which provides that a recognized continuing education provider's coursework shall be valid for three years following initial Board approval; previously, such coursework was valid for two years following initial Board approval. *[14:1 CRLR 74; 13:4 CRLR 79]*

• On March 11, the Board published notice of its intent to completely revise section 1724, Title 16 of the CCR, which currently provides that in order to pass the pharmacist licensure examination, a candidate must achieve a score of 75 or more on each section, and that a candidate who receives a score of less than 75 on one section only may retake that one section only at the next scheduled examination; however, if that candidate exercises this option and fails to achieve a score of 75 or more, he/she must take the entire examination upon the next application. *[14:1 CRLR 74]* The Board's proposed new language for section 1724 would provide that the Board's examination consists of two sections, one multiple choice and one essay, both of which must be passed; any candidate who receives a failing grade on the multiple choice section shall be given a failing grade for the entire examination without regard to the performance on the essay section. According to the Board, this regulatory change is being proposed to streamline the examination and grading process; the Board believes that elimination of essay section hand scoring for candidates who fail the multiple choice section will reduce the time and cost for expert graders and related travel expenses. Although not written into the regulation, the Board's initial statement of reasons also states that it will provide, for the first time, diagnostic reports to candidates who fail the multiple choice section of the exam. At this writing, the Board is scheduled to hold a public hearing on its proposed amendments to section 1724 on May 26 in Sacramento.

Controlled Substance Prescriptions. Pursuant to 21 C.F.R. Part 1304.04, pharmacists are required to stamp a red "C" on the hard copy of controlled substance prescriptions. In an effort to accommodate the extensive use of computers in pharmacies, the Board recently asked the U.S. Drug Enforcement Agency (DEA) to modify its regulations to allow pharmacies to either (1) maintain a separate electronic file of Schedule III-V controlled substances; (2) maintain a separate physical file of Schedule III-V controlled substances; or (3) mark all Schedule III-V controlled substance prescriptions with a red "C." Last fall, DEA responded that pharmacies have only two options: keep controlled substance prescriptions physically separate from other prescriptions, or commingle these and other prescriptions, in which case a red "C" must be stamped on controlled substance prescriptions. *[14:1 CRLR 75]*

However, a February 1 letter from G. Thomas Gitchel of DEA acknowledged that "current requirements under Title 21, Code of Federal Regulations, Section 1304.04(h)(2), may be somewhat dated, given the increasing use of electronic processing systems in pharmacies." Gitchel noted that DEA has "initiated a study of the use of computers in pharmacy activities with the intent of determining what provisions might be made in the regulations for use of such systems." To that end, Gitchel requested that the Board describe its experiences with allowing computerized prescription recordkeeping systems. At its March 30 meeting, the Board agreed to furnish such information to DEA.

LEGISLATION

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 would impose an initial "sunset" date of July 1, 1998 for the Board; create a Joint Legislative Sunset Review Committee within the legislature, which would review the Board's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which the Board's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether the Board should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case the Board would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (*See* agency report on DCA for related discussion of the "sunset" concept.) *[S. Appr]*

SB 2045 (Petris), as introduced February 25, would specify that a pharmacist is liable to a parent or other caregiver of a patient incapable of taking medication without assistance, as specified, if the pharmacist knows this fact and the fact

that the medication is to be administered by the parent or caregiver, and mislabels the dosage of a prescription medication or otherwise incorrectly fills or mislabels a prescription. The bill would expressly overrule the California Supreme Court's decision in *Huggins v. Longs Drug Stores California, Inc.*, 6 Cal. 4th 124 (Nov. 18, 1993). *[14:1 CRLR 75] [S. Floor]*

AB 2973 (Aguiar). The Pharmacy Law regulates the licensure of pharmacies and medical device retailers and includes, among other things, provisions requiring that certificates, licenses, permits, or registrations for these businesses be obtained and renewed by persons conducting these businesses in compliance with certain application procedures; existing law requires the Board to issue temporary permits upon conditions determined by the Board when the ownership of these businesses is transferred and authorizes the Board, under certain circumstances, to void the licenses of these businesses and obtain a court order authorizing the Board to enter the premises of these businesses and arrange for the transfer or sale of dangerous drugs, controlled substances, or dangerous devices found therein. As amended April 25, this bill would expand the Board's jurisdiction by making several of these provisions regulating pharmacies and medical device retailers also applicable to veterinary food-animal drug retailers.

Existing law provides that a dangerous drug, as defined, does not include a veterinary drug that is labeled as a veterinary drug. This bill would, notwithstanding this provision, provide that veterinary food-animal drugs include any dangerous drug intended for use in food-producing animals that by federal or state law may be lawfully dispensed only by prescription or furnished pursuant to certain requirements. *[A. Floor]*

AB 3173 (Snyder). Existing law permits pharmacists practicing in hospitals to perform four specified functions which may not be performed by pharmacists in non-hospital settings. As amended May 10, this bill would provide that these functions may also be performed by pharmacists as part of the care provided by a clinic, home health agency, or a provider who contracts with a licensed health care service plan. It would authorize pharmacists to perform these functions only as part of a multidisciplinary team that includes physicians and direct care registered nurses. *[S. B&P]*

SB 1759 (Kopp) is similar to AB 3173 (*see above*). As amended April 27, this bill would provide that a registered pharmacist is not prohibited from requesting drug therapy-related laboratory tests or adjusting the drug regimen of a patient pursuant to a preexisting order or authorization made by the patient's prescriber in a health care facility in accordance with policies, procedures, or protocols developed by health professionals, provided that the pharmacist has successfully completed a certification program approved by the Board of Pharmacy; define the term "health care facility" for these purposes as a facility operated by a health care service plan; and require that these policies, procedures, or protocols include requirements that the medical records of the patient be available to both the patient's prescriber and the licensed pharmacist, and that the procedures to be performed by a licensed pharmacist relate to a condition for which the patient has already seen a physician. *[S. B&P]*

AB 3388 (Harvey). Existing law states that no provision of law shall be construed as prohibiting a pharmacy from furnishing a prescription drug or device to a licensed health care facility for storage in a prescribed manner. As amended May 5, this bill would require that these supplies furnished by a pharmacy to licensed health facilities for storage in a prescribed manner be approved by the facility's patient care policy committee or pharmaceutical service committee and be readily available to each nursing station. *[A. Floor]*

SB 1364 (Marks). Under existing law, controlled substances that are classified as Schedule I substances are not authorized to be used for legitimate medical purposes. As introduced February 1, this bill would make legislative findings and declarations and would provide that marijuana is deemed a Schedule II substance for use for legitimate medical purposes. *[S. Floor]*

SB 1427 (Mello). Existing law authorizes a pharmacist, when filling a prescription drug order, to select another drug product with the same active chemical ingredients of the same strength, quantity, and dosage form, and of the same generic drug type, as defined, under certain circumstances. As amended May 16, this bill would define the term "dosage form" for purposes of this provision. This bill would authorize a pharmacist, notwithstanding that definition, and except when the prescriber indicates no substitutions may be made, to substitute one drug product for another drug product if the drug products are classified as both pharmaceutically equivalent and therapeutically equivalent in a specified federal publication. *[S. Floor]*

SB 1642 (Craven), as amended April 25, would authorize a licensed physician approved to supervise a physician assistant (PA) to delegate to a PA under his/her supervision, and in a manner determined by the supervising physician, the authority to administer or provide medication to a patient or transmit a prescription from the supervising physician to a person who may lawfully furnish the medication or medical device to the patient. It would require, prior to delegating prescription transmittal authority to a PA, the supervising physician to adopt a written, practice-specific formulary and protocols that specify all criteria to be considered for use of a particular drug or device, and any contraindications for the drug or device.

The bill would require any supervising physician's prescription that is transmitted by the PA to be based on either the physician's order for the particular patient or for a drug listed in the formulary. It would prohibit a PA from administering, providing, or transmitting a prescription for Schedule II through Schedule V controlled substances without an order from the supervising physician. The bill would impose other requirements regarding the content of the prescription transmittal order. It would provide that when transmitting a prescription, the PA is acting on behalf of and as an agent for the supervising physician. *[S. Floor]*

SB 2087 (Mello). SB 1051 (McCorquodale) (Chapter 763, Statutes of 1993) requires the Board to adopt regulations that apply the same requirements or standards for oral consultation to an out-of-state pharmacy that ships, mails, or delivers controlled substances or dangerous drugs or devices to a resident of this state, as are applied to an in-state pharmacy when the pharmacy ships, mails, or delivers any controlled substances or dangerous drugs or devices to a resident of this state (*see* MAJOR PROJECTS). As introduced February 25, SB 2087 would repeal SB 1051's requirement that the Board adopt regulations and instead would require any pharmacy, whether located in this state or outside this state, that ships, mails, or delivers a prescription medication to a resident of this state to provide a toll-free telephone service during normal business hours for patients to receive oral consultation from a pharmacist who has access to the patient's records. It would require that written notice of the right to oral consultation and the toll-free telephone number be provided with each container of drugs that is shipped, mailed, or delivered to a patient in this state. *[S. Floor]*

AB 2610 (Bronshvag), as amended April 26, would establish the Clean Needle and Syringe Exchange Program, and

authorize pharmacists, physicians, and certain persons authorized under the pilot project to furnish hypodermic needles and syringes without a prescription or permit as prescribed through the program. This bill would state the findings and declarations of the legislature regarding HIV infection and development of AIDS among injection drug users. *[A. W&M]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 74–75:

SB 1048 (Watson), as introduced March 5, 1993, would establish the Clean Needle and Syringe Exchange Pilot Project, and authorize pharmacists, physicians, and certain other persons to furnish hypodermic needles and syringes without a prescription or permit as prescribed through the pilot project. *[A. Health]*

SB 849 (Bergeson). Under the Pharmacy Law, a "hospital pharmacy" means and includes a pharmacy licensed by the Board of Pharmacy located within any hospital, institution, or establishment that maintains and operates organized inpatient facilities for the diagnosis, care, and treatment of human illnesses in accordance with certain requirements. Existing law requires the Department of Health Services to issue a single consolidated license to a general acute care hospital that meets certain requirements. As amended May 11, this bill would permit, under certain conditions, a hospital pharmacy to be located outside of the hospital in a physical plant that is regulated under a hospital's consolidated license. *[A. Health]*

AB 1807 (Bronshvag), as amended March 23, provides that, notwithstanding specified security measures, a medical device retailer may establish a locked facility for furnishing dangerous devices in emergencies or after working hours, and allows the Board to authorize revisions in the security measures pertaining to the delivery of dangerous devices from locked storage to patients.

Existing law defines the term "prescription" for the purposes of existing law relating to licensure of pharmacists, regulation of pharmacies, and regulation of controlled substances. This bill revises the definition of the term prescription, for those purposes, to also include electronically transmitted prescriptions, as defined. *[13:2&3 CRLR 100–01]*

This bill also provides 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; and requires these facilities to forward to the dispensing pharmacist a copy of any signed telephone order, chart order, or related documentation substantiating each oral prescription transaction. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 2020 (Isenberg), as amended April 28, would, among other things, authorize optometrists to use, prescribe, and dispense specified pharmaceutical compounds to a patient; provide that any use, prescribing, or dispensing of a pharmaceutical agent to a patient by an optometrist pursuant to these provisions is limited to that which is incidental to the practice of optometry; specify that dispensing by the optometrist to a patient be without charge; and make it a misdemeanor for any person licensed as an optometrist to refer a patient to a pharmacy that is owned by that licensee or in which the licensee has proprietary interest. *[S. B&P]*

AB 667 (Boland), which would have provided that existing law prohibiting a person from furnishing any dangerous device, except upon the prescription of a physician, dentist, podiatrist, or veterinarian, does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a chiropractor acting within the scope of his/her license, died in committee.

RECENT MEETINGS

At the Board's January 26–27 meeting, staff reported on the status of its request that the Department of Health Services (DHS) permit an increase in the number of different oral drugs which may be stored in the emergency drug supply of a licensed skilled nursing facility. Currently, DHS permits six drugs and allows flexibility for up to twelve drugs; on the recommendation of its Long-Term Care Committee, the Board requested that DHS allow flexibility for up to 24 drugs. At its October meeting, the Board noted that DHS denied the request but agreed to consider further requests on a case-by-case basis. Further, the Board asked whether DHS would allow the twelve drugs to vary from nursing station to nursing station within a facility. *[14:1 CRLR 75]* At the January meeting, staff reported that, according to DHS, the same drugs must be maintained in the same emergency kit throughout the facility and, in order to increase that amount, program flexibility must be pursued. A CPhA representative commented that its Long-Term Care Management Council is preparing legislation to address this issue.

Also at the Board's January meeting, the Board voted 8–1 to reimburse Board members for all Board-related work, including mail ballots, review of Board packets, review of committee packets, and attendance at committee meetings, with the compensation to be based on the projected estimated time; and unanimously rejected a request from the Vietnamese Pharmacists Association to reconsider the Board's Test of Spoken English (TSE) requirement in section 1719, Title 16 of the CCR, which requires that foreign-trained pharmacists pass the TSE prior to taking the pharmacist licensure examination.

At the Board's March 30–31 meeting, CPhA raised the issue of patients' rights to "reasonable access" to pharmacists, in light of numerous complaints from pharmacists that health maintenance organizations and health benefits plans are increasingly restricting their subscribers to the use of certain pharmacies and excluding some pharmacies from their networks. CPhA Vice-President John Cronin argued that patients are not receiving the full value of their health insurance policies if they are precluded from selecting where they want to purchase prescriptions. Cronin suggested that the Board, the Department of Corporations, the Department of Finance, and the Department of Health Services establish a task force with other affected health care providers to establish a definition of the term "reasonable access." However, Board members noted that the Board is not authorized to take direct action on this issue; instead, the Board unanimously agreed to thank CPhA for its comments and extend the Board's support for CPhA in its pursuit of a definition of the term "reasonable access."

Also at the March meeting, the Board discussed the discipline process for pharmacy technicians, noting that under the Administrative Procedure Act, the procedure for disciplining pharmacy technicians is as procedurally complex as for disciplining pharmacists. Among other things, the Board discussed whether an alternative method of registering technicians might lend itself better to discipline and enforcement activities. The Board is expected to continue its discussion of this matter at a future meeting.

Also at its March meeting, the Board noted the reassignment of DCA legal counsel Robert Miller and the appointment of Chris Grossgart to serve as DCA legal counsel for the Board; unanimously agreed to write a letter of support to the Medical Board of California (MBC) on the issue of pain management (*see* agency report on MBC for related discussion); and unanimously agreed to establish an eight-year term limit for members of its Competency Committee, with no more than two members changing each year.

FUTURE MEETINGS

May 25–26 in Sacramento.
July 27–28 in San Francisco.
October 26–27 in Los Angeles.

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 8805 of the Business and Professions Code. The Board's regulations are found in Division 5, Title 16 of the California Code of Regulations (CCR).

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.

The Board consists of thirteen members: seven public members, one licensed land surveyor, four registered Practice Act engineers and one Title Act engineer. Eleven of the members are appointed by the Governor for four-year terms which expire on a staggered basis. One public member is appointed by the Speaker of the Assembly and one by the Senate Rules Committee.

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. The committees function in an advisory capacity unless specifically authorized to make binding decisions by the Board.

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. 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 authorities linked to the civil Practice Act and require an additional examination after qualification as a civil engineer.

On March 9, Governor Wilson appointed two new Board members who subsequently joined PELS at its April 8 meeting. New public member Kathryn A. Hoffman is a senior systems engineer for an imaging technology firm, and structural engineer Hoi W. Wong is president of the Sacramento firm of Hoi Wong and Associates. Also on March 9, the Governor reappointed current Board President Richard A. Johnson to another term on the Board.

MAJOR PROJECTS

Oversight Hearing and Resulting Legislation Prompt PELS Strategic Planning Workshops. Following its November 1993 oversight hearing on PELS' performance *[14:1 CRLR 76–77]*, the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions released a report in which it concluded that all Department of Consumer Affairs (DCA) occupational licensing agencies should be subject to a "sunset" legislative review process, and that PELS should be merged with the Board of Registration for Geologists and Geophysicists (BRGG). Accordingly, Senator Dan McCorquodale introduced SB 2036, which would establish a "sunset" mechanism for all DCA agencies; several weeks later, he amended SB 2038 to include a provision merging BRGG and PELS.

In anticipation of a May 9 Business and Professions Committee hearing on both bills, representatives of both boards and affected trade associations lobbied Senator McCorquodale and the members of the Committee against the merger provision in SB 2038. At the May 9 hearing, Committee members agreed to postpone the merger of the two boards, but scheduled them for early "sunset" review under SB 2036 (*see* LEGISLATION).

In the meantime, PELS scheduled a February 25–26 "strategic planning session" designed to clarify its role, function, and constituencies, and to address the criticisms leveled against it at the Senate Subcommittee hearing. The focus of much of the discussion at the retreat was the Center for Public Interest Law's (CPIL) assertion that PELS' engineering enabling statutes and regulations are extremely vague and in need of major restructuring and modernization; and Board President Rich Johnson's November 1993 "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. *[14:1 CRLR 77]* On this issue, the Board heard presentations from representatives of state engineering boards in New Jersey, Delaware, Wyoming, and Utah. Although PELS members generally agreed that its enabling act is in need of an overhaul and discussed how aspects of the different approaches taken by these and other states might be applied in California, they made no specific plans to accomplish this goal.

At the workshop, the Board considered for adoption the following mission statement: "The mission of the Board of Registration for Professional Engineers and Land Surveyors is to safeguard the life, health, property, and public welfare by regulating the practice of professional engineering and professional land surveying. We qualify and license individuals, establish regulations, enforce laws and regulations, [and] provide information so that the public can make informed decisions." Additionally, the Board reviewed a more detailed proposed vision statement, and discussed multiple issues regarding its regulatory framework and purpose.

Among other things, the Board set a goal to advise all engineer and land surveyor applicants who file timely applications of acceptance or rejection within sixty days of receipt of the application. The Board also discussed instituting a continuing education and/or retesting program (*see below*), and set a goal to implement a comprehensive program to ensure continuing competency.

In response to CPIL's claim that more than half of the consumer complaints received by the Board stem from the lack of a written contract between the parties and that PELS has failed to police billing abuses within the industry, the Board discussed whether PELS staff should be involved in fee disputes between consumers and engineers or land surveyors. Several staff members noted that staff currently involves itself informally in mediating fee disputes. Several Board members opined that staff should not be involved in this capacity, and should leave such matters to the courts. Although PELS has jurisdiction to deal cases involving breach of contract, these members contended that such involvement by PELS is unfair to the en-