



establish a birthdate renewal program for NHAs. [14:2&3 CRLR 90]

At the Board's July 21 meeting, Executive Officer Pamela Ramsey asked BENHA to consider additional amendments to the Board's regulations. Specifically, the proposed amendments would authorize continuing education (CE) credit for Board meeting attendance; set a maximum number of hours an AIT may work per week [14:2&3 CRLR 92]; revise the Board's fee regulation to conform it with AB 3660 (Caldera) (see LEGISLATION); amend section 3141 to conform it with the biennial birthdate renewal cycle; amend several provisions to reflect the Board's name change to the Board of Nursing Home Administrators, as specified in SB 2101 (McCorquodale) (see LEGISLATION); amend the preceptor qualification requirements to add that the preceptor must hold an active NHA license and may not hold a probationary license; and specifically authorize the acceptance of NAB-approved CE courses. The Board voted to accept Ramsey's recommendations and directed legal counsel to draft regulatory language for review at the Board's December meeting.

LEGISLATION

Future Legislation. At its July 21 meeting, BENHA discussed the lack of CE requirements for delinquent licensees who renew their licenses after a lapse in practice; currently, no provision requires prorated CE units during the three-year period that a licensee may be delinquent before he/she must reapply. Some Board members expressed a desire to see a provision requiring delinquent licensees to make up CE units; the Board voted to place this issue on a future agenda for consideration of a legislative proposal.

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 91:

SB 2101 (McCorquodale), as amended July 7, changes BENHA's name to the State Board of Nursing Home Administrators, effective January 1, 1995. This bill also increases from twelve to 24 months the length of time within which BENHA may serve an accusation to suspend or revoke an administrator's license after DHS' issuance of a temporary suspension order, service of an accusation to revoke a facility's license, or final decertification from the Medi-Cal or Medicare program (see MAJOR PROJECTS). This bill was signed by the Governor on September 30 (Chapter 1275, Statutes of 1994).

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review pro-

cess for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1998 for BENHA; creates a Joint Legislative Sunset Review Committee which will review BENHA's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BENHA's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BENHA 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 BENHA would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

AB 3660 (Caldera). Under existing law, BENHA is authorized to set and charge fees for, among other things, the application and examination of applicants for licensure as NHAs. As amended August 11, this bill revises the Board's fee schedule by increasing several of its fees. This bill was signed by the Governor on September 30 (Chapter 1120, Statutes of 1994).

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 of the prescribed medical intervention. Under existing law, this authority would be repealed on January 1, 1995. As amended August 18, this bill defines the term "lack of capacity" for purposes of these provisions, revises the review process, and extends this authority until January 1, 1997. This bill requires DHS to convene a committee of specified composition to assess the need for changes to the process for the initiation of medical intervention, and to make recommendations to the legislature regarding any identified changes to be made to that process by July 1, 1995. This bill was signed by the Governor on September 25 (Chapter 791, Statutes of 1994).

RECENT MEETINGS

At its July 21 meeting, the Board established two subcommittees to its Education Committee. One subcommittee will work with colleges and universities re-

garding internship programs; Sheldon Blumenthal and Sister Sienna Wald were appointed to this subcommittee. The Board also established an AIT/Preceptor Program Review Subcommittee, which will consist of Board members Blumenthal and Wald; professional association representatives Sally Rapp, Louis Koff, Georgann Taylor, and a representative from CAHF will also participate on this subcommittee.

Also at BENHA's July 21 meeting, Ramsey reported that the Department of Finance approved the Board's budget deficiency request; with that approval, the Board's fiscal year 1993-94 budget was augmented by approximately \$79,000. Of that amount, approximately \$55,000 will be used to cover the prosecution of enforcement cases currently pending at the AG's Office; \$1,900 will be used to support increased examination costs; \$11,785 will cover in-state travel expenses; \$3,000 will augment consultant services; and \$4,600 will pay for the Board's temporary help.

Also in July, Orrin Cook, MD, took over as BENHA Chair; Dr. Cook previously served as Vice-Chair under Nancy Campbell, who recently resigned from the Board. The Board unanimously elected Sheldon Blumenthal to serve as Vice-Chair.

FUTURE MEETINGS

December 7 in San Diego.
February 16, 1995 in Los Angeles.
May 11, 1995 in Sacramento.
August 17, 1995 in San Francisco.
November 9, 1995 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.

On June 10, Governor Wilson appointed optometrist Steven Grant to the



Board. On August 31, Wilson appointed optometrists Gerald Easton and Sheila Titus and public member Patricia Lee Gee to the Board.

MAJOR PROJECTS

Ophthalmologist/Optomestrist Co-Management of Care Issues. For the past several months, the Board of Optometry and the Medical Board of California (MBC) have exchanged terse letters over the authority of optometrists to provide post-operative cataract care. The issue erupted in February 1994, when MBC admonished an ophthalmologist for his distribution to optometrists of a letter soliciting referrals of patients to him for surgery in return for his referral of the patients back to the optometrist for "co-managed post-operative cataract care." In the admonition, MBC stated both that (1) the referral arrangement violates the anti-kickback provisions of Business and Professions Code section 650, and (2) post-operative care "exceeds the scope of optometric practice." The Board has long believed that post-operative care is within the scope of practice of optometrists, and wrote a May 9 letter to MBC urging its agreement that "[o]ptomestrist may participate in the co-management of the immediate post-surgical patient" and "[t]he parameters of this co-management process should be determined by the practitioners involved based upon the nature of the surgical procedure performed and the risk factors anticipated during the recovery period." [14:2&3 CRLR 92-93]

At its May 19-20 meeting, the Board noted that MBC had not released any documentation clarifying its opinion on the co-management issue; Executive Officer Karen Ollinger opined that MBC would probably not issue such an opinion, noting that MBC has previously been requested to state its position on the matter and has failed to do so. Also at the May meeting, Department of Consumer Affairs (DCA) legal counsel Robert Miller presented his opinion which relates to optometrists' ability to diagnose conditions and make referrals to physicians. According to Miller, Business and Professions Code section 3041 authorizes optometrists to diagnose conditions of the eye, and optometrists perform diagnoses both for the purposes of prescribing and for the purposes of referral to physicians. Miller also stated that optometrists also have a professional duty to make what amounts to preliminary diagnoses of conditions such as glaucoma, for purposes of determining whether a patient should be referred to a physician. According to Board staff, this opinion concerning optometrists' ability

to diagnose is the basis for concluding that optometrists are authorized to be involved in the co-managed post-operative care of patients.

At the Board's August 18-19 meeting, representatives of the California Optometric Association (COA) asked the Board to publicize its opinions on co-management and diagnosing issues, so that all licensees will be aware of the Board's position. Ollinger responded that the Board's next newsletter would address co-management and diagnosing issues.

Licensure of Foreign Graduates. At the Board's May 19-20 meeting, public member Mel Santos commented that the issue of foreign graduates' pathways to licensure as an optometrist in California has been handled inconsistently and haphazardly by the Board in the past [13:4 CRLR 77-78; 12:2&3 CRLR 131-32; 10:4 CRLR 97]; he suggested that the Board form a task force to address this issue. The Board noted that, in order for a foreign graduate to sit for the National Board examination (NBE), he/she must be sponsored by a state board of optometry. The main issue of concern is how the Board should determine whether the foreign student's credentials are equivalent to those required in California. Several suggestions were made as to how to handle sponsorship issues, with some members suggesting that the state sponsor any candidate who wishes to sit for the exam, and then determine educational equivalency if and when that candidate passes the NBE; currently, the Board determines whether it will sponsor a foreign graduate depending on whether it finds his/her foreign education to be equivalent to the curriculum required in California. The Board also discussed the possibility of surveying optometry schools worldwide to evaluate educational equivalency, and develop guidelines accordingly. Following discussion, Board President John Anthony, OD, accepted responsibility for collecting information and developing guidelines for the Board's consideration. Also at the May meeting, the Board approved a resolution asking the International Association of Boards of Examiners in Optometry (IAB) to develop guidelines for the credentialing of foreign schools, and the evaluation of such schools for the purpose of determining educational equivalency.

At the Board's August 18-19 meeting, Anthony reported that IAB has apparently accepted the Board's resolution, but he has heard nothing further about it; Anthony also reported that he would continue to work on a proposal, and hoped to present draft guidelines for the Board's consideration at its next meeting.

Board Reviews Draft Regulatory Proposals. At the Board's August 18-19 meeting, Regulations Committee Chair Robert Dager, OD, presented several draft rulemaking proposals for the Board's consideration; the proposals would clarify the Board's application and examination requirements for licensure. Specifically, the Regulations Committee proposed the following changes:

- Proposed section 1520, Title 16 of the CCR, would state that application for licensure as an optometrist shall be made on a form prescribed by the Board and shall show that the applicant is at least eighteen years of age; the application shall be accompanied by the fees fixed by the Board, satisfactory evidence of graduation from an optometry school approved by the Board, and two classifiable sets of fingerprints on forms provided by the Board; completed applications shall be filed with the Board not later than thirty days prior to the date set for the beginning of the examination for which application is made; and an incomplete application shall be returned to the applicant together with a statement setting forth the reason for returning the application and indicating the amount of money, if any, which will be refunded.

- Proposed section 1521 would state that permission to take the clinical and demonstration and the California laws and regulations examinations shall be granted to those applicants who have paid the necessary fees and whose credentials have been approved by the Executive Officer; the section would also provide that nothing in the Board's regulations shall be construed to limit the Board's authority to seek from the applicant such other information as may be deemed necessary to evaluate the applicant's qualifications.

- Existing section 1530 would be repealed, and a new section 1530 would be added to state that each applicant for licensure must obtain a passing score of at least 75% in each of the required examination sections listed in section 1531.

- Section 1531 would be amended to provide that the Board's licensure examination is composed of Section I, a written cognitive examination developed or approved by the Board or the NBE; Section II, a clinical and demonstration component including specified features; and Section III, which covers California laws and regulations.

The Board reviewed the draft amendments, but took no action on the proposals. The Regulations Committee is also expected to draft changes to the Board's regulations pertaining to examination review and appeals.



LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 93-94:

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1999 for the Board; creates a Joint Legislative Sunset Review Committee which will review the Board's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which the Board's performance will be evaluated. Following review of the agency and a public hearing, the Committee will 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. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

AB 2943 (Hauser). Under existing law, the Board is required to adopt regulations requiring that licensees submit proof of continuing education as a condition of renewal of licensure. As amended June 29, this bill authorizes the Board to adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. [14:2&3 CRLR 93; 12:2&3 CRLR 133] This bill was signed by the Governor on September 15 (Chapter 578, Statutes of 1994).

SB 1399 (Lewis), as amended April 13, authorizes the Board, notwithstanding any other provision of law relating to optometry, to issue a certificate of registration to persons licensed in another state who meet certain other qualifications. This bill was signed by the Governor on August 31 (Chapter 403, Statutes of 1994).

The following bills died in committee: **AB 2020 (Isenberg)**, which would have, among other things, authorized optometrists to use specified diagnostic and therapeutic pharmaceutical agents; **AB 1894 (Polanco)**, which would have authorized 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 **SB 908 (Calderon)**, which would have pro-

vided 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.

LITIGATION

In compliance with the court's April 25 order in *Engineers and Scientists of California (ESC), et al. v. Division of Allied Health Professions*, No. 532588 (Sacramento County Superior Court), the Medical Board published an August 19 notice in the *California Regulatory Notice Register* stating that section 1366(b)(4), Title 16 of the CCR, is invalid in its entirety. The section which permitted unlicensed medical assistants to perform "automated visual field testing, tonometry, or other simple or automated ophthalmic testing" under certain conditions, was invalidated by the court due to procedural irregularities in the rulemaking process. [14:2&3 CRLR 94; 14:1 CRLR 72; 13:2&3 CRLR 100] At the Board's August meeting, Executive Officer Karen Ollinger noted that the Medical Board plans to convene a factfinding session including optometry representatives before it redrafts that provision of its medical assistant regulations.

RECENT MEETINGS

At its August 18-19 meeting, the Board discussed IAB's creation of the Council on Optometric Practitioner Education (COPE), a centralized approval process for optometric continuing education (CE) courses. According to IAB, of which the Board is a member, COPE serves as a national clearinghouse for all CE courses on a statewide, regional, or national scope, and was created to eliminate duplicative efforts to approve CE courses by state boards, instructors, and program administrators. State boards do not have to pay a fee to participate in COPE, as it is an IAB service to its member state boards. At the meeting, the Board reviewed the materials provided by IAB explaining how COPE reviews and approves CE courses, criteria for course qualification, and criteria for administrator qualification, among other things. Following discussion, the Board unanimously agreed to utilize COPE for the approval of CE courses.

Also at the August meeting, the Board agreed to meet on October 14 in Monterey for a strategic planning meeting.

FUTURE MEETINGS

October 14 in Monterey
(strategic planning session).
December 1-2 in San Diego.

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.

In January 1994, public member Herb Stoecklein resigned from the Board; at this writing, he has not yet been replaced.

MAJOR PROJECTS

Electronic Transmission of Prescriptions. AB 1807 (Bronshvag) (Chapter 26, Statutes of 1994) revised the definition of the term "prescription" to include prescriptions for controlled substances that are electronically transmitted; AB 1807 also amended Health and Safety Code section 11167.5 to provide that an order for a Schedule II controlled substance in a licensed skilled nursing facility, an intermediate care facility, or a licensed home health care agency providing hospice care may be dispensed upon an oral or electronically transmitted prescription, subject to specified conditions. [14:2&3 CRLR 98]

At its May 25-26 meeting, the Board reviewed draft regulatory language to implement AB 1807. Among other things, the proposed language would provide that, except as otherwise prohibited by law, prescriptions may be transmitted by electronic means from the prescriber to the pharmacy. An electronically transmitted prescription order must include the name and address of the prescriber, a phone number for verbal confirmation, date of